

FINAL PROJECT DOCUMENTS (Volume II)
FORMER HUNTERS POINT NAVAL SHIPYARD
(Phase 1- Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**San Francisco, California
April 2005**

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

VOLUME I

1. Disposition and Development Agreement (the "DDA") by and between the Redevelopment Agency of the City and County of San Francisco (the "Agency") and Lennar/BVHP, LLC ("Lennar"), dated December 2, 2003, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Image 564 as Instrument No. 2005H932190, with the following Attachments:
 - Att. 1 Legal Description of Phase 1 and of the Project Site (which excludes the Agency Parcels)
 - Att. 2 Map of Project Site and of Agency Parcels, showing Agency Housing Parcels and Community Facilities Parcels
 - Schedule A - Map showing SLC Land, including Pre-Exchange SLC Land and Post-Exchange SLC Land
 - Schedule B - Land Use Plan
 - Att. 3 Quitclaim Deed from Agency to Lennar
 - Att. 4 Short Term License Agreement (Agency Parcels)
 - Att. 5 Redevelopment Area Declaration of Restrictions
 - Att. 6 Reversionary Grant Deed
 - Att. 7 Insurance (includes environmental insurance)
 - Att. 8 Guaranty
 - Att. 9 Infrastructure Plan
 - Exhibit A Demolition and Deconstruction
 - Exhibit B Grading and Landslide Repair
 - Exhibit C Infrastructure Within the Rights of Way (including streets and utilities)
 - Exhibit D Public Open Space
 - Att. 10 Schedule of Performance for Infrastructure Development
 - Att. 11 EIR Mitigation Measures
 - Att. 12 Plan for Environmental Investigation and Remediation During Development at Hunters Point Shipyard
 - Att. 13 Prevailing Wage Requirements
 - Att. 14 Form of Card Check Agreement

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
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and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

- Att. 15 Minimum Compensation Policy
- Att. 16 Health Care Accountability Policy
- Att. 17 Equal Benefits Policy
- Att. 18 Form of Engineer's/Architect's Certificate Re Compliance of Design with Laws re Access
- Att. 19 Form of Engineer's/Architect's Inspection Certificate
- Att. 20 Form of Engineer's/Architect's Certificate Re Compliance of Construction with Laws re Access
- Att. 21 Form of Certificate of Completion
- Att. 22 Affordable Housing Program
 - Exhibit A Distribution of Affordable Housing Units
 - Exhibit B Declaration of Rental Use Restriction
 - Exhibit C Declaration of Restrictions for For-Rent Affordable Housing Units
 - Exhibit D Declaration of Restrictions for For-Sale Affordable Housing Units
 - Exhibit E Memorandum of Option
 - Exhibit F Release of Option Rights
 - Exhibit G Major Phase Housing Data Table
 - Exhibit H Project Housing Data Table
 - Exhibit I Marketing and Operating Obligations
- Att. 23 Community Ownership, Financing and Benefits Policies and Procedures
- Att. 24 Equal Opportunity Program and Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace)
 - Exhibit A Equal Opportunity Program
 - Rider 1 Construction Work Force
 - Rider 2 Equal Opportunity for Women and Minority Owned Business Enterprises
 - Rider 3 Permanent Work Force of Developer and Retail Tenants
 - Rider 4 First Source Referral Hiring and Job Training
 - Exhibit B Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace)

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

Att. 25 Financing and Revenue Sharing Plan

- Exhibit A Preliminary Budget and Project Pro Forma
- Exhibit B Description of Qualified Predevelopment Costs
- Exhibit C Description of Qualified Pre-Agreement Costs
- Exhibit D Tables: Agency Land Return/Developer Equity Return
Formulas and Examples

Att. 26 Option: Alternative Financing and Revenue Sharing Plan with Accelerated
Compensation for Land Value

Att. 27 Outline of Provisions of Vertical Disposition and Development Agreement

Att. 28 Transportation Management Plan

Att. 29 Interim Lease

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
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and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

VOLUME II

2. First Amendment to Disposition and Development Agreement by and between the Agency and Lennar, dated April 4, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Image 565 as Instrument No. 2005H932191, with the following Exhibits (revised DDA Attachments):
 - Exh. A Form of Reversionary Quitclaim Deed
(Att. 6 to DDA)
 - Exh. B Substitute Language re Insurance
(Att. 7 to DDA)
 - Exh. C Substitute Language re Storm Drainage
(Att. 9 to DDA)
 - Exh. D Schedule of Performance for Infrastructure Development
(Att. 10 to DDA)
 - Exh. E Prevailing Wage Requirements
(Att. 13 to DDA)
 - Exh. F Minimum Compensation Policy
(Att. 15 to DDA)
 - Exh. G Outline of Provisions of Vertical Disposition & Development Agreement
(Att. 27 to DDA)
 - Exh. H Environmental Ordinances (including Article 31)
(Att. 30 to DDA)
 - Exh. I Open Space Build-Out Schedule of Performance
(Att. 31 to DDA)
 - Exh. J Design Review and Document Approval Procedure for Infrastructure Development
(Att. 32 to DDA)
 - Exh. K Design Review and Document Approval Procedure for Vertical Improvements
(Att. 33 to DDA)
 - Exh. L Subdivision Map Ordinance and Regulations
(Att. 34 to DDA)
 - Exh. M List of Attachments

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

VOLUME III

3. Interim Lease between the Redevelopment Agency of the City and County of San Francisco and Lennar/BVHP, LLC, dated December 3, 2004.
4. First Amendment to Interim Lease between the Agency and Lennar, dated _____, 2005.
5. Interagency Cooperation Letter Agreement between the Agency, the Mayor, and the City's Department of Public Works, Public Utilities Commission, Municipal Transportation Agency, Department of Parking and Traffic, Planning Department, Real Estate Division, Department of Building Inspection, and the Department of Public Health, dated February 11, 2005.
6. License for Nonfederal Use of Real Property between the United States of America, acting by and through its Department of the Navy and the Agency, dated March 21, 2005.
7. Demand Letter from the Agency to Lennar regarding all amounts owing from Lennar, dated April 4, 2005.
8. Commitment to Issue Letter of Credit from KBC Bank on behalf of Lennar, dated March 3, 2005.
9. Agency and Lennar's Joint Escrow Instructions to Chicago Title Insurance Company, Escrow No. 6044441, dated April 4, 2005.
10. Written confirmation from the State of California, acting by and through the State Lands Commission, regarding approval of the proforma title policy, dated April 1, 2005.
11. Written confirmation from the Agency regarding approval of the proforma title policy, dated April 4, 2005.
12. Quitclaim Deed for Parcel A-1, dated April 4, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Image 566 as Instrument No. 2005H932192.
13. Correction to Quitclaim Deed for Parcel A-1, dated April 22, 2005, and recorded on April 25, 2005, in the San Francisco County Recorder's Office in Reel I875 at Image 456 as Instrument No. 2005H942790.
14. Quitclaim Deed for Parcel A-2, dated April 4, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Image 567 as Instrument No. 2005H932193.

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

15. Correction to Quitclaim Deed for Parcel A-2, dated April 22, 2005, and recorded on April 25, 2005, in the San Francisco County Recorder's Office in Reel I875 at Image 457 as Instrument No. 2005H942791.
16. Reversionary Quitclaim Deed for Parcel A-1, dated April 4, 2005.
17. Reversionary Quitclaim Deed for Parcel A-2, dated April 4, 2005.
18. Irrevocable Escrow Instructions regarding the Reversionary Quitclaim Deeds, dated April 4, 2005.
19. Supplemental Irrevocable Escrow Instructions regarding the Reversionary Quitclaim Deeds, dated _____, 2005.
20. Lennar's Certificate of Readiness, dated April 4, 2005.
21. Certificates of Insurance, dated _____, 2005.
22. Auditor's Final Report on Applying Agreed-Upon Procedures for Hunters Point Shipyard Predevelopment Costs, prepared by Williams, Adley & Company, LLP, dated September 10, 2004.
23. Lennar's Representation Letter regarding Auditor's Final Report on Applying Agreed-Upon Procedures for Hunters Point Shipyard Predevelopment Costs, dated February 10, 2005.
24. Agency's Representation Letter regarding Auditor's Final Report on Applying Agreed-Upon Procedures for Hunters Point Shipyard Predevelopment Costs, dated March 2, 2005.
25. Detailed Updated Preliminary Budget, dated April 5, 2005.
26. Agreement between the Agency and the State of California, by and through the State Lands Commission, to Establish the Ordinary High Water Mark in Two Parcels of Land in the City and County of San Francisco ("Boundary Line Agreement"), dated March 30, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Image 563 as Instrument No. 2005H932189.
27. Agency's Title Insurance Proforma, dated April 3, 2005.
28. Determination letter from the City and County of San Francisco, by and through its Department of Public Works, to Lennar affirming that the proposed transaction is an exempt conveyance under the Subdivision Map Act, dated March 7, 2005.

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

29. Open Space Plan, prepared by SMWM, Conger Moss Guillard, Hood Design, and Stevens & Associates, dated November 8, 2004; and Streetscape Master Plan, prepared by Korve Engineering, SMWM, Conger Moss Guillard, Hood Design, and Stevens & Associates, dated November 8, 2004.

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

VOLUME IV

30. Community Benefits Agreement ("CBA") between Lennar and the Agency, dated April 4, 2005, with the following exhibits:
 - Exhibit A OCIP Addendum
 - Exhibit B OCIP Enrollment Application
 - Exhibit C Trade Risk Tier
 - Exhibit D OCIP Manual
 - Exhibit E Location of Community Builder Lots
 - Exhibit F Intentionally Omitted
 - Exhibit G Community Builder Application
 - Exhibit H Interim African Marketplace Site Map
 - Exhibit I Scope of Work for the Local Arts and Cultural Organization Contract
 - Exhibit J Scope of Work for Los Angeles African Marketplace Contract
 - Exhibit K Jobs Program Methodology and Data
 - Exhibit L Outreach Program
 - Exhibit M Assumption Agreement
31. Lennar's Acknowledgment Letter regarding EOP subcontract riders and CBA side letter agreement, dated April 4, 2005, with the following attachments:
 - Att. A Form of Subcontracts
 - Att. B Form of Subcontract Riders
32. Agency's Sign-off Letter regarding approval of the Subcontract Rider forms, dated _____, 2005.
33. Subcontract Riders, dated _____, 2005.
34. Lennar's Acknowledgment Letter regarding its contract compliance obligation as set forth in the DDA and the CBA, dated April 4, 2005.
35. Document setting forth the agreed-upon minimum purchase price for each lot, dated _____, 2005.
36. List of pre-approved appraisers, mediators and brokers, dated March 24, 2005.
37. Interim Demolition and Deconstruction Plan for Parcel A-1, dated October 21, 2004, with the following exhibits:
 - Exhibit A Draft Parcel A Dust Control Plan
 - Exhibit B Draft Sampling and Analysis Plan for the Evaluation of Lead-based Paint in Soil
 - Exhibit C Contingency Plan for the Management of Abrasive Blast Material
38. Overall Energy Conservation and Green Construction Plan, dated November 8, 2004.

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
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and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

39. Agency's Hazardous Substance Disclosure (pursuant to California Health & Safety Code Section 25359.7), dated April 4, 2005.
40. Preliminary Change of Ownership for Parcels A-1 and A-2, dated April 4, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Images 566 and 567 as Instrument Nos. 2005H932192 and 2005H932193, respectively.
41. Transfer Tax Affidavits for Parcels A-1 and A-2, dated April 4, 2005, and recorded on April 5, 2005, in the San Francisco County Recorder's Office in Reel I861 at Images 566 and 567 as Instrument Nos. 2005H932192 and 2005H932193, respectively.
42. Owner's Affidavit, dated April 4, 2005.
43. Short Term License Agreement (Agency to Lennar) granting Lennar access to the Property for the purposes of constructing the Infrastructure, dated April 4, 2005.
44. Short Term License Agreement (Lennar to Agency) granting Agency access through the Project Site to portions of the Agency Property that are inaccessible from any existing roads on the Project Site, dated April 4, 2005.
45. Lennar's letter designating its Project Decision Team members, dated March 30, 2005.
46. Agency's letter designating its Project Decision Team members, dated April 4, 2005.
47. Agency's letter to Lennar clarifying the definition of Approved Expenses under the DDA, dated April 1, 2005.
48. Design for Development, Hunters Point Shipyard Redevelopment Project, adopted by the Agency's Commission on September 30, 1997, by Resolution No. 1997-193.
49. Amended Design for Development, Hunters Point Shipyard Redevelopment Project, adopted by the Agency's Commission on January 18, 2005, by Resolution No. 7-2005.
50. Agency Housing Parcel Schedule of Performance, dated _____, 2005.
51. Agency's McEnerney action to establish and quiet title (Parcels A-1 and A-2), San Francisco Redevelopment Agency vs. All Persons Claiming Any Interest in, or Lien Upon, the Real Property Herein Described, or any Part Thereof, San Francisco Superior Court, Case No. 05440013, filed on April 1, 2005, and includes the following documents:
 - Summons to Establish Title;
 - Complaint Under Destroyed Land Records Relief Law;
 - Declaration of James B. Morales in Support of Complaint Under Destroyed Land Records Relief Law; and

FINAL PROJECT DOCUMENTS - PHASE 1 (Parcel A)

between

**THE REDEVELOPMENT AGENCY OF THE
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and

Lennar/BVHP, LLC

**Former Hunters Point Naval Shipyard
San Francisco, California**

Agency's Notice of Pending Action Under Destroyed Land Records Relief Law
(filed on April 4, 2005, in San Francisco Superior Court, and recorded on April 4,
2005, in the San Francisco County Recorder's Office in Reel I860 at Image 157
as Instrument No. 2005H931438)

52. Quitclaim Deed for Vacation of Certain Street Areas within Hunters Point Naval Shipyard, dated _____, 2005, and recorded on _____, 2005, in the San Francisco County Recorder's Office in Reel ____ at Image ____ as Instrument No. _____.

Free Recording Pursuant to
Government Code Section 27383 at the
Request of the Redevelopment Agency
of the City and County of San Francisco

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102
Attn: Development Services

CONFORMED COPY of document recorded on,

04/05/2005.2005H932191

as No.

at Reel I 861, Image 565

This document has not been compared with the original
SAN FRANCISCO ASSESSOR RECORDER

(SPACE ABOVE THIS LINE FOR RECORDER'S USE ONLY)

**FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
HUNTERS POINT SHIPYARD
PHASE 1**

by and between

**THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO**

and

LENNAR-BVHP, LLC,
a California limited liability company
doing business as Lennar/BVHP Partners

**FIRST AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT
HUNTERS POINT SHIPYARD
PHASE 1**

This First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 (this "First Amendment") dated as of April 4, 2005 is entered into by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, exercising its functions and powers and organized and existing under the Community Redevelopment Law of the State of California (together with any successor public agency designated by or pursuant to law, the "Agency"), and LENNAR-BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer").

RECITALS

This First Amendment is made with reference to the following facts and circumstances:

A. The Agency and Developer, entered into that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of December 2, 2003 and recorded April 5, 2005 as Document No. 2005 H932190 in the Official Records of San Francisco County (the "Horizontal DDA"). The capitalized terms used herein shall have the meaning set forth in the Horizontal DDA, unless otherwise specifically provided herein.

B. Since the December 2, 2003 Effective Date of the Horizontal DDA: (i) the CAC has requested various minor changes; (ii) certain scrivener's errors and other minor factual inaccuracies have been identified in the Horizontal DDA, and (iii) additional information has become available, all of which require that certain technical changes be made to ensure that the terms of the Horizontal DDA accurately reflect the transaction contemplated thereunder.

C. Developer and the Agency wish to enter into this First Amendment for the purposes of achieving redevelopment within Phase 1 of the Shipyard and making certain amendments to the Horizontal DDA, all to further effectuate the program of development contemplated by the Redevelopment Plan. The Parties have entered into this Amendment to memorialize their understanding and commitments concerning the matters generally described above.

AGREEMENT

Accordingly, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, Developer and the Agency agree as follows:

1. All references to **LENNAR/BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners** (or simply **Lennar/BVHP**), as Developer in the Horizontal DDA, Community Benefits Agreement, Open Space Master Plan, and any other related documents, including without limitation those attached to the Horizontal DDA or incorporated therein by reference, shall be deemed to mean **LENNAR-BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners**.

2. Notwithstanding the various uses of the defined term **Project Site**” in the Horizontal DDA and any related documents, whether or not they are physically attached to the Horizontal DDA, it shall be understood that the term **“Project Site”**: a) when used to describe the land conveyed from the Navy to the Agency, shall be deemed to include all property so conveyed; b) when used to describe the land to be transferred from the Agency to Developer, shall be deemed to exclude the Agency Parcels and any property

conveyed by the Navy but not transferred to Developer; and (c) when used to describe the land that Developer shall operate and maintain under the Interim Lease, shall be deemed to include all property conveyed from the Navy to the Agency (including the Agency Parcels and any land conveyed by the Navy to the Agency but not subsequently transferred to Developer).

3. The fourth sentence of Recital D is hereby deleted in its entirety and the following is substituted in lieu thereof:

“The portion of the Shipyard subject to this DDA (“Phase 1”) comprises portions of Parcels A and B, as designated by the Navy, including the hilltop area of Parcel A and the south side of the hill (“Parcel A-1”) and certain flat portions of Parcel B (“Parcel B-1”).”

4. Section 1.1 of the Horizontal DDA is hereby amended as follows:

A. The definition of **Agency Costs** is revised to delete the reference to Section 22.7 and to substitute the words “Section 22.6” in lieu thereof.

B. The definition of **Amended Design for Development for Vertical Improvements** is deleted in its entirety and the following is substituted in lieu thereof:

“**Amended Design for Development for Vertical Improvements** means that certain document entitled “Design for Development Hunters Point Shipyard Redevelopment Project”, originally adopted by the San Francisco Redevelopment Agency Commission (“Agency Commission”) on September 30, 1997 by Resolution No. 1997-193, as amended on January 18, 2005 by Resolution No. 7-2005, and as the same may be amended from time to time. Though not an attachment hereto, the Amended

Design for Development of Vertical Improvements shall be considered a part of this Agreement.”

- C. The following definition is inserted after the definition of Arbiter:

“**Article 31** means those environmental ordinances adopted to date that fall within the definition of Environmental laws (including, without limitation, Article 31), copies of which of which are included at Attachment 30.”

- D. The following definition is inserted after the definition of Article 31:

“**Article 31 Plan(s)** has the meaning set forth in Section 20.”

- E. The definition of **Bayview Hunters Point Area** or **BVHP Area** is deleted in its entirety and the following is substituted in lieu thereof:

“**Bayview Hunters Point Area** or **BVHP Area** means that portion of the City and County of San Francisco located within the portions of the zip code areas 94124, 94134 and 94107 (or any successor zip codes) that are located in Supervisorial District 10, as shown on that certain Map of the City and County of San Francisco showing Precincts and Legislative Districts, prepared by the Department of Elections and dated January 2004, which comprise the neighborhoods most affected by closure of the Shipyard. Unless otherwise expressly indicated, references to Bayview, Hunters Point, the community, neighborhoods and variants of those terms mean the BVHP Area.”

- F. The following definition is inserted after the definition of Complete Construction:

“**Complete Infrastructure Construction** has the meaning set forth in Attachment 10.”

- G. The following definition is inserted after the definition of Complete Infrastructure Construction:

“Complete Open Space Construction has the meaning set forth in Attachment 31.”

- H. The following definition is inserted after the definition of
Community Benefits:

“Community Benefits Agreement has the meaning set forth in Section 1 of Exhibit B of Attachment 24.”

- I. The following definition is inserted after the definition of
Declaration of Restrictions:

“Deferred Infrastructure Items has the meaning set forth in Attachment 10.”

- J. The following definition is inserted after the definition of
Event of Default:

“Exchange Act has the meaning set forth in Section 19.6.”

- K. The definition of **Infrastructure or Horizontal Improvements** is deleted in its entirety and the following is substituted in lieu thereof:

“Infrastructure or Horizontal Improvements means those items identified in the Infrastructure Plan including street systems and street improvements, wet utilities, dry utilities, public Open Space including those items set forth in the Open Space Master Plan (defined below), and other improvements to be constructed in or for the benefit of the Redevelopment Area and any other matters described in the Infrastructure Plan.”

L. The definition of Open Space is deleted in its entirety and the following is substituted in lieu thereof:

“Open Space means the parcels retained by the Agency and designated for parks, public recreation and other open space uses, all as set forth in the Open Space Master Plan (defined below), portions of which are designated as Open Space on the map attached as Attachment 2.”

M. The following definition is inserted after the definition of Open Space:

“Open Space Build-Out Schedule of Performance means the document attached as Attachment 31, as it may be amended from time to time by mutual agreement of the Parties.”

N. The following definition is inserted after the definition of **Open Space Build-Out Schedule of Performance**:

“Open Space Maintenance Community Facilities District has the meaning set forth in Section 15.7.”

O. The definition of **Open Space Master Plan** is deleted in its entirety and the following is substituted in lieu thereof:

“Open Space Master Plan means that certain Hunters Point Shipyard, San Francisco Phase One Open Space Plan prepared by Lennar/BVHP, SMWM, Conger Moss Guillard, Hood Design and Stevens and Associates, dated November 8, 2004 (as amended), together with that certain Hunters Point Shipyard, San Francisco Streetscape Master Plan prepared by Lennar/BVHP, Korve Engineering, SMWM, Conger Moss Guillard, Hood Design and Stevens and Associates, dated November 8, 2004 (as amended), as each plan shall be approved by the Agency

Commission and filed at the Agency with the Agency Commission Secretary. Though not an attachment hereto, the Open Space Master Plan shall be considered a part of this Agreement.”

P. The definition of **Reversionary Grant Deed** is deleted in its entirety and the following is substituted in lieu thereof:

“**Reversionary Quitclaim Deed** has the meaning set forth in Section 13.3(c) and is attached as Attachment 6.”

Q. The following definition is inserted after the definition of **Reversionary Quitclaim Deed**:

“**Schedule of Performance for Agency Housing Parcels** means the document described in Section 11, as it may be amended from time to time by mutual agreement of the Parties. Though not an attachment hereto, the Schedule of Performance for Agency Housing Parcels shall be considered a part of this Agreement.”

R. The definition of **Schedule of Performance for Infrastructure Development** is revised to delete the parenthetical “(The Vertical DDA will include a Schedule of Performance for Vertical Improvements, as well as a Schedule of Performance for the Agency Housing Parcels)” in the last sentence.

S. The definition of **SLC Land** is deleted in its entirety and the following is inserted in lieu thereof:

“**SLC Land** means that portion of the Project Site subject to, or potentially subject to, the State of California’s public trust doctrine as shown on Schedule A of

Attachment 2. The “Pre-Exchange SLC Land” (as further defined in Section 6.3) is the land potentially subject to the public trust as of the Effective Date that the Parties intend to remove from the public trust, as shown on Schedule A of Attachment 2. The “Post-Exchange SLC Land” (as further defined in Section 6.3) is the land that the Parties intend to subject to the public trust if and when the public trust exchange the Parties are pursuing is effected, at which time the Pre-Exchange SLC Land will be released from the public trust, as shown on Schedule A of Attachment 2.”

T. The following definition is inserted after the definition of **SLC Lease**

Land:

“**Streetscape Plan** has the meaning set forth in Attachment 32.”

5. Section 6.3(a) of the Horizontal DDA is hereby deleted in its entirety and the following is inserted in lieu thereof:

“(a) **Parcel A-1**. If at the time for Close of Escrow on Parcel A-1, the applicable portions of Parcel A-1 have not been removed from the public trust to the extent shown in Schedule A of Attachment 2 (the “Post-Exchange SLC Land”), then the Agency and Developer shall exclude that portion of Parcel A-1 that is still subject to the public trust from the scheduled Closing and instead convey it as soon as practicable after it has been removed from the public trust. In that event, the Agency and Developer shall use commercially reasonable efforts to complete the public trust exchange as soon as practicable after the Close of Escrow on Parcel A-1. The parties acknowledge that the boundary of the Post-Exchange SLC Land shown in Schedule A of Attachment 2 may not reflect the precise boundary of the trust lands after the exchange is complete. After a public trust exchange agreement has been executed, Developer shall convey to the Agency any portion of Parcel A-1 that was initially conveyed to Developer but that is to be placed into the trust pursuant to the exchange agreement. Following completion of the exchange, the Agency shall deliver a quitclaim deed to Developer in mutually satisfactory form for any portion of Parcel A-1 that was excluded from the initial conveyance because it was within the Pre-Exchange SLC Land, but from which the public trust has been removed pursuant to the exchange.”

6. Section 6.10 is hereby added at the end of Section 6 of the Horizontal DDA:

“6.10 Title Clearance. In the event the title policy issued to Developer upon the Close of Escrow contains exceptions that may affect the development, completion and/or dedication of Infrastructure by Developer, the Parties hereby commit to undertake reasonable efforts necessary to eliminate such exceptions by means of McEnerney Quiet Title action, a supplemental street vacation ordinance and the obtaining of a quitclaim deed from the City or any third party holding an adverse interest in the Project Site.”

7. Section 11 is hereby amended to delete the first sentence in its entirety and the following is substituted in lieu thereof:

“The Agency shall Commence Construction and Complete Construction of the Agency Housing Parcels in accordance with the Schedule of Performance for Agency Housing Parcels which shall be mutually agreed upon by Developer and the Agency.”

8. All references in Section 13.3(c) and elsewhere in the Horizontal DDA to the “**Reversionary Grant Deed**”, are hereby deleted and the defined term, “**Reversionary Quitclaim Deed**” is substituted in lieu thereof.”

9. Section 15.1 is hereby amended to delete the first sentence in its entirety and substitute the following in lieu thereof:

“The “Minimum Purchase Price” for each Lot will be set forth on a schedule to the Preliminary Budget and Project Pro Forma attached as Exhibit A to the Financing and Revenue Sharing Plan attached as Attachment 25 and shall be updated annually along with the then Approved Budget as set forth in Section 6.5 of Attachment 25”.

10. Section 15.2 is hereby amended to delete the eighth sentence in its entirety and the following shall be substituted in lieu thereof:

“The initiating Party will deliver to the Appraiser, appraisal instructions mutually agreed upon by the Parties instructing the Appraiser to (i) prepare a written Restricted Use Appraisal Report and deliver it to both Parties within thirty (30) days after request, (ii) include comparables supporting the Appraiser’s conclusion, (iii) take into account the benefits accruing to the Lot under the Vertical DDA and the obligations imposed on the Lot under the Vertical DDA, including without limitation the schedule of performance for Vertical Improvements set forth therein and (iv) consider the carrying costs required if Vertical Improvements on the Lot are not able to be developed promptly after the purchase closes because of market conditions (subject to buyer’s compliance with the schedule of performance for Vertical Improvements set forth in the Vertical DDA)..

11. Section 15.7 is hereby added at the end of Section 15 of the Horizontal DDA:

“15.7 Establishment of a Community Facilities District for Open Space and Streetscape Operations and Maintenance.

Developer and the Agency hereby agree that it shall be a condition precedent to the sale of the first Lot that (i) Developer vote for the establishment of a community facilities district pursuant to the Mello-Roos Community Facilities Act of 1982, as amended, for the ongoing operation and maintenance of the Open Space as well as for the maintenance of sidewalk plantings or other streetscape components, as defined in the Open Space Master Plan and the Streetscape Plan (the “Open Space Maintenance Community Facilities District”), and that such Open Space Maintenance Community Facilities District be established to provide for ongoing maintenance and operation of the Open Space and streetscape components at a service level jointly agreed upon by the Agency and Developer; and (ii) Developer establish covenants, conditions and restrictions, reasonably acceptable to the Agency, applicable to Phase 1 of the Shipyard to be recorded in the official records of the City and County of San Francisco, to the end that every owner of non-exempt property will be obligated to pay an amount equivalent to special taxes that would be levied in such Open Space Maintenance Community Facilities District for operations and maintenance expenses if for any reason such Open Space Maintenance Community Facilities District or its taxing powers are ever eliminated or reduced for any reason, including but not limited to any vote of the qualified electors of the Open Space Maintenance Community Facilities District.”

12. Section 19.6 is hereby added at the end of Section 19 of the Horizontal DDA:

“SLC Land. The Parties acknowledge that Chapter 435 of the Statutes of 2003, the Hunters Point Shipyard Public Trust Exchange Act (“Exchange Act”), requires that the State Lands Commission impose certain conditions prior to its approval of a trust exchange authorized by the Exchange Act, including but not limited to the conditions set forth in section 7 subdivision (c) of the Exchange Act. The Parties further acknowledge that these conditions, if imposed, may affect the use or development of lands both within and outside the Post-Exchange SLC Land. Developer agrees not to engage in any activities that would jeopardize the Agency’s ability to satisfy the conditions for an exchange set forth in the Exchange Act, unless approved by the Agency.”

13. Section 20 of the Horizontal DDA is hereby amended by inserting the following after the first paragraph:

“As part of its obligations under this Section 20, Developer and its contractors and subcontractors for any environmental investigations, construction or operation of the Horizontal Improvements which are not subject to Article 31 shall comply with the applicable provisions of the following plans prepared by Developer pursuant to the terms of this Agreement and Article 31 of the Health Code: Dust Control Plan, Health and Safety Plan (including Contingency Plan), Stormwater and Erosion Control Plan, Soil Importation Plan, Transportation and Disposal Plan (if applicable), and Closure Report (together, “Article 31 Plans”).

As stated above, Developer and its contractors and subcontractors for any environmental investigations, construction or operation of the Horizontal Improvements shall comply with all applicable laws and requirements, including, without limitation all applicable Environmental Laws and the applicable provisions of Article 31 and the Article 31 Plans. In the event the Agency or Developer (or any of Developer’s contractors or subcontractors) receives a complaint concerning compliance with the Article 31 Plans during construction of the Horizontal Improvements, Developer, together with the contractor or subcontractor that is the subject of the complaint (if applicable), shall meet and confer with the complainant in the presence of Agency project or contract compliance staff and shall attempt to resolve in good faith the issues presented in the complaint as expeditiously as possible.

The Agency, in its sole discretion, shall determine whether or not the requirements of the Article 31 Plans are being satisfied. In the event the Agency determines that the requirements of the Article 31 Plans are not being satisfied, the Agency in its sole discretion, may set a cure period within which Developer together with any applicable contractor or subcontractor shall comply with the requirements of the Article 31 Plans. If the Agency determines (in its sole judgment) that compliance has not been reached within the cure period, the Agency shall be entitled to suspend all Agency and City approval processes until such time as the Agency determines, in its sole discretion, that appropriate measures have been taken to effect compliance with the requirements of the Article 31 Plans.”

14. Section 22.6(b) of the Horizontal DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

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

15. Section 22.12 is hereby amended to add the following sentence at the end of the paragraph:

“Additionally, notwithstanding anything to the contrary in this Agreement, the Agency’s Executive Director shall have the right, in his/her sole discretion, to modify or waive any Agency condition to Closing, any mutual condition to Closing, or any ancillary document, provided the waiver does not result in a change to any regulatory or financial terms or obligations set forth in this Agreement.”

16. Attachment 6 to the Horizontal DDA [Form of Reversionary Grant Deed] is hereby deleted in its entirety and the document at Exhibit A hereto is substituted in lieu thereof.

17. Attachment 7 to the Horizontal DDA [Insurance] is hereby amended to delete Section I [Environmental Insurance] in its entirety and substitute in lieu thereof, the language attached at Exhibit B hereto.

18. Exhibit C to the Infrastructure Plan (Attachment 9 to the Horizontal DDA) is hereby amended to delete Section 3(a) [Storm Drainage] in its entirety and substitute in lieu thereof, the language attached at Exhibit C hereto.

19. Exhibit C to the Infrastructure Plan (Attachment 9 to the Horizontal DDA) is hereby amended to delete the first two sentences of the second paragraph of Section 3(d) [Auxiliary Water Supply System (AWSS)] in its entirety and substitute the following language in lieu thereof:

“Although it is anticipated that the proposed water system will provide adequate pressure, flow, and volume to meet firefighting requirements, Lennar/BVHP will construct a high pressure water system at Innes Avenue, from the project boundary along the Galvez “S” Curve that is shown on Figure 3, Street System Parcel A’/B’. This connection will consist of approximately 1,280 feet of 20-inch diameter ductile iron pipe.”

20. Attachment 10 to the Horizontal DDA [Schedule of Performance For Infrastructure Development] is hereby deleted in its entirety and the document at Exhibit D hereto is substituted in lieu thereof.

21. Attachment 13 to the Horizontal DDA [Prevailing Wage Requirements (Labor Standards)] is hereby deleted in its entirety and the document at Exhibit E hereto is substituted in lieu thereof.

22. Attachment 15 to the Horizontal DDA [Minimum Compensation] is hereby deleted in its entirety and the document at Exhibit F hereto is substituted in lieu thereof.

23. Exhibit B to the Equal Opportunity Program and Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (Attachment 24) is hereby amended to add the following to the end of Section 1:

“The binding agreement implementing these programs shall be by and between Developer and the Agency and shall be referred to as the “Community Benefits Agreement,” which, upon execution by both Parties, shall be considered a part of this Agreement though not attached hereto. In the event of a conflict between this Exhibit B to Attachment 24 and the terms of the Community Benefits Agreement, the terms of the Community Benefits Agreement shall prevail.”

24. The Financing and Revenue Sharing Plan (Attachment 25 to the Horizontal DDA) is hereby amended to delete Section 6.1 [Caps on Predevelopment and Pre-Agreement Costs] in its entirety and substitute the following language in lieu thereof:

“6.10 Caps on Predevelopment and Pre-Agreement Costs. Developer and the Agency have agreed upon certain caps for Qualified Predevelopment Costs and Qualified Pre-Agreement Costs. The amount and nature of those costs are described in Exhibits B and C attached hereto. Any amounts incurred by Developer in producing the deliverables and performing the tasks described therein in excess of those caps will be absorbed by Developer without reimbursement. Further, Seven Hundred Sixty Thousand Dollars (\$760,000.00) of the earliest incurred Qualified Predevelopment Costs will be deferred to Phase 2, but this deferred sum will not accrue interest.”

25. Attachment 27 to the Horizontal DDA [Outline of Provisions of Vertical Disposition and Development Agreement] is hereby deleted in its entirety and the document at Exhibit G hereto is substituted in lieu thereof.

26. The Horizontal DDA is hereby amended to add as Attachment 30, those environmental ordinances adopted to date which fall within the definition of Environmental Laws (including without limitation, Article 31 which takes the place of the Plan for Environmental Investigation and Remediation and the Soil and Ground Water Management Plan referred to in Sections 6.6 (c)(8)(d) and 6.6 (c)(8)(e) respectively) attached hereto as Exhibit H.
27. The Horizontal DDA is hereby amended to add as Attachment 31, the Open Space Build-Out Schedule of Performance attached hereto as Exhibit I.
28. The Horizontal DDA is hereby amended to add as Attachment 32, the Design Review and Document Approval Procedure for Infrastructure Development, attached hereto as Exhibit J.
29. The Horizontal DDA is hereby amended to add as Attachment 33, the Design Review and Document Approval Procedure for Vertical Improvements, attached hereto as Exhibit K.
30. The Horizontal DDA is hereby amended to add as Attachment 34, the Subdivision Map Ordinance and Regulations, attached hereto as Exhibit L.
31. The list of **Attachments** to the Horizontal DDA is hereby deleted in its entirety and the document at Exhibit M hereto is substituted in lieu thereof.
32. This First Amendment constitutes a part of the Horizontal DDA and any reference in any document to the Horizontal DDA shall be deemed to include a reference to such Horizontal DDA as amended hereby.

33. Except as otherwise amended hereby, all terms, covenants, conditions and provisions of the Horizontal DDA shall remain in full force and effect.

34. All capitalized terms used herein shall have the meanings assigned thereto in the Horizontal DDA.

35. This First Amendment is binding upon and will inure to the benefit of the successors and assigns of the Agency and Developer, subject to the limitations set forth in the Horizontal DDA.

36. This First Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.

IN WITNESS WHEREOF, the Agency has caused this First Amendment to be duly executed on its behalf and Developer has signed or caused this First Amendment to be signed by duly authorized persons, all as of the day first above written.


Authorized by Agency Resolution No. 3-2005
adopted January 18, 2005

AGENCY:

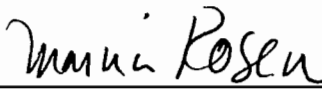
Approved as to Form:

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and
politic

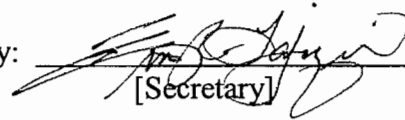
By: _____


for James B. Morales
Agency General Counsel

By: _____


Marcia Rosen
Executive Director

By: _____


[Secretary]

DEVELOPER:

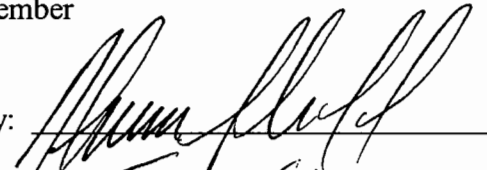
LENNAR-BVHP, LLC, a California limited
liability company

By: Lennar Southland I, Inc., a California
limited liability company, its managing
member

By: _____

Name: _____

Title: _____


Name: THOMAS STAFF
Title: VP

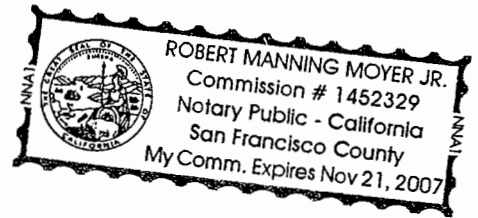
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIA }
 }ss.
COUNTY OF SAN FRANCISCO }

On April 4, 2005, before me, Robert Manning Moyer Jr., Notary Public, personally appeared Marcia Rosen, personally known to me, or proved to me on the basis of satisfactory evidence, to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in his authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature Robert Manning Moyer Jr.



OPTIONAL

Description of Attached Document

Title or Type of Document:

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

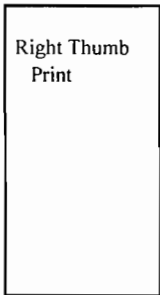
Signer's Name: _____

Signer's Name: _____

Title: _____

Title: _____

Signer is Representing:



Signer Is Representing:

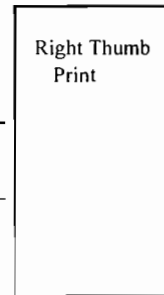


Exhibit A

Reversionary Quitclaim Deed

ATTACHMENT 6

FORM OF REVERSIONARY QUITCLAIM DEED

WHEN RECORDED MAIL TO:

Redevelopment Agency of the City and
County of San Francisco
770 Golden Gate Avenue
San Francisco, CA 94102

Parcel _____, Assessor's Block _____, Lot(s) _____

Space Above This Line Reserved for Recorder's Use

Exempt from documentary transfer tax
pursuant to California Revenue and
Taxation Code § 11922.

QUITCLAIM DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, Lennar/BVHP
LLC, a California limited liability company doing business as Lennar/BVHP Partners, does hereby
REMISE, RELEASE AND FOREVER QUITCLAIM to the REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of
California, the real property in the City and County of San Francisco, State of California, described in
the attached Exhibit A.

The Agency and Lennar have executed this Quitclaim Deed For Parcel _____ as of _____, 200__.

Dated _____
STATE OF CALIFORNIA }
COUNTY of _____ }

On _____
before me, the understated, a Notary Public in and for said State,
personally appeared _____
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the
within instrument and acknowledged to me that he/she/they
executed the same.
WITNESS my hand and official seal.

Signature _____

LENNAR-BVHP, LLC, a California limited
liability company

By: Lennar Southland I, Inc., a California limited
liability company, its managing member

By: _____

Name: _____

Title: _____

CERTIFICATE OF ACCEPTANCE

Government Code Section 27281

This is to certify that the interest in real property conveyed by the Quitclaim Deed for Parcel _____ from Lennar-BVHP LLC, a California limited liability company doing business as Lennar/BVHP Partners to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, existing under the laws of the State of California, Grantee, is hereby accepted by the undersigned officer, its regularly appointed, qualified Executive Director, on behalf of the Redevelopment Commission of the City and County of San Francisco (the "Commission"), pursuant to the authority conferred by Resolution No. 179-2003, adopted on December 2, 2003, and the Grantee consents to the recordation thereof, by its duly authorized officer.

IN WITNESS WHEREOF, I have hereunder set my hand this _____ day of _____, 2004.

Approved As To Form and Legality:

By: _____
James B. Morales
Agency General Counsel

REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO, a public
body, corporate and politic

By: _____
Marcia Rosen
Executive Director

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me (**OR** - proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary (Seal)

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, _____, before me, the undersigned, a Notary Public in and for said State personally appeared _____, personally known to me (**OR** - proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary (Seal)

EXHIBIT A

LEGAL DESCRIPTION

Exhibit B

Insurance

SECTION I. Environmental Insurance.

(A) General. The Parties will reasonably cooperate with each other to obtain environmental insurance providing coverage to the Parties for defense costs and loss associated with third party claims arising from pollution conditions, as well as first party coverage for clean-up costs associated with pollution conditions, as set forth below. Terms used in this Attachment have the meanings set forth in the Disposition and Development Agreement between the Agency and Developer to which this Attachment 7 is attached (the "Agreement").

(1) Parcel A. On or before the Agency accepts title to Parcel A, the Parties will obtain a bound environmental insurance policy providing the above-described coverage to all of Parcel A (not just Parcel A-1) in the amount of 25 million dollars in the aggregate and 25 million dollars per claim, for a ten year term, with a deductible requirement of 250 thousand dollars per incident. Developer will be the First Named Insured, and the Agency and City will be Additional Named Insureds. The Parties may mutually agree upon conferring Additional Named Insured or Additional Insured status on other related parties.

(2) Parcel B-1. Effective upon the Close of Escrow transferring title of Parcel B-1 from the Agency to Developer, the Parties will obtain endorsements to the above-described environmental insurance policy increasing the policy limit to a mutually agreeable amount in light of the then-existing environmental insurance market.

(3) Order of Conveyance. This Section I(A) assumes that Parcel A will be the first Parcel of the Shipyard conveyed from the Navy to the Agency, and that Parcel A-1 will be the first Parcel conveyed from the Agency to Developer, with Parcel B-1 to follow. If for any reason this order of conveyance is changed, then the Parties will review the insurance requirements in this Section I(A) to determine, in good faith, whether modifications of the insurance requirements are reasonably necessary given the changed order of conveyance. The Parties' intent is for the types of insurance specified in this Section I(A) to be in place when any portion of the Shipyard is conveyed from the Navy to the Agency.

(B) Cost Allocation. The Parties agree to allocate the costs of premiums and deductible payments for the above-described environmental insurance policy as described below. For purpose of this cost allocation agreement, the term "deductible payment" includes costs associated with a claim under the policy that are expended in satisfaction of the deductible requirement pursuant to the terms of the policy.

(1) Initial Premium. Developer is entitled to recover eighty percent of the initial premium amount (and associated brokerage fees and taxes) as described in Section I(A)(1), as a Soft Cost pursuant to the Financing and Revenue Sharing Plan attached as Attachment 25 to the Agreement. The balance of the premium amount (and

associated brokerage fees and taxes) will be considered a recoverable cost under Net Operating Income pursuant to the Interim Lease attached as Attachment 29 to the Agreement.

(2) Subsequent Premiums. Developer is entitled to recover one hundred percent of the premium (and associated brokerage fees and taxes) necessary to obtain the increased coverage described in both Sections I (A)(2) and (A)(3) above as a Soft Cost pursuant to Attachment 25.

(3) Deductible During Infrastructure Build-Out. Any deductible payment associated with Parcel A-1 will be considered a Soft Cost pursuant to Attachment 25 during the period Infrastructure is being constructed and Lots are being sold.

(4) Deductible After Infrastructure Build-Out. The following cost allocation will be applied to deductible payments after Infrastructure has been completed and all Lots have been sold, for the respective parcel for which the deductible payments are incurred, during the remainder of the 15-year policy term:

(a) For third party claims, if one Party is named and not the other, that "named" Party will pay the deductible, except to the extent the Party has secured an agreement from other non-Party insureds named in the third party claim to contribute to payment of the deductible.

(b) For third party claims where both Parties are named, each Party shall pay one-half of the amount of the deductible, but the Parties agree to cooperate in good faith to secure contributions, which the Parties will share equally, from other non-Party insureds named in the third party claim.

(c) For first party cleanup claims, the deductible will be paid by the owner of the property for which the cleanup costs will be incurred. If the cleanup costs relate to a plume or other environmental condition that is located on properties owned by different owners, then the affected owners will determine, in good faith, a reasonable allocation of the deductible based on the cleanup costs reasonably attributable to that portion of the environmental condition on each party's respective property.

C

Exhibit C

Language Re. Storm Drainage

a. Storm Drainage

The overall layout of the storm drainage system is shown on Figure 10. As indicated, the storm drain and sanitary sewer system for the Hilltop Area and for Parcel B' will be separated systems and the storm drain and sanitary sewer system for Hillside Area will be combined. The separated system is addressed below, and the combined system is addressed under a subsequent heading.

As an interim measure for storm water discharge, the Agency has secured utility easements over Navy property for discharge of storm waters from Parcel A. Prior to the commencement of earth moving construction on the hilltop in accordance with the Navy Utilities Agreement, Lennar/BVHP shall construct a new storm drain line beginning from the existing storm drain line in Donahue Street and extending to connect to the existing Navy Outfall No. 1 in Parcel B at San Francisco Bay ("Donahue Street Alignment"). "Other Storm Water Alignments" through Navy granted utility easements are the "Crisp-Spear-Blandy Alignment" and "Crisp Alignment." The Crisp-Spear-Blandy Alignment begins upstream at the westernmost property line of Parcel A-1 at Crisp Avenue and terminates at Navy Outfall No. 16. Lennar/BVHP shall construct a storm water connection within this alignment as provided for by the Navy Utilities Agreement, if feasible, to allow for discharge of storm water flow from Parcel A-1 to the extent not otherwise managed through the Donahue Alignment. The Crisp Alignment drains waters collected near the southeasterly corner of Parcel A-2 and flows westerly towards Griffith Street. Lennar/BVHP shall construct storm water connection to the sewer system within the Crisp Alignment, as provided for by the Navy Utilities Agreement, for storm waters from Parcel A-2 to discharge into the City sewer system, to the limited extent that they do not do so already. All Alignments are subject to change pending Navy approval of the design.

The Agency has permission to use existing Navy owned storm water lines. In the event the Navy ceases operation of portions of its storm water lines as a result of the Navy's environmental remediation program or regulatory direction, prior to construction of the dedicated Parcel A storm water alignments described above, then storm water discharges will be delivered to the property lines at outlet points shown on Figure 10 (revised).

The storm drain system will be constructed in two stages; the first stage serving Parcel A' only, and the second stage serving Parcels A' and B'. The storm drains will conform with the City of San Francisco design standards for storm drains, including the requirement that a 5-year event will be entirely drained by the underground system and a 100-year event will be contained between the faces-of curb within the street right-of-way. Catch basins shall be provided at all low points and shall be located in the gutter to most effectively serve adjacent drainage areas.

The construction of storm drains for the Hilltop Area during Stage 1 will consist of a new gravity system of vitrified clay pipe (VCP) ranging from 12 inches to 24 inches in diameter that will tie into a new storm drain system commencing at the intersection of Galvez and Donahue and terminating at Navy Outfall No. 1. The existing system discharges to the Bay through a 36-inch outfall near the extension of Donahue Street. Lennar/BVHP will work with the City to develop

and implement a site-specific plan for management of discharges in accordance with applicable regulatory requirements.

During Stage 2 of the development, a permanent new system will be constructed in the Donahue Alignment. All storm water from Parcels A' East and B' will discharge to this new storm drain system. New storm drain pipes up to 36 inches in diameter will be constructed in Donahue Street, and will discharge to the Bay at the existing outfall located at the extension of Donahue Street. The outfall will be at the same location as the existing outfall; however, the alignment of the piping upstream from the outfall will be modified, with the 36 inch storm drain in Donahue Street described above. The outfall will be upgraded to 42 inches in diameter, and will flow through a liquid/solid separation system prior to discharge to the Bay. Appropriate water quality and best management practices will be implemented as required by the FEIR, applicable regulatory requirements and as approved by the City.

Storm water runoff from the project will comply with the requirements of the National Pollutant Discharge Elimination System (NPDES). All storm water discharges will be made in accordance with a plan consistent with the City and County of San Francisco Initial Storm Water Management Plan 2003-2004, September 2003 and any future amendments to the plan. This plan currently requires:

1. Development and implementation of a Storm Water Management Plan (SWMP) that describes Best Management Practices (BMP), measurable goals, and timetable for implementation of the following six program areas (Minimum Control Measures)

Public Education

Public Participation

Illicit Discharge Detection and Elimination

Construction Site Storm Water Runoff Control

Post Construction Storm Water Management

Pollution Prevention/Good Housekeeping for Municipal Operations

2. Reduce discharge of pollutants to the maximum extent possible

3. Annually report on the progress of SWMP implementation

The storm drainage system and the infrastructure to be constructed by Lennar/BVHP in connection therewith are shown in Figure 10. The storm drainage system will comply with applicable City of San Francisco standards as identified in attachment 2. Applicable design criteria include the following:

- Drainage basins are separate areas with a maximum time of concentration of 20 minutes during a five-year storm event.
- Underground drainage facilities are adequate to completely convey the entire five-year runoff event.
- Runoff events exceeding a five-year event will be carried by surface drainage features. Surface features (i.e., gutters) will have adequate capacity to convey the 100-year event.
- Minimum pipe size for the main storm water trunk lines is 12 inches.

- Pipes up to 27 inches in diameter will be vitrified clay pipe (VCP); pipes greater than 27 inches will be reinforced concrete pipe (RCP).
- Pipes will have a minimum of four feet of cover.
- The drainage system will maintain a minimum velocity of 2.5 ft/sec
- The minimum pipe slope will be 0.2%.

(i) Drainage Basins

The proposed drainage design provides for drainage basins with a 20-minute maximum time of concentration during a five-year event. In addition to the areas encompassed by Parcels A' and B', there are three small drainage basins extending from Friedell Street to Donahue Street that will be served by the existing system.

Portions of the proposed storm drain system will tie to the existing combined sewer system in Donahue Street. Connections to this existing system will be made at the intersections of Donahue Street and LaSalle Avenue and at the intersection of Jerrold Avenue, and Cleo Rand Avenue. It will not be feasible to drain these areas by gravity to the new separated system.

(ii) Liquid/Solid Separator

During Stage 1, the storm drains will be tied to the existing storm drain system and discharges will be made directly to the Bay.

During Stage 2, the outfall discharging to the San Francisco Bay will be upgraded. The location of this outfall is shown on Figure 10. It is anticipated that this improved outfall will require a new discharge permit and will be subject to applicable portions the City of San Francisco General Permit for Storm Water Discharges from Small Municipal Separate Storm Sewer Systems. The system will be designed to comply with all applicable regulatory requirements and mitigation measures. The project will include a vortex-type treatment unit for the separation of floatable materials and settleable solids, as required by the General Permit and in accordance with the National Pollutant Discharge Elimination System (NPDES). This treatment unit will require regular maintenance to remove accumulated debris and solids. The developer, from the time of construction, will provide maintenance for this unit until ownership is transferred to the City under the established acquisition process.

(iii) Particulate Management

Source control measures to remove particulates in runoff from streets and parking lots will be provided as appropriate. Best Management Practices for source control will be developed in cooperation with the City prior to the start of construction. Regular maintenance will be required for the removal of accumulated particulates from the catch basins. The developer, from the time of construction, will perform maintenance until ownership of the storm drains is transferred to the City under the established acquisition process. Following transfer of ownership, the City will perform maintenance.

In accordance with the FEIR, a Storm Water Pollution Prevention Program (SWPPP) will be prepared prior to construction and will include appropriate measures to remove and control particulates in runoff from exposed areas during construction. All stages of the development will conform to the City's Storm Water Management Plan.

D

Exhibit D

Schedule of Performance for Infrastructure Development

ATTACHMENT 10

SCHEDULE OF PERFORMANCE FOR INFRASTRUCTURE DEVELOPMENT

The following capitalized terms have the meanings set forth in this Section, wherever used in this Agreement.

DEFERRED INFRASTRUCTURE ITEMS are composed of the following four items: 1) 2" asphalt concrete wearing surface, 2) plantings, 3) irrigation heads, and 4) street furniture.

COMPLETE INFRASTRUCTURE CONSTRUCTION means Complete Construction of all items pertaining to Phase I work identified in the DDA, Attachment 9, Infrastructure Plan with an exception for Deferred Infrastructure Items.

Parcel A-1

| ACTIVITY | SCHEDULE |
|---------------------------------------|--|
| Commence Construction | 75 Calendar Days after Close of Escrow on A-1 |
| Complete Infrastructure Construction: | |
| First Lot | 300 Calendar Days after Commencement of Construction |
| Hilltop | 450 Calendar Days after Commencement of Construction |
| Deferred Infrastructure Items | 90 calendar days after vertical construction is complete with respect to adjacency |
| Block 1 | 360 Calendar Days after Commencement of Construction and completion of the Galvez Avenue "S" curve |

Parcel A-2

| ACTIVITY | SCHEDULE |
|---------------------------------------|--|
| Complete Infrastructure Construction: | |
| Hillside | 720 Calendar Days after Commencement of Construction |
| Deferred Infrastructure Items | 90 calendar days after vertical construction is complete with respect to adjacency |

Parcel B-1

| ACTIVITY | SCHEDULE |
|--------------------------------------|--|
| Commence Construction | 75 Calendar Days after Close of Escrow on B-1 |
| Complete Infrastructure Construction | 360 Calendar Days after Commencement of Construction |
| Deferred Infrastructure Items | 90 calendar days after vertical construction is complete with respect to adjacency |

)

E

Exhibit E

Prevailing Wage Requirements

ATTACHMENT 13

**PREVAILING WAGE REQUIREMENTS
(LABOR STANDARDS)**

These Prevailing Wage Requirements (hereinafter referred to as “Labor Standards”) are attached to and made a part of the Disposition and Development Agreement (the “Agreement”) for Hunters Point, Phase 1 (“Phase 1”). The Developer is bound by this Attachment as part of the obligations it assumes, and benefits it receives, under the Agreement.

Section 1. Applicability. These Labor Standards apply to any and all construction of the Horizontal Improvements as defined in the Agreement.

Section 2. All Contracts and Subcontracts shall contain the Labor Standards; Confirmation by Construction Lender. All specifications relating to the construction of the Horizontal Improvements shall contain these Labor Standards and the Developer shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Developer shall supply the Agency with true copies of each contract relating to the construction of the Horizontal Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do so shall be a violation of these Labor Standards.

Section 3. Definitions.

Terms not defined in this Attachment have the meanings given to them in the Agreement.

Agency's Optional Form has the meaning set forth in Section 8.2(a).

BAT has the meaning set forth in Section 6.

Bona Fide Prepayment of Wages has the meaning set forth in Section 5.2.

Contractor is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier having a contract or subcontract that exceeds \$10,000.00, and who employs Laborers, Mechanics, Working Foremen, and security guards to perform the construction on all or any part of the Horizontal Improvements.

DAT has the meaning set forth in Section 6.

Laborers and Mechanics are all persons providing labor to perform the construction, including Working Foremen and security guards.

Non-Complying Contractor has the meaning set forth in Section 13.2.

Non-Conforming Contract has the meaning set forth in Section 13.2.

Notice of Dispute has the meaning set forth in Section 13.3.

Notice to Employees has the meaning set forth in Section 12.

Statement of Compliance has the meaning set forth in Section 8.2(b).

Wage Determination has the meaning set forth in Section 4.1.

Working Foreman is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least twenty percent (20%) of the work week.

Section 4. Prevailing Wage.

4.1 All Laborers and Mechanics employed in the construction of the Horizontal Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by Section 5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment, computed at rates not less than those contained in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, §§ 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of Close of Escrow, the Agency shall provide the Developer with a copy of the applicable Wage Determination.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

4.2 Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein, *i.e.*, the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

4.3 If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Developer, that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in Section 8.1. The Executive Director of the Agency may require the Developer to set aside in a separate interest-bearing account with a member of the Federal Deposit Insurance Corporation,

assets to meet obligations under the plan or program referred to above in Section 4.2. The interest shall accumulate and shall be paid as determined by the Agency acting at its sole discretion.

4.4 Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Section 5. Permissible Payroll Deductions. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

5.1 Any withholding made in compliance with the requirements of federal, state or local income tax laws, and the federal social security tax.

5.2 Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest ("Bona Fide Prepayment of Wages"). A Bona Fide Prepayment of Wages is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

5.3 Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

5.4 Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing for principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents, provided, however, that the following standards are met:

(a) The deduction is not otherwise prohibited by law; and

(b) It is either:

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

(2) Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

(4) The deduction shall serve the convenience and interest of the employee.

5.5 Any authorized purchase of United States Savings Bonds for the employee.

5.6 Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with federal and state credit union statutes.

5.7 Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

5.8 Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

Section 6. Apprentices and Trainees. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

Section 7. Overtime. No Contractor contracting for any part of the construction of the Horizontal Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight (8) hours in any workday unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in any workday and should such Laborer or Mechanic work in excess of twelve (12) hours in any workday that Laborer or Mechanic must receive compensation at a rate not less than double the regular rate of pay for all hours worked in excess of twelve (12) in that workday. If a Laborer or Mechanic works in excess of forty (40) hours in a workweek that Laborer or Mechanic must receive compensation at a rate not less than one and one-half (1.5) times the regular rate of pay for all hours worked in excess of forty (40) hours in that workweek. Should a Laborer or Mechanic work for seven consecutive workdays in the same workweek, that Laborer or Mechanic must be compensated at a rate not less than one and one-half (1.5) times the regular rate of pay for the first eight (8) hours in that seventh consecutive workday and at a rate not less than double the regular rate of pay for all hours worked in excess of eight (8) in that seventh consecutive workday.

Section 8. Payrolls and Basic Records.

8.1 Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Horizontal Improvements and preserved for a period of one (1) year thereafter for all Laborers and Mechanics it employed in the construction of the Horizontal Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

8.2 Weekly Submissions.

(a) The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Horizontal Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency ("Agency's Optional Form"). The Contractor if a Prime Contractor, or the Developer acting as the Contractor, is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise, each Contractor shall timely submit such payrolls.

(b) Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form ("Statement of Compliance") and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

8.3 The Contractor shall make the records required under Section 8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request, the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

Section 9. Occupational Safety and Health. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

Section 10. Equal Opportunity Program. The utilization of apprentices, trainees, Laborers and Mechanics under this Attachment shall be in conformity with the Equal Opportunity

Program set forth in Attachment 24 of the Agreement, including Schedules A through C. Any conflicts between the language contained in these Labor Standards and Attachment 24 shall be resolved in favor of the language set forth in Attachment 24, except that in no event shall less than the prevailing wage be paid.

Section 11. Nondiscrimination Against Employees for Complaints. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

Section 12. Posting of Notice to Employees. A copy of the Wage Determination referred to in Section 4.1 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Developer at the Close of Escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Horizontal Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

Section 13. Violation and Remedies.

13.1 Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

13.2 Stop Work -- Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Horizontal Improvements to contain the Labor Standards as required by Section 2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by Section 8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Developer with a copy to the Contractor involved and failure to cure the violation within five (5) working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

13.3 Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five (5) working days from the date of said notice, the Developer shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Developer, upon receipt of the notice of claimed violation from the Agency, shall, with respect to any amount stated in the Agency notice, withhold payment to the Contractor of the amount stated multiplied by forty-five (45) working days; and shall with the Notice of Dispute, also advise the Agency that the monies are being or will be withheld. If the Developer fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Horizontal Improvements under the applicable contract or by the involved Contractor until such Notice of

Dispute and written withhold advice has been received.

13.4 Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Developer shall continue to withhold the monies until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in Section 14.

13.5 Withholding Certificates of Completion. The Agency may withhold any or all Certificates of Completion of the Horizontal Improvements provided for in the Agreement, for any violations of these Labor Standards until such violation has been cured.

13.6 General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. *Provided, however,* the stop work remedy of the Agency provided above in Sections 13.2 and 13.3 is not subject to arbitration.

Section 14. Arbitration of Disputes.

14.1 Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof.

14.2 The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

14.3 The arbitration shall take place in the City and County of San Francisco.

14.4 Arbitration may be demanded by the Agency, the Developer or the Contractor.

14.5 With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Developer, or as appropriate to one or the other if the Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards, they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination referred to in Section 4 and copies of all notices sent or received by the Agency pursuant to Section 13. Such material shall be made part of the arbitration record.

14.6 One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within thirty (30) days from appointment.

14.7 The decision of the arbitrator shall be final and binding on all of the parties, whether a party participates in the arbitration or not. Any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before thirty (30) days from appointment. The arbitrator shall schedule hearings as necessary to meet this thirty (30) day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

14.8 Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision. If the arbitrator's decision requires the payment of money, the Contractor shall make the required payments and the Developer shall pay the Contractor from money withheld.

14.9 Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

Section 15. Non-liability of the Agency. The Developer and each Contractor acknowledge and agree that the procedures set forth herein for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Horizontal Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly, the Developer and any Contractor, by proceeding with construction, expressly waive and are deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including without limitation claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI- NATION

The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

PREVAILING WAGE

You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your regular rate of pay for all hours worked over 8 a day and double your regular rate of pay for all hours worked over 12 in a day. You must also be paid one and one-half times your regular rate of pay for all hours worked over 40 in a week. If you work for seven consecutive days in the same workweek, you must be paid one and one-half times your regular rate for the first eight hours and double time for all hours over 8.

APPRENTICES

Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.

PROPER PAY

If you do not receive proper pay, write:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3120
or call **749-2427** and ask for

Mr. Sylvester McGuire
Senior Contract Compliance Specialist

F

Exhibit F

Minimum Compensation Policy

ATTACHMENT 15

MINIMUM COMPENSATION POLICY

This Minimum Compensation Policy (the “Policy”) is attached to and made a part of the Disposition and Development Agreement (the “Agreement”) for Hunters Point, Phase 1 (“Phase 1”). Developer is bound by this Attachment as part of the obligations it assumes and benefits it receives under the Agreement.

Section 1. Findings and Declarations.

1.1 The Redevelopment Agency of the City and County of San Francisco (the “Agency”) enters into many contracts, including, but not limited to, service contracts, loan and grant agreements, and property agreements, in furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code §§ 33000 *et seq.*) in the interest of the health, safety and general welfare of the City of San Francisco’s (the “City”) residents.

1.2 These contracts and agreements have at times involved compensation to the contracting parties’ or their subcontractors’ employees that is at or only slightly above the minimum wage levels required by federal and state laws. The compensation paid by some Agency contractors and their subcontractors fails to provide employees with sufficient resources to afford life in the City. Requiring these contracting parties and their subcontractors to provide a minimum level of compensation to their employees will improve the health, safety and general welfare of San Francisco’s residents, by, among other things, decreasing poverty and invigorating neighborhood businesses through increased consumer income.

Section 2. Definitions.

Terms not defined in this Attachment have the meanings given to them in the Agreement.

Agency means the Redevelopment Agency of the City and County of San Francisco.

Agency Property means real property that is owned by the Agency or over which the Agency has exclusive use. “Exclusive use” means the right to use or occupy real property to the exclusion of all others, subject to the rights reserved by the party granting such exclusive use.

Agreement has the meaning set forth in the Preamble.

Business Day means a day other than Saturday, Sunday or a state or federal holiday.

City means the City and County of San Francisco, California, a municipal corporation.

Contract means an agreement or portion of an agreement that provides for services to be purchased at the expense of the Agency or out of funds established by ordinance, Memorandum of Understanding (MOU) or otherwise controlled by the Agency. The term Contract includes, without limitation, Property Agreements, Included Subcontracts and agreements such as grant agreements, pursuant to which agreements the Agency grants funds to a Contractor for services (including, without limitation, cultural activities, performances or exhibitions) to be rendered to all or any portion of the public rather than to Agency. Notwithstanding the foregoing, the term Contract excludes:

(a) Excluded Subcontracts;

(b) any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have twenty (20) or fewer Employees;

(c) agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;

(d) agreements entered into pursuant to settlement of legal proceedings;

(e) agreements for urgent or specialized litigation requirements where the Agency General Counsel finds that it would be in the best interests of the Agency not to include the requirements of this Policy;

(f) agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with the Agency is less than twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with the Agency to exceed twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations;

(g) agreements for the investment, management or use of trust assets where compliance with this Policy would violate the fiduciary duties of the trustee;

(h) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);

(i) agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, which bid packages or requests for proposals were not amended on or after the Effective Date;

(j) agreements involving the expenditure by the Agency of grant or special funds to the extent the application of this Policy would violate or be inconsistent with the terms or conditions of the applicable grant agreement, or with the rules, regulations or instructions of the public agency administering such grant agreement, which terms or conditions or rules, regulations or instructions provide for compensation lower than the Minimum Compensation and/or to the extent that application of this Policy would require the Agency to use Agency monies to supplement the grants, special funds or other non-General Fund revenues to maintain the current level of services;

(k) agreements with a Contractor that is a public entity;

(l) agreements for employee benefits to be provided to Agency employees, where the Executive Director finds that no entity is willing to comply with this Policy and is capable of providing the required employee benefits;

(m) agreements that require the Contractor to pay no less than the "prevailing rate of wage" in accordance with state or federal law or Agency policy, but only to the extent (A) each Covered Employee is covered by such requirement, and (B) such prevailing rate of wage is not less than the gross hourly compensation required under Section 3 of this Policy;

(n) agreements for the investment of Agency monies where the Executive Director finds that requiring compliance with this Policy will violate the Agency's fiduciary duties and for the investment of retirement, health or other funds held in trust pursuant to federal, state or local law, or MOU where the official or officials responsible for investing or managing such funds finds that requiring compliance with this Policy will violate their fiduciary duties;

(o) agreements made in connection with loans or grants under which the Agency, as creditor or grantor, is providing funds to be used by the debtor or grantee to: (A) acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed; (B) construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or (C) rehabilitate improvements owned or leased by the debtor or grantee;

(p) disposition and development or ground lease agreements of Agency Property on which residential improvements for low-or-moderate income households will be constructed or existing improvements will be operated for low-or-moderate income households; provided, however, that any leases for commercial space in such properties shall be considered Included Leases and shall be subject to the requirements of this Policy;

(q) agreements with an owner (such as an owner participation agreements) where such agreement is granted from the exercise of the Agency's regulatory or police powers not requiring any discretionary approvals by the Agency.

Contract Amendment means an agreement entered into on or after the Effective Date, pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (a) extend the term; (b) modify the total amount of payments due from the Agency under a Contract; or (c) modify the scope of services to be performed by a Contractor. The term does not include construction change orders.

Contractor means either: (a) the person or entity that enters into a Contract with the Agency; (b) in the case of an Included Subcontract, the subcontractor who enters into the Included Subcontract with the Contractor; or (c) in the case of an Included Tenant, the Tenant who enters into the Included Lease with the Contractor.

Covered Employee means:

(a) An Employee of a Contractor who, during the applicable Pay Period, performs at least four (4) hours per week during the Pay Period work funded (in whole or in part) under the applicable Contract or to the project funded under the applicable Contract:

(i) within the geographic boundaries of the City;

(ii) on real property owned or controlled by the Agency, but outside the geographic boundaries of the Agency; or

(iii) elsewhere in the United States, but only if such related work performed elsewhere within the United States consists of at least ten (10) hours per each work week during the Pay Period in question.

(b) Notwithstanding the foregoing, the term Covered Employee excludes the following Employees of a Contractor that is a Nonprofit Corporation:

(i) Any Employee who is:

(A) under the age of eighteen (18) and is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer Employee; or

(B) employed as a trainee in a bona fide training program consistent with federal law, which training program enables the Employee to advance into a permanent position; provided, however, these exemptions only apply when the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; and

(ii) Any disabled Employee of a Contractor, which disabled Employee:

(A) is covered by a current sub-minimum wage certificate issued to the

Contractor by the U.S. Department of Labor; or

(B) would be covered by such a certificate but for the fact that the Contractor is paying a wage equal to or higher than the minimum wage.

Effective Date means the date the Agency Commission approves this Policy.

Employee means any person who is employed by a Contractor, including part-time and temporary employees.

Excluded Subcontract means any agreement or portion of an agreement between a Contractor and a person or entity that is not an Employee of such Contractor, which agreement or portion of an agreement relates to a Contract but is not an Included Subcontract. The term Excluded Contract includes, without limitation, an agreement pursuant to which a Contractor obtains from such a person or entity goods to be used in the fulfillment of the Contractor's duties under the applicable Contract. The term also includes agreements (including, without limitation, any permit to enter or license for a term of less than one hundred and twenty (120) days or any easement agreement) for the exclusive use of real property owned by the Agency or of which the Agency has exclusive use, other than Property Agreements.

Included Lease means a lease, sublease or other agreement with any person or entity for the exclusive right to occupy or use all or any portion of real property owned, leased or otherwise controlled by the Agency or real property in which the Agency has a Proprietary Interest.

Included Subcontract means an Included Lease or an agreement or portion of an agreement between a Contractor and a person or entity who is not an Employee of such Contractor, pursuant to which such person or entity:

(a) agrees to assist a Contractor in performing a Contract; or

(b) agrees to assist a Contractor with a project funded by grant monies conveyed to the Contractor under the applicable Contract. An agreement to assist a Contractor means an agreement to perform all or a portion of a component of the services covered by the Contract with the Agency.

Included Subcontractor means a Subcontractor who enters into an Included Subcontract.

Lease means a written agreement (including, without limitation, any lease, concession or license) in which:

(a) the Agency gives to another party the exclusive use of Agency Property for a term exceeding one hundred and twenty (120) consecutive days in any calendar year,

whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one hundred and twenty (120) consecutive days. The term Lease includes Lease Amendment.

(b) the Contractor gives to another party the exclusive use of property in which the Agency has a Proprietary Interest for a term exceeding one hundred and twenty (120) consecutive days in any calendar year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one hundred and twenty (120) consecutive days.

Lease Amendment means a modification to a Lease that extends the term or materially changes any other provision of the Lease. Notwithstanding the foregoing, "Lease Amendment" does not include a one-time extension of the term of a Lease for up to six (6) months, or relocation of the leased premises at the request of the Agency for its benefit or convenience (as determined by the Agency Executive Director).

Minimum Compensation means each of the components required under Section 3 of this Policy.

Nonprofit Corporation means a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

Policy has the meaning set forth in the Preamble.

Property Agreements means Disposition and Development Agreements (DDAs), ground leases, and any other agreements with the Agency (other than Excluded Subcontracts) in which the Agency has a Proprietary Interest.

Proprietary Interest means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Contract could be adversely affected, in the following circumstances:

(a) The Agency receives significant ongoing revenue (such as rent payments) under a lease or ground lease of real property owned by the Agency for the development of a project pursuant to a Contract, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (b) below); or

(b) The Agency receives ongoing revenue from a project pursuant to a Contract to pay debt service on bonds or loans provided by the Agency to assist the development of such project (including incremental tax revenues generated by the project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that project or the development project in which it is located;

(c) The Agency has agreed in a Contract to underwrite or guarantee the development or operation of a development project, or loans related thereto;

(d) The Agency pursuant to a Contract receives a continuing financial payment that is specific to that project, which is not a tax or other charge of general applicability or a one-time payment for the land;

(e) The Agency receives a share in the profits of a project in a negotiated economic participation agreement pursuant to a Contract;

(f) In addition to the circumstances described above, the Agency shall be deemed to have a Proprietary Interest in a Contract for a project if the Agency determines, or an interested party demonstrates, prior to the effective date of the Contract pursuant to which a project will be operated that there is a significant risk that the Agency's financial or other nonregulatory interest in the project could be adversely affected, except that no circumstance or arrangement shall be considered "financial or nonregulatory" under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, Section 16 of the California Constitution (except as provided in (b) above), zoning or the issuance of regulatory permits.

Pay Period means the applicable Contractor's regular pay period.

Sublease means any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease. Notwithstanding the foregoing, the term Sublease does not include each of the circumstances that constitute an exclusion from the definition of "Lease."

Subtenant means a person or entity that enters into a Sublease.

Tenant means the person or entity that enters into a Lease with the City.

Section 3. Minimum Compensation Components. Minimum Compensation shall consist of each of the following:

(a)(i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.

(ii) On January 1, 2002, the Agency shall increase the hourly gross compensation to ten dollars (\$10.00) per hour; provided, however, that in the case that an increase in the gross compensation under the City's Minimum Compensation Ordinance

does not take effect on January 1, 2002, the Agency's increase shall become effective on the later date imposed by the City ordinance; provided, further, however, that in the case of Nonprofit Corporations, the Agency may approve this adjustment only upon the Executive Director's review of the Joint Report issued by the Controller, Mayor's Budget Office, and Budget Analyst, pursuant to the City's ordinance and finds that the Agency has sufficient funds to pay the anticipated costs of the adjustment. A finding of "sufficient funds" shall mean that the Agency will not be required to reduce services in order to pay the anticipated costs of the adjustment.

(iii) For each of the next three (3) years after the adjustment provided in Section 3.1(a)(ii) is made, at annual intervals, the Agency shall make an additional adjustment of two and one-half percent (2.5%).

(b) Compensated time off (at the compensation rates specified in Section 3.1(a)) in an hourly amount that, on an annualized basis for a full-time employee, equals twelve (12) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, for sick leave, vacation or personal necessity. Notwithstanding the foregoing, if a Contractor reasonably determines, in good faith, that the Contractor cannot comply with this requirement for compensated time off, the Contractor shall provide the Covered Employee with a cash equivalent of such compensated time off.

(c) Uncompensated time off in an hourly amount that, on an annualized basis for a full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, at the option of the Covered Employee, for sick leave for the illness of the Covered Employee or such Covered Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild. This uncompensated time off is in addition to any an employee is eligible for under the Family and Medical Leave Act. Nothing in this section should be construed as conflicting with the Family and Medical Leave Act.

Section 4. Contract Requirements. Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

4.1 For each hour worked by a Covered Employee during each Pay Period during the term of the Contract (as such term may be extended from time to time), Contractor shall provide to such Covered Employee no less than the Minimum Compensation as required in this Policy.

4.2 Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract. Such failure shall be determined by the Agency in its sole discretion.

4.3 If, within thirty (30) days after the Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion,

the Agency shall have the right to pursue any rights or remedies available under the terms of the Contract or under applicable law.

4.4 The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for complaining to the Agency with regard to the employer's compliance or anticipated compliance with this Policy, for opposing any practice proscribed by this Policy, for participating in proceedings related to this Policy, or for seeking to assert or enforce any rights under this Policy by any lawful means.

4.5 The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Policy.

4.6 The Contractor shall keep itself informed of the current Minimum Compensation, and shall provide prompt written notice to all Covered Employees of annual adjustments to the Minimum Compensation, as well as any written communications received by the Contractor from the Agency, which communications are marked to indicate that they are to be distributed to Covered Employees.

4.7 The Contractor shall provide reports to the Agency in accordance with any reporting standards promulgated by the Agency's Contract Compliance Division.

4.8 The Contractor shall provide the Agency with access to pertinent records after receiving a written request to do so and being provided at least five (5) Business Days to respond.

4.9 The Contract Compliance Division may conduct random audits of Contractors. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by this Policy; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) Business Days of the written notice; and (iv) limited to one (1) audit per Contractor every two (2) years for the duration of the Contract. Nothing in this Section shall be deemed to interfere with the authority of the Contract Compliance Division to investigate any report of an alleged breach of contract as provided in Section 6.2.

4.10 Any Contractor subject to the provisions of this Policy shall promptly notify the Contract Compliance Division of any subcontractors performing services covered by this Policy and shall certify to the Contract Compliance Division that it has notified the subcontractors of their obligations under this Policy.

Section 5. Administration and Enforcement.

5.1 The Contract Compliance Division shall adopt the guidelines or rules adopted by the City and County of San Francisco for implementation of the City's Minimum Compensation Ordinance. At the option of the Contract Compliance Division, additional or revised guidelines or rules for the administration of this Policy may be adopted to facilitate the Agency's implementation of this Policy. Such guidelines and rules shall not be adopted finally until the Contract Compliance Division has held at least

one (1) public community meeting and a workshop at a regularly scheduled Agency Commission meeting on the proposed guidelines. The guidelines and rules shall establish procedures for providing administrative hearings requested by Covered Employees to determine whether a Contractor has breached a Contract based on the Minimum Compensation requirements of this Policy. The guidelines and rules shall also establish procedures permitting Contractors to provide payroll information in confidence to the Agency for purposes of monitoring compliance under this Policy and authorizing disclosure of the information by the Agency only when necessary for enforcement purposes. The Contract Compliance Division shall also issue a determination as to whether a particular instrument constitutes a Contract or agreement subject to the requirements of this Policy. The Contract Compliance Division shall report annually on compliance with this Policy to the Agency Commission. Such report shall include cumulative information regarding the number of waivers granted by the Executive Director or Agency Commission pursuant to Sections 6, 7, 8 and 9 of this Policy and statistical data regarding such waivers.

5.2 A Covered Employee may report to the Contract Compliance Division in writing any alleged breach by a Contractor of the terms required to be contained in the applicable Contract under this Policy. The Contract Compliance Division shall investigate any such report. If the Contract Compliance Division determines that a Contractor is in breach of any such term, the Contract Compliance Division shall notify the Executive Director of its findings and of any action that the Contract Compliance Division requests that the Executive Director take with respect to such breach. In order to ensure compliance with this Policy and to enhance the monitoring activities of the Contract Compliance Division, the Agency desires to encourage reporting by Covered Employees pursuant to this subsection. The Contract Compliance Division shall keep confidential, to the maximum extent permitted by applicable laws, the Covered Employee's name and other identifying information.

5.3 In addition to any other rights or remedies available to the Agency under the terms of the Contract or under applicable law, the Agency shall have the following rights, in the event of such failure by the Contractor:

(a) the right to charge the Contractor an amount equal to the difference between the Minimum Compensation levels required by this Policy and any compensation actually provided to each Covered Employee who was not paid in accordance with the terms of this Policy, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(b) the right to set off all or any portion of the amount described in Section 5.3(a) against amounts due to Contractor under the Contract;

(c) the right to terminate the Contract in whole or in part;

(d) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement of the affected Covered Employee or to obtain other appropriate equitable relief; and

(e) the right to bar a Contractor from entering into future contracts with the Agency for three (3) years. Each of these rights shall be exercisable individually or in combination with any other rights or remedies available to the Agency. Any amounts realized by the Agency pursuant to this subsection shall be paid to each applicable Covered Employee.

5.4 Each Covered Employee shall be a third-party beneficiary under the Contract as set forth in this Section 5.4 and in Section 5.5, and may pursue the following remedies in the event of a breach by the Contractor of any contractual covenant described in Section 3 or Section 4, but only after the Covered Employee has provided the notice and participated in the administrative review hearing provided in this Section 5.4. The Covered Employee shall give written notice of a breach to the Contractor and to the Contract Compliance Division. If the Contract Compliance Division determines that no breach has occurred, or if the Agency fails to obtain the cure of a breach by the Contractor within sixty (60) days after receipt of notice by the Covered Employee, the Covered Employee may request an administrative review hearing. The Covered Employee must request such a hearing within ninety (90) days after giving written notice of the breach. Unless the Covered Employee withdraws the request for a hearing, the Contract Compliance Division shall conduct, or arrange to have conducted, a hearing. The Employee shall have the right to attend the hearing personally or through a designated representative. The Contract Compliance Division shall notify the Contractor of the hearing so that the Contractor may attend and present evidence. After the hearing is completed, the person conducting the hearing shall determine whether the Contractor has breached the Contract. Upon the issuance of a written decision finding a breach, and after a waiting period of twenty-one (21) days, the Covered Employee may bring an action against the Contractor for such breach in the Superior Court of the State of California, as appropriate, unless the Agency has commenced an action against the Contractor based on the breach, or obtained compliance, within the twenty-one (21)-day waiting period and provided notice to the Covered Employee of that action. If the Covered Employee prevails in such action, the Covered Employee may be awarded: (A) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; and (B) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement or to obtain other appropriate equitable relief.

5.5 In the event of any legal action or proceeding between Contractor and a Covered Employee arising from this Attachment 15, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection with such action or proceeding; provided, however, that a Contractor shall be entitled to such costs and expenses only if the court determines that the Covered Employee's action or proceeding was frivolous, vexatious or otherwise an act of bad faith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment. This Attachment 15 does not authorize any award of costs, expenses, or attorney's fees in favor of or against

the Agency.

5.6 The Agency shall maintain the confidentiality of payroll information obtained in the course of monitoring compliance with this Policy and shall disclose such information only as necessary for enforcement purposes.

5.7 The Contract Compliance Division shall develop a procedure for obtaining an assurance from Contractors when they sign an agreement subject to this Policy that they comply with the requirements of this Policy, such as the signing of an affidavit of compliance.

Section 6. Waivers. The Executive Director shall waive the requirements of this Policy under the following circumstances:

6.1 The Executive Director has determined that (a) either (1) there is only one prospective Contractor willing to enter into the applicable Contract on the terms and conditions established by the Agency (other than the requirements of this Policy); or (2) the needed services under the applicable Services Contract are available only from a sole source; and (b) the prospective Contractor is not currently disqualified from doing business with the Agency or any other governmental agency.

6.2 The Executive Director has determined in writing that the Contract is necessary to respond to an emergency which endangers the public health or safety and no entity that complies with the requirements of this Policy and is capable of responding to the emergency is immediately available to perform the required services.

6.3 The Executive Director has determined in writing that (a) there are no qualified responsive bidders or prospective vendors that comply with the requirements of this Policy; and (b) the Contract is for a service, project, or property that is essential to the Agency or the public.

6.4 the Executive Director has determined in writing that (a) the Services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity; (b) purchase under such arrangement will substantially reduce the Agency's cost of purchasing such Services; and (c) purchase under such an arrangement is in the best interest of the Agency or the public.

Section 7. Additional Waivers by the Executive Director – Nonprofit Corporations. A Nonprofit Corporation may seek a waiver from the requirements of the adjustments provided in Section 3.1(b) and Section 3.1(c) if the highest paid managerial position in the organization earns a salary which, when calculated on an hourly basis, is not more than six (6) times the lowest wage paid by the organization to a Covered Employee. The Nonprofit Corporation shall provide to the Contracting Department a written statement, prepared and signed by the Nonprofit Corporation, setting forth an explanation of the economic hardship to the Nonprofit Corporation or the negative impact on services that would result from compliance with this Policy. The Executive Director may grant the requested waiver. Each waiver shall be effective for a period of up to one (1) year, and subsequent waivers may be requested and granted.

Section 8. Special Waiver By the Agency Commission. A special waiver may be granted if, upon receipt of an application from the Contractor, stating fully the grounds of the request and the facts pertaining thereto, the Agency finds following its own further investigation that the application of the Policy would result in an adverse impact on services or an unreasonable financial impact on the Contract. In order to permit any such waiver, the Agency must determine that:

(a) The application of the Policy would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the applicable Redevelopment Plan;

(b) There are exceptional circumstances or conditions applicable to the property, the intended development of the property, or the services proposed through a contract, which do not apply generally to other properties or contracts having the same standards, restrictions and controls;

(c) Permitting a waiver, for a specified period of time, will not be materially detrimental to the public welfare or injurious to property or improvement in the area; and,

(d) Permitting a waiver, for a specified period of time, will not be contrary to the objectives of the applicable redevelopment plan.

Waivers shall only be granted for a limited time period as determined to be needed to promote the general purpose and intent of the applicable redevelopment plan. Subsequent waivers may be requested and either granted or denied. The Agency anticipates that all covered Projects and Contracts will eventually transition to achieving a viability that will allow for covered Contractors to comply with the Policy.

Section 9. Waiver Through Collective Bargaining. All or any portion of the applicable requirements of this Policy may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Section 10. Relationship to Other Requirements. This Policy provides a minimum level of compensation and shall not be construed to preempt or otherwise affect any other law, regulation or requirement providing a higher level of compensation.

Section 11. Preemption. Nothing in this Policy shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

Section 12. Effective Date. This Policy shall become effective the date of the Agency approval.

Section 13. Severability. If any part or provision of this Policy, or the application of this Policy to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected by such a holding and shall continue in full force and effect. To this end, the provisions of this Policy are severable.

G

Exhibit G
Disposition and Development Agreement for Vertical Improvements

**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO**

**San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102
Attention: Development Services**

**DISPOSITION AND DEVELOPMENT AGREEMENT
HUNTERS POINT SHIPYARD
VERTICAL DEVELOPMENT PHASE _____, LOT _____**

By and Among

**LENNAR/BVHP, LLC, a California limited liability company
dba Lennar/BVHP Partners,**

**THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO**

and

_____,
a _____

DISPOSITION AND DEVELOPMENT AGREEMENT

This DISPOSITION AND DEVELOPMENT AGREEMENT ("Agreement") is dated for reference purposes only as of the ____ day of _____, 20__, by and among LENNAR/BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer"), the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California, together with any successor public agency designated by or pursuant to law (the "Agency") and _____, a _____ ("Vertical Developer").

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of California, the Agency has undertaken a program for the clearance and reconstruction or rehabilitation of slum and blighted areas in the City and County of San Francisco (hereinafter called the "City"), and in this connection has undertaken a project in the area known as the "Hunters Point Shipyard Redevelopment Project Area," as the area is shown on the Land Use Plan attached to the Hunters Point Shipyard Redevelopment Plan (as defined below), which area is herein called the "Project Area."

B. The Agency prepared a Hunters Point Shipyard Redevelopment Plan and in accordance with the Community Redevelopment Law of California (Health and Safety Code §§ 33000 et. Seq.), the City, acting through its Board of Supervisors, by Ordinance No. 285-97 adopted on July 14, 1997, approved the same for the Project Area, providing for the clearance and redevelopment or rehabilitation of certain lands in the Project Area and the further uses of such land. The Hunters Point Shipyard Redevelopment Plan was recorded as Document No. H595996, on November 21, 2003, in the Office of the Recorder of the City and County of San Francisco (the "Official Records"). The Hunters Point Shipyard Redevelopment Plan, as it may be amended from time to time subject to the provisions of this Agreement, is referred to herein as the "Redevelopment Plan". In cooperation with the City, the Agency is in the process of implementing the Redevelopment Plan.

C. The United States of America, acting through the Department of the Navy (the "Navy") and the Agency entered into that certain Conveyance Agreement (the "Conveyance Agreement") dated March 31, 2004, governing the terms and conditions for the transfer of the Hunters Point Naval Shipyard (the "Shipyard") from the Navy to the Agency pursuant to which the Shipyard is divided into six (6) parcels designated A through F. As of the date hereof, Parcels _____ have been conveyed to the Agency and subsequently conveyed to Developer and the remaining parcels, as contemplated in the Conveyance Agreement, are to be conveyed to the Agency over time in phases, as the Navy completes environmental remediation and is able to issue a Finding of Suitability to Transfer for specified parcels or portions thereof. The standards and procedures for environmental remediation of the Shipyard are set forth in the Conveyance Agreement.

D. The development of portions of Parcels A and B, including the hilltop area of Parcel A and the south side of the hill and certain flat portions of Parcel B comprise "Phase I," is

the subject of that certain Disposition and Development Agreement, Hunters Point Shipyard Phase I, by and between the Agency and Developer, dated as of December 2, 2003 and filed as Document No. _____ on _____ in the Official Records (the "Horizontal DDA"). The Horizontal DDA sets forth, among other things (i) Developer's obligations with respect to the construction of public infrastructure improvements, (ii) the development plan for Phase I, including the number of residential units and affordable housing requirements, and (iii) various community benefits. Phase I is described in Attachment 1 to the Horizontal DDA and is shown on Attachment 2 to the Horizontal DDA.

E. The Phase I development plan is based on the Redevelopment Plan and the Conceptual Framework for Phase I Development of the Hunters Point Shipyard (the "Conceptual Framework") which was issued on January 13, 2003, subsequently reviewed by the Mayor's Hunters Point Shipyard Citizen Advisory Committee (the "CAC") and other stakeholders, and approved by the Agency on July 22, 2003. The Redevelopment Plan establishes the basic land use standards for the Project Area and includes general objectives, including planning objectives, which apply to the Project Area. In furtherance of the Redevelopment Plan, the Agency Commission has approved, by adopting Resolution No. _____ on _____, the Hunters Point Shipyard Design for Development (as amended, the "Design for Development"). The Design for Development, as the same may be amended from time to time, is a companion document to the Redevelopment Plan incorporating the general ideas set forth in the Conceptual Framework and containing design standards and design guidelines which apply to all development in the Project Area. Additionally, the Agency has created a Hunters Point Shipyard Vertical Design Review and Document Approval Procedure, attached hereto as Attachment ____, which sets forth the process and requirements for Agency review and approval of the design and construction documents related to development in the Project Area.

F. An addition to the public infrastructure improvements to be made by the Developer pursuant to the terms set forth in the Horizontal DDA, Phase I development shall include: (i) a total of 1,600 residential units, at least 32% of which will be affordable to low and moderate income residents, and a mix of approximately 30% rental units and 70% for-sale units; (ii) approximately three hundred thousand (300,000) square feet of commercial, retail, research and development, cultural and educational space, along with an interim location for the African Marketplace (as more particularly described in Attachment ____ hereto); and (iii) the development of approximately six (6) acres for community facilities yet to be determined, that may include health, education, cultural, environmental, job-training or other community-serving facilities (the "Community Facilities Parcels).

G. [Insert Description of Vertical Developer's Project]

H. Pursuant to this Agreement, Developer and the Agency have entered into a "Community Benefits Agreement" (as defined below), that has established the "Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program," with which Developer and Vertical Developer shall be obligated to comply. In addition, as set forth in this Agreement, Vertical Developer shall comply with various requirements and procedures including the Equal Opportunity Program (or such successor program as the Agency may adopt); Prevailing Wage Requirements and the requirements set

forth in the Card Check Agreement; the Minimum Compensation Policy; the Health Care Accountability Policy; and the Equal Benefits Policy.

I. In furtherance of the Redevelopment Plan, the Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, at Reel I519, Image 1666, as Document No.03-H595997-00 on November 21, 2003 (the "Declaration of Restrictions").

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

In order to further effectuate the foregoing program of development contemplated by the Redevelopment Plan, and for good and valuable consideration the amount and sufficiency of which are hereby acknowledged, the parties hereto have entered into this Agreement to memorialize their understandings and commitments concerning the matters generally described above.

NOW, THEREFORE, Developer together with the Agency and Vertical Developer agree as follows:

1. **DEFINITIONS.**

The following terms have the meanings and content set forth in this Article 1 wherever used in this Agreement.

1.1 **Abandon(s)** means the period during which no work is performed on the Vertical Developer Lot(s). As used herein, "work" includes Vertical Developer's performance of substantial physical construction of Improvements, which determination of substantial physical construction shall be made by the Agency's Executive Director in his/her reasonable judgment.

1.2 **Actual Knowledge applied to Developer**, means and is limited to the actual knowledge of _____ [list appropriate employees] of Developer, without having conducted any independent inquiry or inspection.

1.3 **Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program** means the Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace) the terms of which are set forth in the Community Benefits Agreement which, though not an attachment hereto, shall be considered a part of this Agreement

1.4 **Affiliate** means (A) a Person which directly or indirectly owns and controls fifty percent (50%) or more of each class of controlling interests in Vertical Developer, or (B) in which the Vertical Developer directly or indirectly owns and controls (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class

of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person. An Affiliate must be reasonably creditworthy given the obligations it is assuming, which creditworthiness will be assumed if the Affiliate qualifies for a loan consistent with the mortgage provisions of this.

1.5 **Affiliate Vertical Developer** means a Vertical Developer that is an Affiliate of Developer.

1.6 **Affordable Housing Program** means the document attached hereto as Attachment ____.

1.7 **Agency** has the meaning set forth in the opening paragraph of this Agreement.

1.8 **Agency Housing Parcel(s)** has the meaning set forth in the Affordable Housing Program.

1.9 **Agency Parcel(s)** has the meaning set forth in the Affordable Housing Program.

1.10 **Agency Reversionary Grant Deed** has the meaning set forth in Section 12.3(b), and shall be substantially in the form of Attachment ____.

1.11 **Agreement** has the meaning set forth in the opening paragraph of this document and shall include the Design for Development, the Open Space Master Plan and the Community Benefits Agreement.

1.12 **Arbiter** has the meaning set forth in Section 11.2(b)(4).

1.13 **Area Median Income** has the meaning set forth in the Affordable Housing Program.

1.14 **Assumption Agreement** means an agreement in recordable form reasonably satisfactory to the Agency, duly executed by Vertical Developer and the Transferee that describes (i) the portions of the Project Area being Transferred, (ii) the obligations of Vertical Developer that the Transferee assumes, (iii) the obligations from which Vertical Developer will be released consistent with this Agreement, and (iv) the Transferee's acknowledgement that the Transferee has reviewed and agrees to be bound by this Agreement and all conditions and restrictions applicable to the Transferred Property.

1.15 **Bayview Hunters Point Area or BVHP Area** means that portion of the City and County of San Francisco located in zip code areas 94124, 94134 and 94107 as of the Effective Date, which is comprised of the neighborhoods most affected by closure of the Shipyard. Unless otherwise expressly indicated, references to Bayview, Hunters Point, the community, neighborhoods and variants of those terms mean the BVHP Area.

1.16 **Building Permit** means a building or site permit issued by the City's Central Permit Bureau of the Department of Building Inspection which will allow Vertical Developer to Commence Construction of Vertical Improvements pursuant to this Agreement.

1.17 **Card Check Agreement** means the document attached hereto as Attachment ____.

1.18 **Certificate of Completion** has the meaning set forth in Section 6.5(a).

1.19 **Certificate of Occupancy** means an instrument issued by the City's Department of Building Inspection certifying that a Residential Unit, Residential Project or non-residential Project is fit for occupancy or use pursuant to the San Francisco Building Code.

1.20 **CFD** has the meaning set forth in the Open Space Master Plan.

1.21 **City** means the City and County of San Francisco, and whenever any action may or must be taken by the City, such reference to the City includes its authorized officers, departments, employees and representatives.

1.22 **Closing Date, Close of Escrow, Escrow Closing, Closing or Close** has the meaning set forth in Section 3.2(b).

1.23 **Commence Construction** means ground breaking in connection with the commencement of physical construction of the Improvements.

1.24 **Community Benefits Agreement** means the agreement between Developer and the Agency that sets forth the terms and provisions of the Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace). Though not an attachment hereto, the Community Benefits Agreement shall be considered a part of this Agreement.

1.25 **Complete Construction/ Completion of Construction** means (a) that a specified scope of work has been completed in accordance with mutually approved plans and specifications; (b) public agencies with jurisdiction have issued all permits, licenses, approvals, certificates of occupancy and other sign-offs required for the contemplated use and occupancy of the scope of work, and more specifically (i) with respect to Residential Units within a Residential Project, the issuance of a final Certificate of Occupancy for such development, and with respect to a non-residential Project, the issuance of a temporary certificate of occupancy and (ii) as to either, the delivery of recordable Engineer's/Architect's Certificates from the Engineer or Architect; (c) the site has been cleaned and all equipment, tools and other construction materials and debris have been removed; (d) all bills for the scope of work have been paid, any surety has consented to final payment, no mechanics' liens have been recorded and the period for recording mechanics' liens has expired; and (e) all as-built plans and warranties, guaranties, operating manuals, operations and maintenance data, certificates of completed operations or other

insurance, and all other close-out items required under the pertinent construction contract, have been provided.

1.26 **Conflicting Law** means applicable City, state or federal laws and any rules, regulations, orders, executive mandate or any applicable City, state or federal court decisions thereunder (or any approvals permits, authorizations or conditions thereto) which preclude or substantially increase the cost of performance of or compliance with any provision of this Agreement by Vertical Developer, Developer or the Agency.

1.27 **Construction Disputes** has the meaning set forth in Section 11.1.

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

1.29 **Declaration of Restrictions** is the document described in Recital H, as the same may be amended from time to time.

1.30 **Design for Development** means the document described in Recital E and includes any amendments to the document. Though not an attachment hereto, the Design for Development shall be considered a part of this Agreement.

1.31 **Design Documents** means Concept Plans, Basic Concept Design Documents, Schematic Design Documents, Open Space Master Plan, and Design Development Documents, all of which have the meanings set forth in the Vertical Design Review and Document Approval Procedure unless otherwise defined herein, and specifically excludes any contracts between Vertical Developer and any contractor, subcontractor, architect, engineer, consultant or Mortgagee.

1.32 **Developer** has the meaning set forth in the opening paragraph of this Agreement.

1.33 **Developer's Remedial Costs** has the meaning set forth in Section 12.3(b)(i).

1.34 **Effective Date** means the date that this Agreement is approved by the Agency Commission.

1.35 **Engineer/Architect** means a duly licensed design professional, who may be either an engineer or an architect, designated by the Agency from time to time to issue the Engineer's/ Architect's Certificates and to perform the other services contemplated under this Agreement.

1.36 **Engineer's/Architect's Certificates** has the meaning set forth in Section 6.5(a) and are substantially in the form of Attachments _____.

1.37 **Environmental Laws** has the meaning set forth in Section 5.1(b).

1.38 **Equal Benefits Policy** means the document attached hereto as Attachment _____.

1.39 **Equal Opportunity Program** means the document attached hereto as Attachment ____, or such successor program as the Agency may adopt.

1.40 **Escrow Holder** is that certain title company with which Developer has opened an escrow to effectuate the Closing under the Purchase and Sale Agreement and Joint Escrow Instructions.

1.41 **Final Construction Documents** has the meaning set forth in the Vertical Design Review and Document Approval Procedure.

1.42 **Gross Revenues** has the meaning set forth in Attachment 25 (Financing and Revenue Sharing Plan) to the Horizontal DDA.

1.43 **Hazardous Substance(s)** has the meaning set forth in Section 5.1(a).

1.44 **Health Care Accountability Policy** means the document attached hereto as Attachment _____.

1.45 **Horizontal DDA** has the meaning set forth in Recital D.

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

1.47 **Hunters Point Shipyard Redevelopment Plan or Redevelopment Plan** has the meaning set forth in Recital B.

1.48 **Improvements or Vertical Improvements** means buildings, structures, and other works of improvement described in the Final Construction Documents and the applicable Design Documents.

1.49 **Inclusionary Units** has the meaning set forth in the Affordable Housing Program.

1.50 **Indemnified Party(ies)** has the meaning set forth in Section 5.2.

1.51 **Interagency Cooperation Agreement** is as described in Section 7.1.

1.52 **Joint Escrow Instructions** has the meaning set forth in Section 3.1.

1.53 **Land Use Plan** has the meaning set forth in Recital A.

1.54 **Losses** has the meaning set forth in Section 5.2.

1.55 **Lot(s)** means those parcels that are to be transferred to Vertical Developer pursuant to the terms of this Agreement for the construction of Improvements in accordance with the Redevelopment Requirements.

1.56 **Mediator** has the meaning set forth in Section 11.2(b)(1).

1.57 **Minimum Compensation Policy** means the document attached hereto as Attachment ____.

1.58 **Mortgage** means any mortgage, deed of trust, financing lease, indenture, trust agreement, reimbursement agreement, certificate of participation, collateral assignment, assignment of rents, fixture filing, security agreement or similar security instrument or assignment (including without limitation any derivative agreement, swap, hedge, forward purchase or other instrument relating to any of the above) of Vertical Developer's interest in the Lot, including the Improvements thereon, if any, that is recorded in the Official Records, creating or evidencing a security interest in, encumbrance upon, securitization of or lien against the Lot or any income, rentals, revenue, profits or other proceeds derived from the Lot to secure a loan the proceeds of which will be used to develop Vertical Improvements on the Lot in accordance with this Agreement.

1.59 **Mortgagee** means the holder of a Mortgage or of any beneficial interest therein, and shall include any insurer or guarantor of a Mortgage, or of any obligation or condition secured by such Mortgage. The Mortgagee shall also include a Person holding an interest in a Mortgage by way of collateral assignment securing the performance of an obligation of the holder of such Mortgage, to the extent provided in such collateral assignment. Multiple financial institutions participating in a single financing secured by a single Mortgage shall be deemed a single Mortgagee for purposes of this Agreement.

1.60 **Non-Affiliate Vertical Developer** means a Vertical Developer that is not an Affiliate of Developer.

1.61 **Occupant** has the meaning set forth in Section 14.5.

1.62 **Open Space / Open Space Parcel** means the parcels retained by the Agency and designated for parks, public recreation and other open space uses, portions of which are designated as Open Space on the map attached as Attachment 2 to the Horizontal DDA.

1.63 **Open Space Master Plan** means an open space, parks and recreation master plan for design, and development and maintenance of the Open Space adopted pursuant to the Horizontal DDA governing hardscape materials, planting materials, access, amenities and other design elements and which also sets forth the financing plan for the maintenance of the Open Space improvements. Though not an attachment hereto, the Open Space Master Plan shall be considered a part of this Agreement.

1.64 **Owner** has the meaning set forth in Section 14.5.

1.65 **Parties or Party** means the Agency, Developer and Vertical Developer and each of them as applicable.

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

1.67 **Prevailing Wage Requirements** means that document attached hereto as Attachment ____.

1.68 **Project** means an individual building and the related Improvements [**may need to adjust for different project proposals**] anticipated to be constructed in connection therewith (including, but not limited to any applicable Open Space Parcel) pursuant to the Design for Development, Final Construction Documents and the applicable Design Documents.

1.69 **Project Area** has the meaning set forth in Recital A.

1.70 **Purchase and Sale Agreement and Joint Escrow Instructions** shall mean the agreement entered into between Developer, as "Seller," and Vertical Developer, as "Buyer," substantially in the form of Attachment ____, changes to which shall be subject to review and approval by the Agency as to issues that may adversely affect the Agency in a financial or regulatory capacity, and as the same may be amended from time to time by Developer and Vertical Developer.

1.71 **Quitclaim Deed** means the document described in Section 3.2, substantially in the form of Exhibit 2 to the Purchase and Sale Agreement and Joint Escrow Instructions, duly executed and acknowledged by Developer and in recordable form, conveying the Lot(s) to Vertical Developer.

1.72 **Redevelopment Requirements** means (i) the Redevelopment Plan, (ii) the Declaration of Restrictions, (iii) the Design for Development, (iv) those elements of the Construction Documents for which approval is required pursuant to the Vertical Design Review and Document Approval Procedure, (v) the Open Space Master Plan and (vi) this Agreement.

1.73 **Release** has the meaning set forth in Section 5.1.

1.74 **Release of Horizontal DDA** has the meaning set forth in Section 3.2, and shall be substantially in the form of Attachment ____.

1.75 **Replacement Period** has the meaning set forth in Section 12.3(a)(iii).

1.76 **Repurchase Option** has the meaning set forth in Section 10.1 of the Purchase and Sale Agreement and Joint Escrow Instructions.

- 1.77 **Residential Project** has the meaning set forth in the Affordable Housing Program.
- 1.78 **Residential Unit** has the meaning set forth in the Affordable Housing Program.
- 1.79 **Reversionary Default** has the meaning set forth in Section 12.3(b).
- 1.80 **Schedule of Performance** means the document to be mutually agreed upon and attached hereto as Attachment ____.
- 1.81 **Shipyard** has the meaning set forth in Recital C.
- 1.82 **Significant Change** means (a) Vertical Developer files, or is the subject of, a petition for bankruptcy, or makes a general assignment for the benefit of its creditors, (b) a receiver is appointed on account of Vertical Developer's insolvency, (c) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Vertical Developer, or against any property or assets of Vertical Developer being used or required for use in the development of the Improvements or against any substantial portion of any other property or assets of Vertical Developer which is not removed or otherwise resolved within ____ days or (d) a final non-appealable judgment is entered against Vertical Developer in an amount in excess of Five Million Dollars (\$5,000,000.00), and it is unable to either satisfy or bond the judgment.
- 1.83 **Supplement** has the meaning set forth in Article 17.
- 1.84 **Transfer** means to sell, assign, convey, lease, sublease, Mortgage, hypothecate or otherwise alienate a Lot and/or any Improvements thereon.
- 1.85 **Transferred Property** has the meaning set forth in Section 14.1.
- 1.86 **Transferee** means the Person to whom a Transfer is made.
- 1.87 **Transferor** means the Person who affects a Transfer pursuant to this Agreement.
- 1.88 **Unavoidable Delay** means a delay in a Party's performance of its obligations hereunder that is caused by (a) acts of God, enemy action, civil commotion, fire, flood, earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from the labor practices of the Party claiming the benefit of Unavoidable Delay), (c) material shortages of or inability to obtain labor or materials beyond the reasonable control of the Party claiming the benefit of Unavoidable Delay, (d) lawsuits brought by plaintiffs unaffiliated with the Party claiming the benefit of Unavoidable Delay, (e) material restrictions imposed or mandated by governmental or quasi-governmental entities beyond the reasonable control of the Party claiming the benefit of Unavoidable Delay, (f) delays by governmental or quasi-governmental entities in issuing requisite approvals or consents beyond the reasonable control of the Party claiming the benefit of Unavoidable Delay, including without limitation failure of the Agency and/or the City to respond to Vertical Developer's submissions within the time periods set forth in the Interagency Cooperation Agreement or the Vertical Design Review and

Document Approval Procedure for Infrastructure Development or (g) any other event beyond the reasonable control of the Party claiming the benefit of Unavoidable Delay. Delays beyond a Party's reasonable control exclude delays to the extent caused by the negligent act or omission or willful misconduct of the Party claiming the benefit of Unavoidable Delay.

1.89 **Unrelated Buyer** means a third-party in an arms length transaction who is not an Affiliate of Vertical Developer.

1.90 **Vertical Design Review and Document Approval Procedure** is attached hereto as Attachment ____.

1.91 **Vertical Improvements Net Profit** has the meaning set forth in the Vertical Profit Sharing Agreement.

1.92 **Vertical Profit Sharing Agreement** has the meaning set forth in Article 10.

2. **TERM OF AGREEMENT AND RELEASE OF THE VERTICAL DDA**

The term of this Agreement shall commence upon the Effective Date and continue until the expiration of the Redevelopment Plan, unless earlier terminated as provided in this Agreement or upon termination of the Purchase and Sale Agreement and Joint Escrow Instructions; provided, however, the provisions of Sections 4.2, 4.3 ____, and the non-discrimination covenants set forth in Section 8.2 shall continue in perpetuity. Upon the Vertical Developer's request, the Agency shall cause the lien of this Agreement (and the other attachments specifically incorporated herein that are not intended to survive sale of a Lot or Residential Unit) to be released as to a particular Lot concurrently with the first sale of that Lot to an Unrelated Buyer. Indemnities and other obligations that are intended to survive partial release, expiration or termination will survive any partial release, expiration or termination of this Agreement.

3. **TERMS FOR CONVEYANCE OF VERTICAL DEVELOPER LOTS; AMENDMENT AND RELEASE OF HORIZONTAL DDA.**

3.1 **Escrow Closing.** Developer and Vertical Developer have agreed to the purchase and sale of the Lot(s), which purchase and sale, and the delivery and recordation of documents and funds in connection therewith, shall be accomplished through an Escrow Closing established with an escrow holder and consummated pursuant to the Purchase and Sale Agreement and Joint Escrow Instructions.

3.2 **Quitclaim Deed.** Conveyance of the Lot(s) to Vertical Developer shall be pursuant to the Quitclaim Deed. The Quitclaim Deed shall include, among other covenants, restrictions and notices that run with the land, a condition subsequent to the effect that in the event of a Reversionary Default by Vertical Developer, the Agency may declare a termination in favor of the Agency of the title, and of all the rights and interest in the Lot(s) conveyed by the

Quitclaim Deed to Vertical Developer, and that such title and all rights and interests of Vertical Developer, and any assigns or successors in interest to and in the Lot(s), shall revert to the Agency. Such condition subsequent and any such reversion of title in the Agency shall always be subject to and limited by the lien or security interest authorized by this Agreement, and any rights or interests provided in this Agreement for the protection of the Mortgagee; and shall not apply to individual Lot(s) or portions thereof, on which a particular Project has been completed in accordance with this Agreement and for which a Certificate of Completion has been issued as provided in this Agreement. Such condition subsequent shall conform to the provisions of Civil Code Sections 885.010 through 885.070.

3.3 **Amendment and Release of Horizontal DDA.** As a condition of Closing, the Agency and Developer shall execute and cause Escrow Holder to record in the Official Records (pursuant to joint escrow instructions), a release of the Horizontal DDA (the "Release of Horizontal DDA") pursuant to which the obligations of Developer under the Horizontal DDA shall be released as to the subject Vertical Developer Lot (excepting from such release any indemnity obligations relating to the period of Developer's ownership of the Lot(s) and other provisions either expressly stated to survive transfer or which by their nature survive the transfer of such Lot(s)) and the lien of the Horizontal DDA shall be fully released as it relates to the Lot(s).

3.4 **Community Facilities District.** Vertical Developer hereby acknowledges that the Lot(s) are and will continue to be subject to the City's Community Facilities Districts 7 and 8 (the "CFD") for construction of the infrastructure including Open Space and maintenance of the Open Space. Vertical Developer and Developer shall cooperate to obtain an apportionment of any assessments payable pursuant to said CFD and attributable to the Lot(s).

3.5 **Transportation Management Association.** Vertical Developer hereby acknowledges that the Lot(s) are and will continue to be subject to the Hunters Point Shipyard Transportation Management Association which requires Vertical Developer's membership and contribution as set forth in Attachment 28 to the Horizontal DDA.

3.6 **Affordable Housing Program and Other Programs and Requirements.** Vertical Developer hereby acknowledges that the Lot(s) are and will continue to be subject to the terms of the Affordable Housing Program, Prevailing Wage Requirements, Form of Card Check Agreement, Minimum Compensation Policy, Health Care Accountability Policy, Equal Benefits Policy, Equal Opportunity Program and any other program or requirement set forth in this Agreement as binding upon the Vertical Developer with respect to the Lot(s).

3.7 **Condemnation and Destruction.**

(a) ***Eminent Domain or Taking.*** If proceedings under a power of eminent domain relating to the Lot(s) or any part thereof are commenced prior to Close of Escrow, the terms of Section 9.1 of the Purchase and Sale and Joint Escrow Instructions shall apply. In the event the sale of the Lot(s) contemplated in the Purchase and Sale and Joint Escrow Instructions is not consummated for any reason, any condemnation award or settlement shall be treated as Gross Revenues.

(b) **Damage or Destruction.** If, prior to Close of Escrow, any part of the Lot or improvements on the Lot is damaged or destroyed by earthquake, flood, landslide, fire or other casualty, the terms of Section 9.2 of the Purchase and Sale and Joint Escrow Instructions shall apply. Whether or not the sale of the Lot(s) contemplated in the Purchase and Sale and Joint Escrow Instructions is consummated, all rights to insurance claims or proceeds shall be treated as Gross Revenues, provided, however, that insurance proceeds shall first be made available to Developer for the repair of any damage to the Lot(s) that Developer has chosen to undertake pursuant to the terms of Section 9.2 of the Purchase and Sale and Joint Escrow Instructions.

3.8 **Inspections and Studies.** In the event this Agreement is terminated without the Closing having occurred for any reason other than an event of default on the part of the Agency, Vertical Developer will, within fifteen (15) Business Days after termination and without any further act or consideration on the part of the Agency (i) give copies to the Agency of all written, typed or other tangible data concerning all inspections, investigations, tests, studies and reports (including, without limitation, all underlying data and materials such as video tapes generated in connection with such inspections, investigations, tests, studies and reports), all correspondence to and from all governmental agencies and utility companies and all correspondence to and from all third parties to the extent not confidential; provided, however, that Vertical Developer will not be deemed to make any representations or warranties to the Agency with respect to the contents thereof; and (ii) return to Developer all inspections, investigations, tests, studies and other reports and documents previously delivered by Developer or Developer's agents to Vertical Developer.

4. **PROPERTY "AS-IS" AND RELEASE**

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

4.2 **No Side Agreements or Representations; As-Is Purchase.** VERTICAL DEVELOPER REPRESENTS AND WARRANTS TO DEVELOPER AND THE AGENCY THAT DEVELOPER HAS PROVIDED VERTICAL DEVELOPER WITH THE OPPORTUNITY TO INDEPENDENTLY AND PERSONALLY INSPECT THE LOT(S) AND IMPROVEMENTS, IF ANY) DURING THE TITLE OBJECTION PERIOD AND THAT VERTICAL DEVELOPER IS ENTERING INTO THIS AGREEMENT BASED UPON ITS

RIGHTS AND INTENTIONS TO CONDUCT SUCH PERSONAL EXAMINATION AND INSPECTION. VERTICAL DEVELOPER AGREES THAT IT WILL ACCEPT THE LOT(S) IN ITS THEN CONDITION AS-IS AND WITH ALL ITS FAULTS, INCLUDING, WITHOUT LIMITATION, ANY FAULTS AND CONDITIONS SPECIFICALLY REFERENCED IN THIS AGREEMENT, EXCEPTING ONLY ANY FAULTS AND CONDITIONS THAT WERE FRAUDULENTLY CONCEALED FROM VERTICAL DEVELOPER. NO PERSON ACTING ON BEHALF OF DEVELOPER OR THE AGENCY IS AUTHORIZED TO MAKE, AND BY EXECUTION HEREOF, VERTICAL DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER DEVELOPER NOR THE AGENCY HAS MADE, NOR DOES EITHER MAKE, AND EACH SPECIFICALLY NEGATES AND DISCLAIMS ANY REPRESENTATIONS, WARRANTIES, PROMISES, COVENANTS, AGREEMENTS OR GUARANTIES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, PAST, PRESENT OR FUTURE, OF, AS TO, CONCERNING OR WITH RESPECT TO:

- (i) THE VALUE OF THE LOT(S);
- (ii) THE INCOME TO BE DERIVED FROM THE LOT(S) (EXCEPTING THE AGREEMENT SET FORTH IN ATTACHMENT ___ REGARDING THE AGENCY'S PARTICIPATION IN THE VERTICAL IMPROVEMENTS NET PROFIT);
- (iii) THE SUITABILITY OF THE LOT FOR ANY AND ALL ACTIVITIES AND USES WHICH VERTICAL DEVELOPER MAY CONDUCT THEREON, INCLUDING ANY DEVELOPMENT OF THE LOT(S);
- (iv) THE HABITABILITY, MERCHANTABILITY, MARKETABILITY, PROFITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE LOT;
- (v) THE MANNER, QUALITY, STATE OF REPAIR OR LACK OF REPAIR OF THE LOT;
- (vi) THE NATURE, QUALITY OR CONDITION OF THE LOT, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY;
- (vii) THE COMPLIANCE OF OR BY THE LOT(S) OR ITS/THEIR OPERATION WITH ANY LAWS, RULES, ORDINANCES OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY;
- (viii) THE MANNER, CONDITION OR QUALITY OF THE CONSTRUCTION OR MATERIALS, IF ANY, INCORPORATED INTO THE LOT(S);
- (ix) COMPLIANCE WITH ANY ENVIRONMENTAL PROTECTION, POLLUTION OR LAND USE LAWS, RULES, REGULATION, ORDERS OR REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THE ENDANGERED SPECIES ACT, TITLE III OF THE AMERICANS WITH DISABILITIES ACT OF 1990, CALIFORNIA HEALTH & SAFETY CODE, THE FEDERAL WATER POLLUTION CONTROL ACT, THE

FEDERAL RESOURCE CONSERVATION AND RECOVERY ACT, THE U.S. ENVIRONMENTAL PROTECTION AGENCY REGULATIONS AT 40 C.F.R., PART 261, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED, THE RESOURCES CONSERVATION AND RECOVERY ACT OF 1976, THE CLEAN WATER ACT, THE SAFE DRINKING WATER ACT, THE HAZARDOUS MATERIALS TRANSPORTATION ACT, THE TOXIC SUBSTANCE CONTROL ACT, AND REGULATIONS PROMULGATED UNDER ANY OF THE FOREGOING;

(x) THE PRESENCE OR ABSENCE OF HAZARDOUS MATERIALS AT, ON, UNDER, OR ADJACENT TO THE LOT(S);

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

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

(xiii) THE CONFORMITY OF THE LOT(S) TO PAST, CURRENT OR FUTURE APPLICABLE ZONING OR BUILDING CONDITIONS;

(xiv) DEFICIENCY OF ANY UNDERSHORING;

(xv) DEFICIENCY OF ANY DRAINAGE;

(xvi) THE FACT THAT ALL OR A PORTION OF THE LOT(S) MAY BE LOCATED ON OR NEAR AN EARTHQUAKE FAULT LINE OR LOCATED IN A SPECIAL STUDY ZONE;

(xvii) THE EXISTENCE OF VESTED LAND USE, ZONING OR BUILDING ENTITLEMENTS AFFECTING THE LOT(S);

(xviii) THE EFFECTIVENESS OF ANY NOISE ABATEMENT MEASURES WHICH MAY OR MAY NOT BE IMPLEMENTED AT ADJACENT PROPERTIES; OR

(xix) WITH RESPECT TO ANY OTHER MATTER CONCERNING THE LOT(S) EXCEPT AS MAY BE OTHERWISE EXPRESSLY STATED HEREIN OR BY SEPARATE AGREEMENT, INCLUDING ANY AND ALL SUCH MATTERS REFERENCED, DISCUSSED OR DISCLOSED IN ANY DOCUMENTS DELIVERED BY DEVELOPER OR THE AGENCY TO VERTICAL DEVELOPER, IN ANY PUBLIC RECORDS OF ANY GOVERNMENTAL AGENCY OR ENTITY OR UTILITY COMPANY, OR IN ANY OTHER DOCUMENTS AVAILABLE TO VERTICAL DEVELOPER.

VERTICAL DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE LOT(S) AND REVIEW INFORMATION AND DOCUMENTATION AFFECTING IT, VERTICAL DEVELOPER IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE LOT(S) AND REVIEW OF SUCH INFORMATION AND DOCUMENTATION, AND NOT ON ANY INFORMATION PROVIDED OR TO BE PROVIDED BY DEVELOPER OR THE AGENCY. VERTICAL DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION MADE AVAILABLE TO IT OR PROVIDED OR TO BE PROVIDED BY OR ON BEHALF OF DEVELOPER OR THE AGENCY WITH RESPECT TO THE LOT(S) WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT NEITHER DEVELOPER NOR THE AGENCY HAS MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION EXCEPT AS MAY OTHERWISE BE PROVIDED HEREIN. VERTICAL DEVELOPER AGREES TO FULLY AND IRREVOCABLY RELEASE ALL SUCH SOURCES OF INFORMATION AND PREPARERS OF INFORMATION AND DOCUMENTATION TO THE EXTENT SUCH SOURCES OR PREPARERS ARE DEVELOPER, THE AGENCY, OR THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SERVANTS, ATTORNEYS, AFFILIATES, PARENT COMPANIES, SUBSIDIARIES, SUCCESSORS OR ASSIGNS FROM ANY AND ALL CLAIMS THAT VERTICAL DEVELOPER MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST SUCH SOURCES AND PREPARERS OF INFORMATION FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSE, DEMAND, ACTION OR CAUSE OF ACTION ARISING FROM SUCH INFORMATION OR DOCUMENTATION, EXCEPTING ONLY ANY FAULTS AND CONDITIONS THAT WERE FRAUDULENTLY CONCEALED FROM VERTICAL DEVELOPER. NEITHER DEVELOPER NOR THE AGENCY IS LIABLE OR BOUND IN ANY MANNER BY ANY ORAL OR WRITTEN STATEMENTS, REPRESENTATIONS OR INFORMATION PERTAINING TO THE LOT(S), OR THE OPERATION THEREOF, FURNISHED BY ANY OF THE FOREGOING ENTITIES AND INDIVIDUALS OR ANY OTHER INDIVIDUAL OR ENTITY, EXCEPTING ONLY ANY FAULTS AND CONDITIONS THAT WERE FRAUDULENTLY CONCEALED FROM VERTICAL DEVELOPER. VERTICAL DEVELOPER FURTHER ACKNOWLEDGES AND AGREES THAT TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE SALE OF THE LOT(S) AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS" CONDITION AND BASIS WITH ALL FAULTS, AND THAT NEITHER DEVELOPER NOR THE AGENCY HAS ANY OBLIGATION TO MAKE REPAIRS, REPLACEMENTS OR IMPROVEMENTS EXCEPT AS MAY OTHERWISE BE EXPRESSLY STATED HEREIN.

4.3 **Release.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, VERTICAL DEVELOPER AND ANYONE CLAIMING BY, THROUGH OR UNDER IT, HEREBY FULLY AND IRREVOCABLY RELEASES DEVELOPER AND THE AGENCY, AND EACH OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SERVANTS, ATTORNEYS, AFFILIATES, PARENT COMPANIES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS, AND ALL PERSONS, FIRMS, CORPORATIONS AND ORGANIZATIONS ACTING ON THEIR BEHALF, FROM ANY AND ALL CLAIMS THAT IT MAY NOW HAVE OR HEREAFTER ACQUIRE AGAINST DEVELOPER OR THE AGENCY, OR ANY OF THEIR EMPLOYEES, OFFICERS, DIRECTORS, REPRESENTATIVES, AGENTS, SERVANTS, ATTORNEYS, AFFILIATES,

PARENT COMPANIES, SUBSIDIARIES, SUCCESSORS AND ASSIGNS, AND ALL PERSONS, FIRMS, CORPORATIONS AND ORGANIZATIONS ACTING ON THEIR BEHALF FOR ANY COSTS, LOSS, LIABILITY, DAMAGE, EXPENSES, DEMANDS, ACTIONS OR CAUSES OF ACTION ARISING FROM OR RELATED TO ANY CONSTRUCTION DEFECTS, ERRORS, OMISSIONS OR OTHER CONDITIONS, LATENT OR OTHERWISE, INCLUDING ENVIRONMENTAL, GEOTECHNICAL AND SEISMIC MATTERS, AFFECTING THE LOT, OR ANY PORTION THEREOF INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL MATTERS WHICH WERE:

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

(ii) REASONABLY DISCOVERABLE BY PRUDENT INVESTIGATION DURING THE DUE DILIGENCE PERIOD; OR

(iii) OTHERWISE DISCLOSED TO VERTICAL DEVELOPER BY DEVELOPER OR THE AGENCY OR DISCOVERED BY VERTICAL DEVELOPER AT ANY TIME PRIOR TO THE CLOSING.

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

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

IT IS UNDERSTOOD AND AGREED THAT THE PURCHASE PRICE HAS BEEN ADJUSTED BY PRIOR NEGOTIATIONS TO REFLECT THAT THE LOT(S) IS/ARE SOLD BY DEVELOPER AND PURCHASED BY VERTICAL DEVELOPER SUBJECT TO THE FOREGOING. IT IS NOT CONTEMPLATED THAT THE PURCHASE PRICE WILL BE INCREASED IF COSTS TO VERTICAL DEVELOPER ASSOCIATED WITH THE LOT(S) PROVE TO BE LESS THAN EXPECTED NOR WILL THE PURCHASE PRICE BE REDUCED IF VERTICAL DEVELOPER'S PLAN FOR THE LOT(S) LEADS TO HIGHER COST PROJECTIONS.

INITIALS:

(Vertical Developer)

(Developer)

(Agency)

5. **HAZARDOUS SUBSTANCES**

5.1 Definitions

(a) The term "Hazardous Substance" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent," "hazardous substance," "hazardous waste constituent," "infectious waste," "medical waste," "biohazardous waste," "extremely hazardous waste," "pollutant," "toxic pollutant," or "contaminant," or any other formulation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Substance includes without limitation any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos containing materials, polychlorinated biphenyls ("PCBs"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

(b) The term "Environmental Laws" includes all present and future federal, state and local laws, statutes, rules, regulations, ordinances, standards, directives, interpretations and conditions of approval, all administrative or judicial orders or decrees and all guidelines, permits, license approvals or other entitlements, or rules of common law pertaining to the protection of the environment, natural resources, wildlife, human health or safety, or employee or community right-to-know requirements related to the work being performed under this Agreement. Environmental Laws specifically include the doctrine of environmental justice, under which a community or member thereof may claim that it, he or she has been adversely and disproportionately affected by environmental conditions.

(c) The term "Release" means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance).

5.2 Hazardous Substances Indemnification. Vertical Developer shall indemnify, defend and hold harmless Developer, the Agency, the City, and their respective commissioners, members, supervisors, officers, agents, employees, attorneys, contractors, lenders, successors and assigns (individually, an "Indemnified Party" and collectively, the "Indemnified Parties") from and against any and all claims, demands, liabilities, losses, damages, injuries, accidents, fires or other casualty of any kind or character to any Person or property, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' and consultants' fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, present and future, including the reasonable costs to the Indemnified Party of carrying out the terms of any judgment, settlement, consent decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the Indemnified Party to take any action (collectively, "Losses") incurred by or asserted against any Indemnified Party after the Close of Escrow in connection with, arising out of, in response to, or in any manner relating to (i) Vertical

Developer's violation of any Environmental Law or (ii) or any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Lot(s) to the extent the Release, threatened Release, condition, contamination or nuisance occurs after the Close of Escrow, or is caused or exacerbated at any time by Vertical Developer, its officers, employees, agents or others for whom Vertical Developer is responsible, except, as to any particular Indemnified Party, to the extent such violation, Release, threatened Release, condition, contamination or nuisance is caused by the active negligence or willful misconduct of such Indemnified Party. Vertical Developer's obligations under this Section 5.2 shall (1) apply regardless of responsibility for passive negligence and the availability of insurance proceeds and (2) survive the expiration or other termination of this Agreement and the recordation of the Certificate of Completion for the Project. Vertical Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend the Indemnified Parties from any claim that actually or potentially falls within the indemnification provision of this Section 5.2, even if allegations are or may be groundless, false or fraudulent. Vertical Developer's obligation to defend shall arise at the time such claim is tendered to Vertical Developer and shall continue at all times thereafter.

6. **VERTICAL DEVELOPMENT**

6.1 **Land Uses Within Project Area.** Vertical Developer's development of the Lot and any applicable Open Space shall be in accordance with (i) the Redevelopment Requirements; (ii) the CEQA mitigation measures set forth in Attachment ___ hereto, as well as those mitigation measures determined necessary for the development contemplated hereunder; and (iii) all applicable Environmental Laws, and will be designed, reviewed, constructed and completed pursuant to this Agreement.

6.2 **Commencement and Completion of Development.**

(a) Vertical Developer shall Commence Construction and Complete Construction of the Improvements on the Lot(s) not later than the dates specified therefor in the Schedule of Performance subject to the terms of this Agreement, including Section ___ hereof regarding Unavoidable Delay. In addition to any other extension permitted hereunder, the period within which the Vertical Developer shall Commence Construction shall be extended for a period equal to the period of any default by Developer or the Agency of any of its obligations herein.

(b) Failure by the Vertical Developer to so commence and complete construction shall constitute a default under this Agreement, and shall entitle the Agency to exercise any of the remedies set forth in Article XII hereof, pursuant to the terms set forth herein.

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

6.4 **Conditions to Commencement of Development.** Prior to Commencing Construction of a Project, Vertical Developer shall satisfy the following conditions precedent, to the extent not expressly waived by the Agency:

(a) Vertical Developer shall have submitted Construction Documents for a Project to the Agency or its staff for review and shall have obtained Agency approval of same pursuant to the Vertical Design Review and Document Approval Procedure;

(b) Agency staff shall have issued an Engineer's/Architects Certificate Re. Compliance of Design with Laws Re. Access;

(c) A Building Permit (or if the site permit process is utilized, the first addendum to the site permit) for the Project proposed to be commenced shall have been issued;

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

(e) There shall be no Vertical Developer event of default under this Agreement, nor any event, act or omission that with notice and the expiration of any cure period without cure would become a Vertical Developer event of default hereunder with respect to the Lot or the Project to be constructed thereon.

6.5 **Issuance of Certificates of Completion.**

(a) From and after the date on which Vertical Developer shall have Completed Construction of a Project, Vertical Developer may request Engineer or Architect to issue recordable "Engineer's/Architect's Certificates" verifying that Vertical Developer has Completed Construction of the specified Project, substantially in the forms of Attachments ___ and ___. Within twenty (20) days after Vertical Developer's written request, Engineer or Architect will issue the appropriate Engineer's/Architect's Certificates to Vertical Developer and the Agency in duplicate originals. Within twenty (20) days after its receipt of the Engineer's/Architect's Certificates, if the Agency agrees that Vertical Developer has completed Construction of the specified Project, the Agency will issue to Vertical Developer, in recordable form, a Certificate of Completion for the specified Project (or portion thereof, if so agreed by the Agency pursuant to the terms of this Section 6.5) substantially in the form of Attachment ___ (the "Certificate of Completion"), which Vertical Developer shall promptly record in the Official Records. The Certificate of Completion shall be a determination that Vertical Developer has Completed Construction of the specified Project in accordance with this Agreement and the approved Construction Documents, except for latent defects, but such determination does not impair the Agency's right to indemnity under Section 15.1.

(b) The Agency's issuance of any Certificate of Completion does not relieve Vertical Developer or any other Person from any building, fire or other construction code requirements or conditions to occupancy of any Improvement, which requirements or conditions must be complied with separately but not pursuant to this Agreement.

(c) Following recordation of the Certificate of Completion, any Person then owning or thereafter purchasing, leasing or otherwise acquiring any interest in the applicable Project (or portion thereof) shall not, by virtue of such ownership, purchase, lease, or acquisition,

or by virtue of such Person's actual or constructive knowledge of the contents of this Agreement, incur any obligation or liability under this Agreement with respect to the construction, operation (specifically excluding compliance with the covenant against discrimination set forth in Section 8.2 hereof), restoration or rehabilitation of the Improvements.

(d) Subject to the Agency's prior approval, Vertical Developer may elect to subdivide various components within a Project, and shall be entitled to obtain a Certificate of Completion with respect to each such subdivided component, prior to Completion of the Improvements for the entire Project. Acceptable subdivided components include, but shall not be limited to: (i) each component containing a retail or other commercial use; (ii) each component containing a residential development (and for each Residential Unit itself, provided that with respect to individual Residential Units, Vertical Developer shall request no less than three (3) Certificates of Occupancy at any one time); and (iii) each component containing parking facilities.

Prior to Vertical Developer's initial request for a Certificate of Completion for a subdivided component, Vertical Developer shall provide to the Agency for review, a schedule which sets forth in adequate detail the composition of all proposed subdivided components and stating the anticipated timeframe for completion of the remaining components within the Project. The Agency shall review the schedule and either approve or disapprove the proposal set forth therein within twenty (20) days of receipt from Vertical Developer. Provided that the Agency approves the schedule submitted by Vertical Developer and provided further that the conditions to approval of each such subdivided component are met, upon formal request, the Agency agrees to issue separate Certificates of Completion, prior to Completion of the Improvements for the entire Project, for each of the subdivided components when and if they are completed.

Each component shall be considered complete when (A) the following elements of the component are completed: (1) the core and shell; (2) the exterior building surfaces and finishes; (3) the utility surfaces in the core and shell; (4) the core and shell of the component's lobby; (5) any elevators serving the component; (6) all life safety systems serving the component, which must be fully operational; (7) the parking facilities serving the component; and (8) any other elements of the Project reasonably determined by the Agency to be necessary; and (B) the City and County of San Francisco has issued a temporary Certificate of Occupancy (except that for a Residential Unit a final Certificate of Occupancy is required) with respect to the component.

6.6 **Failure to Issue a Certificate of Completion.** If the Engineer or Architect refuses or fails to issue an Engineer's/Architect's Certificate, or the Agency refuses or fails to issue a Certificate of Completion within the time provided in Section 6.5(a) hereof, then, within such time periods the Engineer, Architect or the Agency, as the case may be, will deliver to Vertical Developer (and in the Engineer's or Architect's case, to the Agency as well) a written statement setting forth in adequate detail the basis for such refusal or failure and the measures or acts which Vertical Developer must undertake or perform in order to obtain the requested Engineer's/Architect's Certificate or Certificate of Completion. Notwithstanding any other provision of this Agreement, disputes regarding the refusal or failure to issue an Engineer's/Architect's Certificate are Construction Disputes subject to the provisions of Article

11, but disputes regarding the Agency's refusal or failure to issue a Certificate of Completion are not Construction Disputes and are not subject to the provisions of Article 11.

6.7 **Non-Merger in Certificate of Completion.** None of the provisions of this Agreement relating to non-construction obligations are intended to, or shall be, merged by reason of the issuance of a Certificate of Completion verifying Completion of Construction of a particular Project. Any such Certificate of Completion shall not be deemed to affect or impair the non-construction related provisions and covenants of this Agreement, which shall survive the issuance of a Certificate of Completion.

7. **COOPERATION AND ASSISTANCE; AGENCY ADMINISTRATION**

7.1 **Interagency Cooperation Agreement.** The Agency and the City have previously entered into the Interagency Cooperation Agreement, pursuant to the terms of which, the Agency shall use its best efforts to cause the timely performance of the necessary City agencies to issue such approvals, permits, entitlements, agreements, permits to enter, and subdivision maps, and perform such other acts as may be required by the Agency and Vertical Developer to permit the development and timely performance contemplated by this Agreement.

Costs incurred by the Agency and by City departments pursuant to the Interagency Cooperation Agreement, in connection with the Agency's or any City department's review, approval and oversight in connection with development of the Vertical Improvements contemplated under this Agreement (which excludes costs associated with development of Vertical Improvements on the Agency Parcels), shall be handled according to the terms set forth in Section 10 of the Horizontal DDA. All City departments and any third-party professionals necessary for the Agency and Vertical Developer to perform their respective duties hereunder, shall be paid in a timely manner, but in no event to exceed _____.

7.2 **Issuance of Building Permits/Coordination.**

(a) Vertical Developer shall obtain all necessary Building Permits and subdivision maps and shall make application for such permits directly to the Central Permit Bureau of the City or other applicable City agency.

(b) Vertical Developer is advised that the Central Permit Bureau will forward all building permits for the Project to the Agency and the Department of Streets and Mapping will forward all maps for the Project for the Agency's approval of compliance with Redevelopment Requirements and this Agreement. The Agency's review of such permits and maps is limited to compliance with the requirements and standards in the Vertical Design Review and Document Approval Procedure and other Redevelopment Requirements, and the Agency shall have no obligations or responsibilities for such compliance. Absent manifest error, a signature by an authorized representative of the Agency on the permit, map or other applicable document shall be conclusive evidence that there is no conflict with the Redevelopment Requirements and this Agreement arising out of such permit, map or other applicable document.

7.3 **Authorization of Permits.**

(a) Except for Construction Documents obtained by the Agency or its Transferee in connection with development of the Agency Affordable Housing Units, and, except as provided under the Interagency Cooperation Agreement, Vertical Developer is responsible for obtaining any permit, approval, entitlement, agreement, permit to enter, subdivision map or other authorization ("Authorization") as may be necessary or desirable to effectuate and implement the development contemplated under this Agreement from any City agency or other governmental agency having or claiming jurisdiction over all or portion of the Lot. Upon request, the Agency shall reasonably cooperate with Vertical Developer in its efforts to obtain any authorization including, without limitation, executing any such permits, applications or maps to the extent the Agency is required to execute the same as co-applicant or co-permittee, so long as such permits, applications and maps are consistent with this Agreement. Vertical Developer shall not agree to the imposition of any conditions or restrictions in connection with obtaining any such authorization if the same would create any obligations on the part of the Agency not otherwise contemplated under this Agreement, without the Agency's prior written approval, which may be given or withheld in its sole discretion. In any event, the Agency shall not bear any cost or expense in connection with such permits, applications or maps.

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

8. RESTRICTIONS ON THE SITE AND DEVELOPMENT

8.1 General Restrictions. The Project Area, the Horizontal Improvements, the Vertical Improvements and the Agency Parcels and the improvements thereon shall be devoted only to the uses permitted by (a) the Redevelopment Plan, (b) the Declaration of Restrictions, (c) the Design for Development, (d) the Horizontal DDA, (e) the Open Space Master Plan, (f) the Community Benefits Agreement, (g) those uses consistent with the environmental restrictions, covenants and notices set forth in the Quitclaim Deed, and (h) this Agreement. As of the Effective Date, and except as may be required by a Conflicting Law, the Agency shall not amend the Redevelopment Plan or the Design for Development, in a manner which would directly, adversely and materially affect Vertical Developer's rights and obligations under this Agreement unless consistent with the following provisions:

(a) Prior to the issuance of a Certificate of Completion for the last Project to be developed by Vertical Developer under this Agreement, the Agency may not amend the Redevelopment Plan or the Design for Development without Vertical Developer's consent, which consent shall not be unreasonably withheld, if such amendment would (i) alter the permitted uses of the land, (ii) decrease the maximum height of any buildings, (iii) reduce the density or intensity of development permitted, (iv) other than negligibly increase the cost of developing a Project on the Lot(s), (v) other than negligibly delay development, (vi) limit or restrict the availability of infrastructure to the Project or Lot(s), (vii) impose limits or controls on the timing, phasing or sequencing of development that materially adversely affect development of the Project, or (viii) modify the provisions regarding fees or exactions in such a manner that Vertical Developer is adversely impacted.

(b) Following the issuance of a Certificate of Completion for the last Project to be developed by Vertical Developer under this Agreement, the Agency may amend the Redevelopment Plan or the Design for Development without Vertical Developer's consent, if such amendment will not (i) alter the permitted use, (ii) decrease the maximum height of any buildings, (iii) reduce the density or intensity of development permitted, (iv) modify the provisions regarding fees or exactions in such a manner that Vertical Developer is adversely impacted, or (v) have the effect of materially increasing the or adversely affecting and vertical Developer obligations under the Agreement remaining after the issuance of a Certificate of Completion.

In the event the Lot or any portion thereof is Transferred pursuant to the terms set forth in Article 14, a Transferee shall only include the owner of the Transferred Property and, in the case of a condominium or similar Project, the owner of the Transferred Property shall be deemed to be the homeowner's association, but in no event shall the consent of the owner of any publicly owned property or any Agency Housing Parcel or any owner of an individual Residential Unit be required.

In addition, as of the Effective Date, the Agency will not enact any new exaction applicable to the Improvements in addition to those in existence as of the Effective Date, excluding new exactions to operate and maintain the Open Space. This restriction does not prevent the City from enacting new exactions applicable to the Vertical Improvements.

8.2 **Nondiscrimination.**

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), familial status, religion, national origin or ancestry by Vertical Developer or any occupant or user of the Project Area in the sale, lease, rental, sublease, Transfer, use, occupancy, tenure or enjoyment of the Project Area, or any part thereof. Neither Vertical Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project Area (or any part thereof) or any Transferee, successor, assign or holder of any interest in the Project Area (or any part thereof) or any person or entity claiming under or through such Transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project Area, including without limitation, with reference to the selection,

location, number, use or occupancy of buyers, tenants, vendees or others. However, Vertical Developer shall not be in default of its obligations under this Section where there is a judicial action or arbitration involving a bona fide dispute over whether Vertical Developer is engaged in discriminatory practices and Vertical Developer promptly acts to satisfy any judgment or award against Vertical Developer.

(b) Any Transferee, successor, assign, or holder of any interest in the Project Area, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above.

8.3 Effect, Duration and Enforcement of Covenants.

(a) The covenants provided in this Article 8 shall be covenants running with the land (as long as the land in the Project Area remains subject to the land use requirements and restrictions of the Redevelopment Plan and the Declaration of Restrictions) and they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement (i) binding for the benefit and in favor of the Agency, as beneficiary, as to all covenants set forth in this Article 8; and the City and the owner of any other land or of any interest in any land in the Project Area, as beneficiary, as to the covenants provided in Sections 8.1, 8.3 and 8.4, and their respective successors and assigns; and (ii) binding against Vertical Developer, its successors and assigns to or of Phase 1 of the Project Area and any improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of any portion of the Project Area, including, but not limited to Phase I, or the improvements thereon. The covenants provided in Section 8.2 shall remain in effect without limitation as to time, and the covenants in Sections 8.1(a) through (d), with respect to the terms of such documents as of the Effective Date, shall remain in effect for the duration of the periods provided for in such documents; provided, however, that such agreements and covenants shall be binding on Vertical Developer itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to, or an interest in, or possession or occupancy of any portion of the Project Area including, but not limited to Phase I. In addition, if the Agency becomes the fee owner of the Project Area or any portion thereof, whether voluntarily or involuntarily, then the covenants contained in this Article 8 (except those contained in Section 8.2, the Redevelopment Plan, the Declaration of Restrictions and the Design for Development, if still in effect) shall terminate and be of no further force or effect as to the Project Area or the portion thereof which the Agency owns.

(b) In amplification, and not in restriction, of the provisions of the preceding Sections, the Agency, the City and their respective successors and assigns, as to the covenants provided in this Article 8 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of the BVHP Area and other parties, public or private, and without regard to whether the Agency or the City has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. The Agency, the City and their respective successors and assigns

shall have the right, as to any and all of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce such covenants to which it or any other beneficiaries of such covenants may be entitled including without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative. Any owner of land or of any interest in land in the Project Area shall also have such rights as to the covenants contained in Sections 8.1(a) and (b) as shall be permitted by law.

(c) The conveyance of any Lot(s) in the Phase 1 Project Area by Developer to Vertical Developer shall be made and accepted upon and subject to the express covenants contained in this Article 8.

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

(e) The provisions of this Article 8 shall not be affected by the Agency's issuance of a Certificate of Completion; provided, however, that notwithstanding any other provision hereof, upon the Agency's issuance of a final Certificate of Completion for an entire Project, the Agency shall not be entitled to enforce any condition subsequent in the Quitclaim Deed conveying the Lot(s) to Vertical Developer or exercise its rights under the Agency Reversionary Grant Deed with respect to that Project.

8.4 **Environmental Restrictions, Covenants and Notices.** As set forth in Section 4.1, the Lot(s) are subject to certain environmental restrictions, covenants and notices that run with the land and are set forth in the quitclaim deeds from the Navy to the Agency (which quitclaim deeds are recorded in the Official Records) and which are likewise set forth in the Quitclaim Deed.

9. **LICENSE TO ENTER FOR OPEN SPACE**

When and as required, the Agency shall, upon Vertical Developer's reasonable prior request, execute a Short Term License Agreement substantially in the form of Attachment ____ hereto to permit Vertical Developer or its agents or designees to enter and access any Agency-owned portion of the Project Area or any property subject to an Agency lease, and, where applicable, assist in obtaining same as to real property in the Project Area leased, owned or controlled by the City or any of its agencies for any purpose associated with Vertical Developer's build-out and/or maintenance of the Open Space. The Agency, may from time to time amend the attached form of a Short Term License Agreement and impose such insurance, bond, guaranty and indemnification requirements as the Agency determines are necessary or appropriate to protect its interests, consistent with the Agency's custom and practice and in a manner that will not unnecessarily interfere with or materially increase the cost or risk of Vertical Developer's ability to perform under this Agreement or if it would unnecessarily interfere with or materially increase the cost or risk, such amendment must be consistent with commercial industry practice; provided, further, in no event shall any such modification conflict with Environmental Laws or expand the scope of the basic indemnities or principle provisions or rights or obligations of Vertical Developer with respect to Hazardous Substances.

10. **VERTICAL IMPROVEMENTS NET PROFITS**

In the event that Developer has previously elected to exercise its option to purchase the Agency's interests in Phase 1 of the Project Area, as set forth in Attachment 26 to the Horizontal DDA (the "Vertical Profit Sharing Agreement"), then, pursuant to the provisions of such Attachment, the Agency shall have the right to participate in the Vertical Improvements Net Profit from the Lot(s) in accordance with the terms thereof. For purposes hereof, the applicable provisions of the Vertical Profit Sharing Agreement are incorporated herein by this reference as if fully set forth herein.

11. **DISPUTE RESOLUTION**

11.1 **Arbitration/Mediation of Certain Disputes.** Notwithstanding the provisions of Article 12, disputes arising under Sections 6.1, 6.3, 6.4, 6.5 and 6.6 of this Agreement (excluding, however, disputes in any way relating to the Agency's failure or refusal to issue a Certificate of Completion) shall be subject to mediation and then to arbitration under Section 11.2 (collectively, "Construction Disputes"). All disputes that are not Construction Disputes will be subject to litigation, except to the extent another form of dispute resolution is specifically provided for in a particular provision of the Agreement or in an Attachment hereto.

11.2 **Construction Disputes.**

(a) ***Good Faith Negotiation by Parties.*** Vertical Developer and the Agency shall attempt to resolve, through good faith negotiation between themselves, any Construction Dispute subject to this Article 11 for a period of ten (10) days after the Construction Dispute is raised by either Vertical Developer or the Agency in a written notice to the other Party. Vertical developer and the Agency shall each be represented in such negotiations by one or more representatives with decision making and settlement authority sufficient to resolve the Construction Dispute, subject to approval of the party's governing body, where required.

(b) ***Mediation and Arbitration.*** Any Construction Dispute that cannot be resolved by Vertical Developer and the Agency during such ten (10) day good faith negotiation period may be submitted by either Party first to mediation within five (5) days after conclusion of the good faith negotiation period described in this Section 11.2(b).

(1) The mediator ("Mediator") will be the first available Mediator from the list of at least three (3) pre-approved Mediators previously established pursuant to the terms of the Horizontal DDA and subsequently approved by Vertical Developer, starting with the first named Mediator and continuing to cycle through the list as Mediators are required, provided that no Mediator will mediate consecutive disputes. If none of the Mediators listed is able or willing to serve, a single neutral Mediator shall be appointed by JAMS/Endispute in San Francisco, California. The Mediator appointed must have at least ten (10) years of experience in resolving disputes similar to the dispute at issue.

(2) The mediation shall be conducted according to the rules established by JAMS/Endispute; provided that, the mediation must be completed within thirty (30) days after the Mediator is appointed.

(3) If a dispute has not been resolved through an agreement in principle between the parties within the period specified in Section 11.2(b)(2) above, the matter may at the request of either party be submitted to arbitration.

(4) The arbitrator ("Arbiter") will be the first available arbitrator from the list of at least three (3) pre-approved Arbiters previously established pursuant to the terms of the Horizontal DDA and subsequently approved by Vertical Developer, starting with the first named Arbiter and continuing to cycle through the list as Arbiters are required, provided that no Arbiter will arbitrate consecutive disputes. If none of the Arbiters listed is able or willing to serve, a single neutral Arbiter shall be appointed by JAMS/Endispute in San Francisco, California. The Arbiter appointed must have at least ten (10) years of experience in resolving disputes similar to the dispute at issue.

(5) The arbitration shall be conducted according to the rules established by JAMS/Endispute. Judgment upon the Arbiter's decision may be entered in any court of competent jurisdiction.

(6) Initially, each Party to the mediation or arbitration will advance its proportionate share of the fees and costs of the Mediator and the Arbiter, if any. The non-prevailing Party in the arbitration shall pay the Mediator's and Arbiter's fees and costs.

(7) The provisions of this Article 11 shall constitute the sole and exclusive provisions for the resolution of any and all Construction Disputes subject to this Article 11, whether arising before or after the Effective Date.

11.3 Acknowledgment

NOTICE: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN SECTION 11.2 DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN A COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL UNLESS THOSE RIGHTS ARE SPECIFICALLY INCLUDED IN SECTION 11.2. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS PROVISION IS VOLUNTARY. WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT THE MATTERS INCLUDED IN SECTION 11.2 TO NEUTRAL ARBITRATION IN ACCORDANCE WITH THOSE SECTIONS.

Agreed to and accepted by:

(Vertical Developer)

(Developer)

(Agency)

11.4 **Proceeding Pending Resolution of a Dispute.** Pending agreement or other resolution of any Construction Dispute, or other dispute hereunder, Vertical Developer will proceed in accordance with (i) elements of this Agreement that are not subject to dispute and (ii) all elements of this Agreement that are subject to dispute in accordance with Vertical Developer's positions, pending resolution of the dispute, unless the Agency in its sole and absolute discretion directs otherwise; provided, however, that if proceeding with Vertical Developer's position in any Construction Dispute is infeasible because the Construction Dispute involves the Agency's disapproval or conditional approval of Construction Documents, or an alleged design defect or code violation that could result in the Vertical Improvements having to be demolished and replaced, then Vertical Developer may elect not to proceed until such Construction Dispute is resolved. If Vertical Developer proceeds pending resolution of a dispute, then as part of the ultimate agreement or resolution between Vertical Developer and the Agency, they shall agree upon an appropriate adjustment to the Performance Schedule and, if such dispute involves a monetary or payment issue, prepare a written reconciliation of the amounts paid by Vertical Developer and the amounts that should have been paid in accordance with the final agreement or resolution, and Vertical Developer and the Agency shall then make any necessary adjustments between them based on the reconciliation.

12. **DEFAULTS AND REMEDIES**

12.1 **General; Notice of Default.**

(a) Except as otherwise expressly provided in this Agreement, in the event of a determination by the Agency acting through its Executive Director that there exists any default under or breach of this Agreement by Vertical Developer, the Agency shall deliver a notice of default to Vertical Developer (with a copy to Developer) regarding such default or breach. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Upon receipt of such notice of default, unless a shorter time is provided for in this Agreement, Vertical Developer shall commence within a reasonable time not to exceed sixty (60) days to cure or remedy such default or breach, and shall thereafter pursue such cure or remedy diligently to completion within one hundred and twenty (120) days thereafter.

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

(c) Upon delivery of a notice of default, the Agency and Vertical Developer shall promptly meet to discuss the alleged default or breach and the manner in which the defaulting Party can cure or remedy the same so as to satisfy the aggrieved Party's concerns. The

Agency and Vertical Developer shall continue meeting regularly, discussing, investigating and considering alternatives during the cure period permitted under this Agreement for the particular default. If, at any time, the aggrieved Party no longer holds the view that the defaulting Party is in default, the aggrieved Party shall issue to the defaulting Party (with a copy Developer) a written acknowledgement of the defaulting Party's cure or remedy of the matter that was the subject of the notice of default.

(d) If, in the event of any default in or breach of this Agreement by Vertical Developer (i) remedial action is not diligently taken or pursued, or the default or breach shall not be cured or remedied within the cure period permitted under this Agreement or (ii) Vertical Developer shall refuse to meet and discuss as described above, then the Agency may institute such proceedings (except as otherwise provided in this Agreement) as may be necessary or desirable in its opinion to cure such default or breach, including without limitation, proceedings to compel specific performance by Vertical Developer.

(e) If, in the event of any default in or breach of this Agreement by the Agency (i) remedial action is not diligently taken or pursued, or the default or breach shall not be cured or remedied within the cure period permitted under this Agreement or (ii) the Agency shall refuse to meet and discuss as described above, then Vertical Developer may institute such proceedings (except as otherwise provided in this Agreement) as may be necessary or desirable in its opinion to cure such default or breach, including without limitation, proceedings to compel specific performance by the Agency.

(f) Nothing in Sections 12.1(c), 12.1(d) and 12.1(e) above, shall require the Agency or Vertical Developer to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

(g) Notwithstanding any other provision herein to the contrary, neither Vertical Developer nor any Transferee shall be deemed in default with respect to the portion of the Project Area owned by Vertical Developer or Transferee so long as Vertical Developer or Transferee performs all of its obligations under this Agreement in accordance with the provisions of this Agreement; provided, however, that nothing in this Article 12 shall be deemed to supersede or preclude the Agency's, City's or any City agencies' rights and remedies under any permit, approval, subdivision map, or other entitlement granted for the development and use of the Project Area, or with respect to any other project, which rights and remedies shall be in addition to the rights and remedies under this Article 12.

12.2 **Default by Vertical Developer.** The occurrence of any one of the following events or circumstances shall constitute an event of default by Vertical Developer under this Agreement:

(a) Vertical Developer causes or permits a Transfer not permitted under this Agreement, or a Significant Change, to occur;

(b) Vertical Developer allows any other person or entity (except Vertical Developer's authorized representatives) to occupy or use all or any part of the Project Area in

violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following Vertical Developer's receipt of written notice thereof from the Agency;

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

(d) Vertical Developer, for reasons other than Unavoidable Delay, fails to Commence Construction or to Complete Construction of the Vertical Improvements within the times set forth in the Schedule of Performance, or the Agency's Executive Director determines that the Vertical Developer has substantially suspended construction of the Vertical Improvements for more than _____ () consecutive days, or a total of _____ () days, or Abandons construction and such failure, Abandonment or suspension continues for a period of thirty (30) days following Vertical Developer's receipt of written notice thereof from the Agency as to an Abandonment, suspension or failure to Commence Construction or to Complete Construction;

(e) Vertical Developer causes or permits, within its reasonable control, a default as defined in and occurring under any agreement attached hereto or referenced herein, and fails to cure the same in accordance with such other agreement; provided, however, that the Agency's remedies for a default under such other agreement shall be limited to the remedies set forth therein, but such restriction shall not impair the Agency's remedies under this Agreement;

(f) Vertical Developer fails to pay when due any amount required to be paid hereunder, and such failure continues for a period of ten (10) Business Days following Vertical Developer's receipt of written notice thereof from the Agency;

(g) Vertical Developer is in default under the Prevailing Wage Requirements, the Card Check Agreement, the Minimum Compensation Policy, the Healthcare Accountability Policy, the Equal Benefits Policy, the Equal Opportunity Program (each as attached hereto as Attachments __, __, __, __, __ and __ respectively), or the Community Benefits Agreement as applicable, and fails to cure the same in accordance with such other agreements, subject, however, to any rights to cure and the Agency's remedies for any default under the Equal Opportunity Program and the Community Benefits Agreement;

(h) Vertical Developer fails to obtain appropriate authorizations for the Vertical Improvements to be constructed on the Lot(s) within the periods of time specified in this Agreement and the Schedule of Performance, and such failure continues for a period of thirty (30) days following Vertical Developer's receipt of written notice thereof from the Agency;

(i) Vertical Developer does not submit to the Agency all Construction Documents as required by this Agreement and the Vertical Design Review and Document Approval Procedure within the periods of time specified in this Agreement (which includes the Schedule of Performance), the Vertical Design Review and Document Approval Procedure, and such failure continues for a period of thirty (30) days following Vertical Developer's receipt of written notice thereof from the Agency;

(j) Vertical Developer shall not have certified in writing to Developer and the Agency that Vertical Developer is ready, willing and able in accordance with this Agreement to Commence Construction of the Vertical Improvements by the time set forth in the Schedule of Performance, and such failure shall continue for a period of ten (10) Business Days following receipt of written notice thereof from the Agency;

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

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

12.3 **Agency Remedies.** With respect to any event of default by Vertical Developer under this Agreement, the Agency shall have the right to cure the event of default and exercise any remedies available to it pursuant to the terms of this Article 12 and subject to the terms and provisions of Article 13 hereof. The remedies available to the Agency in the instance of an event of default by Vertical Developer are as follows:

(a) **Termination.** In the event Vertical Developer is in default under this Agreement, the Agency, at its option, subject to the terms of Section ____ hereof regarding Unavoidable Delay, and for the cause stated below, may terminate this Agreement by notice thereof to the Vertical Developer, which notice shall state the cause therefor, the Lot(s) within the Project Area to which it pertains, and the effective date of termination, which date shall be no less than thirty (30) days following the date of the notice. Upon termination, no Party shall have any further rights against, or liability to, any other Party under this Agreement as to the subject Lot(s), except to the extent of any obligation or right which has arisen prior to the date of the termination which is not affected by a Conflicting Law.

(i) Vertical Developer shall have failed to Commence Construction and Complete Construction within the time periods set forth in the Schedule of Performance; provided, however, that the Schedule of Performance will be extended by the period of any delay

by the Agency or any City department in issuing any permits, approvals, entitlements or authorizations predicate to Vertical Developer Commencing Construction and any other extensions permitted under this Agreement.

(ii) Having Commenced Construction, Vertical Developer Abandons same for a period of ____ () consecutive months. The ____ (----) month period shall be extended for a period equal to the period of any default by the Agency hereunder and any other extensions permitted under this Agreement.

(iii) No default giving the Agency the right to terminate this Agreement shall be deemed to have occurred if Vertical Developer is a joint venture that includes a Joint Venture Community Builder (as defined in the Community Benefits Agreement), and Vertical Developer Abandons construction of the Vertical Improvements for a period ending ninety (90) days after the closing of the purchase of the Joint Venture Community Builder's ownership interest in Vertical Developer, or such longer period as permitted by the Executive Director of the Agency in the Executive Director's reasonable discretion (the "Replacement Period"), due to the default by the Joint Venture Community Builder under the Vertical Developer's joint venture agreement; provided, however, that Vertical Developer diligently and continuously attempts to replace its joint venture partner with another Joint Venture Community Builder during the Replacement Period.

The Agency shall have the right to terminate this Agreement upon no less than fifteen (15) days prior written notice executed by the Agency, which notice shall describe the Lot(s) in the Project Area to which the termination pertains. The Agency shall cause the notice of termination to be recorded in the Official Records.

(b) **Reversionary Grant Deed.** As additional security and to facilitate and implement the Agency's rights under this Agreement in the event of an uncured default by Vertical Developer under Section 6.2(a) of this Agreement (a "Reversionary Default") after conveyance of the Lot(s), and as a condition precedent to Developer's obligation to convey the Lot(s) to Vertical Developer, Vertical Developer shall have executed and delivered to the Escrow Holder a Reversionary Grant Deed substantially in the form of Attachment __ (the "Agency Reversionary Grant Deed") conveying title to the subject Lot(s) from Vertical Developer to the Agency. The Agency Reversionary Grant Deed will be delivered with irrevocable instructions from Vertical Developer to the Escrow Holder, reasonably acceptable to the Agency, directing the Escrow Holder to comply with the Agency's direction to record the Agency Reversionary Grant Deed upon the Agency's written notice that Vertical Developer has committed a Reversionary Default. In the event the Agency believes that the Agency is entitled to exercise its option to cause title to the subject Lot(s) to vest in the Agency, then the Agency, without limiting its remedies under this Agreement, shall proceed as follows:

(i) **Reversionary Default by an Affiliate Vertical Developer.** In the event of a Reversionary Default by an Affiliate Vertical Developer, the Agency shall, within _____ days () days direct the Escrow Holder to record the Agency Reversionary Grant Deed and to notify Vertical Developer and Developer of such recordation. The Escrow Holder's recordation of the Agency Reversionary Grant Deed shall not affect in any manner Vertical Developer's rights (whether before or after such recordation) to exercise any and

all remedies available to Vertical Developer to contest the Agency's rights to cause the recordation of the Agency Reversionary Grant Deed or from otherwise asserting some right, title or interest in or to the Lot(s). Provided that Vertical Developer has received notice as provided herein, Vertical Developer must bring any action contesting the Agency's right to record the Agency Reversionary Grant Deed within sixty (60) days following recordation of the Agency Reversionary Grant Deed, or Vertical Developer shall be precluded from challenging the Agency's action.

During the period following recordation of the Agency Reversionary Grant Deed and either (A) the completion of any proceedings initiated by Vertical Developer relating to the Agency's exercise of its right of reversion (not to exceed _____ months) resulting in the Agency's right of reversion being denied, after which Vertical Developer shall continue development of the Lot(s) pursuant to the terms of this Agreement under a revised Schedule of Performance, mutually agreed to by Vertical Developer and the Agency or upon Vertical Developer's failure to commence or resume substantial physical construction as required hereunder, Developer may then exercise its rights under Section 12.4 below; or (B) the resale of the Lot(s) to a new developer (in the event the Agency's exercise of its right of reversion is upheld) pursuant to the terms set forth below in this Section, Developer shall have the right to propose in writing to the Agency expenditures that Developer will incur to protect and maintain the Lot(s) during such time period, which proposal shall include a specific plan of action and specified cost categories and shall be subject to the Agency written approval. The Agency agrees not to unreasonably withhold or delay a decision on Developer's proposal, but reserves the right to request additional information before making its decision to approve portions of the proposal on a temporal (i.e., monthly), line item or any other reasonable basis. If upon approval thereof by the Agency, Developer, at its option, undertakes to make such approved expenditures ("Developer's Remedial Costs"), then in the event the Agency's exercise of its right of reversion is upheld and the Lot's are re-sold to a new developer pursuant to the terms set forth below in this Section, proceeds from the sale of the Lot(s) shall first go to reimbursement of Developer's Remedial Costs, with the balance being treated as Gross Revenues. In the event the Agency's exercise of its right of reversion is not upheld, Developer shall look to Vertical Developer for reimbursement pursuant to the terms of the Purchase and Sale Agreement and Joint Escrow Instructions.

Upon exercising its option to record the Agency Reversionary Grant Deed and provided the Agency's exercise of its right of reversion is upheld, the Agency shall diligently work to secure a new developer to develop the Lot(s). After the reversion of the Lot(s) to the Agency, the Lot(s) shall be sold pursuant to the terms of Section 15.3(c) of the Horizontal DDA. All proceeds from the resale of the Lot(s) shall be treated as Gross Revenues.

(ii) ***Reversionary Default by a Non-Affiliate Vertical Developer.*** In the event of an uncured Reversionary Default by a Non-Affiliate Vertical Developer, the Agency may, in its sole and absolute discretion choose to either (A) exercise its right of reversion by directing the Escrow Holder within _____ () days, to record the Agency Reversionary Grant Deed and to notify Vertical Developer and Developer of such recordation or (B) exercise any and all other remedies available to the Agency hereunder, at law, and in equity and forgo exercising the Agency's right of reversion. If the Agency elects to proceed under this Section 12.3(b)(ii)(A), the provisions of Section 12.3(b)(i) shall apply. If the Agency elects to

proceed under this Section 12.3(b)(ii)(B), Developer shall have the right after _____ () days or after notice from the Agency that it elects not to exercise its right of reversion (whichever is earlier) to proceed under the terms set forth in Section 12.4 below. In the event the Agency elects to proceed under section 12.3(b)(ii)(A) and the Agency's right of reversion is denied through legal proceedings initiated by Vertical Developer, then Developer shall have the right to proceed under the terms set forth in Section 12.4 below.

(iii) **Assignment of Warranties and Plans.** In the event the Agency exercises its Agency Reversionary Grant Deed as to the Lot(s), all warranties in which Vertical Developer may then have an interest relating to work, labor, skill or materials furnished in connection with the construction of any improvements on the Lot(s) or any portion thereof shall thereupon be deemed assigned to and the property of the Agency without further act or consideration. Also, in the event of such transfer, all plans and specifications which have been prepared by or for Vertical Developer related to improvements on the Lot(s) or to be constructed on the Lot(s), shall be deemed assigned to the Agency or its nominee without consideration or expense to the Agency. Vertical Developer agrees to execute, within ten (10) days of a request by the Agency, such documents as the Agency reasonably requests to document the foregoing assignments.

(c) **Specific Performance.** Subject to Section 12.9 below, the Agency shall have the right to institute an action for specific performance of this Agreement or of the Quitclaim Deed, including without limitation the right to institute any action for specific performance of Vertical Developer's obligations under this Agreement or the Quitclaim Deed to construct the Vertical Improvements.

(d) **Other Remedies.** The remedies provided for herein are in addition to and not in limitation of other remedies, including without limitation, (i) those provided in the Quitclaim Deed and elsewhere for violation of the covenants set forth in Article 8; (ii) the remedies set forth in the Community Benefits Agreement and (iii) the remedies set forth in the Prevailing Wage Requirements, the Card Check Agreement, the Minimum Compensation Policy, the Healthcare Accountability Policy, the Equal Benefits Policy and the Equal Opportunity Program.

12.4 **Developer Rights Upon Vertical Developer Default.**

In the event of (i) the failure of an Affiliate Vertical Developer to commence or resume substantial physical construction after denial of the Agency's right of reversion, all as set forth more fully in Section 12.3(b)(i)(A) or (ii) an uncured Reversionary Default by a Non-Affiliate Vertical Developer for which the Agency chooses not to exercise its right of reversion, fails to exercise such right of reversion within _____ () days after Vertical Developer's uncured Reversionary Default, or is denied exercise of its right of reversion, Developer shall have the right to exercise its Repurchase Option pursuant to Section ____ of the Purchase and Sale Agreement and Joint Escrow Instructions. To the extent the purchase price under the Repurchase Option is less than the appraised value of the Lot(s) including any improvements thereon, Developer shall, as a condition of closing, pay the difference between the

actual purchase price and such appraised value to Agency and the same shall be treated as Vertical Improvements Net Profit.

12.5 Default by the Agency.

It shall constitute an event of default by the Agency under this Agreement, if the Agency fails to perform any of its agreements or obligations under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within sixty (60) days after the Agency's receipt of written notice thereof from Vertical Developer, or, in the case of a default that is curable but is not susceptible of cure within sixty (60) days, if the Agency fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed one hundred and twenty (120) days.

12.6 Remedies Available in the Event of a Default by Developer or the Agency.

(a) **Limitation on Damages.** The Agency shall not be liable to Developer or Vertical Developer for monetary damages caused by any event of default by the Agency, or required to expend money to cure any event of default by the Agency, except as provided in Section 12.6(d) below, subject to the limitation contained in Section 12.8 below.

(b) **Specific Performance.** Subject to Section 12.8 below, Vertical Developer or the Agency shall have the right to institute an action for specific performance of this Agreement.

(c) **Other Remedies.** Subject to Sections 12.1, ____, 12.6(a) and 12.6(d), Vertical Developer and the Agency shall be entitled to exercise all other remedies permitted by law.

(d) **Agency Liability.** The Agency shall be liable for payments allowed under Section 19.6 incurred by Vertical Developer if Vertical Developer prevails in enforcing its rights hereunder, and is entitled to the same under Section 19.6. Except as expressly set forth in this Section 12.6(d) and in Section 19.6, the Agency shall have no liability whatsoever for monetary damages, and in no event will the Agency be liable for lost opportunities, lost profits or other damages of a consequential nature.

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

12.8 No Implied Waiver. No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of another Party hereto, or of any condition to the waiving Party's own obligations, shall be considered a waiver of the waiving Party's rights with respect to any obligation of

another Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

12.9 **Limitation on Liability.** No commissioners, members, supervisors, officers, shareholders, directors, partners, agents or employees of Vertical Developer, the Agency or the City (or of their partners, constituent entities or successors or assigns) shall be personally liable to another Party hereto in the event of any event of default under this Agreement by the Agency or Vertical Developer hereto or for any amount which may become due to any Party hereto or any obligations under this Agreement.

12.10 **Criteria for Specific Performance.** The Agency and Vertical Developer recognize that the obligations of (i) the Agency to comply with the terms set forth in this Agreement, and (ii) Vertical Developer to comply with the various terms and provisions set forth in this Agreement (including, but not limited to, the Redevelopment Requirements, the covenants of Article 8 hereof, and the Community Benefits Agreement) are special, unique and of extraordinary character, and if either Party fails to perform such obligations, the non-defaulting Party will have no adequate remedy at law. Under such circumstances, the aggrieved Party, in addition to any other rights that it may have, shall be entitled to injunctive relief to enforce any such obligations. In the event proceedings are brought in equity to enforce such obligations, neither Vertical Developer nor the Agency shall raise as a defense that there is an adequate remedy at law as to such obligations.

13. **MORTGAGES AND LIENS**

13.1 **Mortgage Prior to Completion.**

(a) **Limitations on Mortgages.** Except as permitted in this Agreement, Vertical Developer may not:

(i) Engage in any financing or other transaction creating any mortgage or deed of trust or mechanic's lien on the Lot(s) or any portion thereof; or

(ii) Place or suffer to be placed on the Lot(s) or any portion thereof any lien or other encumbrance (other than (A) a lien for taxes levied but not delinquent or payable with penalty or as to which a permitted contest as described below is occurring or (B) for furniture, fixture or equipment financing).

(b) **Unpermitted Mortgage.** Any such mortgage, encumbrance or lien not permitted by this Article 13 is a violation of this covenant on the date of its execution or filing of record regardless of whether or when it is foreclosed or otherwise enforced.

(c) **Contests.** Vertical Developer will be permitted to contest the validity or amount of any tax, assessment, encumbrance or lien and to pursue any remedies associated with such contest; provided, however, that such contest and pursuit of remedies does not subject the Lot(s) or any portion thereof to forfeiture or sale or lien, and such contest shall not impair any of Vertical Developer's obligations hereunder.

(d) **Changes to Agreement.** Developer and the Agency agree to cooperate with Vertical Developer, at no cost to either Developer or the Agency, to assist Vertical Developer in making minor changes requested by a Mortgagee to this Agreement and the other agreements between Vertical Developer and Developer and/or the Agency contemplated hereunder, without the requirement for the payment of consideration to either Developer or the Agency except for the payment of the reasonable fees and costs of Developer or the Agency incurred in connection with such modifications; provided, however, that in the event Developer and/or the Agency (as applicable) determines, in its reasonable discretion, that such changes will adversely affect such party's rights, obligations, or financial expectations or Vertical Developer's obligations under this Agreement, then neither Developer nor the Agency shall have any obligation to make any such changes.

13.2 **Notice of Lien.** Vertical Developer must notify Developer and the Agency promptly of any lien or encumbrance that has been created on or attached to the Lot(s) or any portion thereof whether by act of Vertical Developer or otherwise.

13.3 **Purpose of Mortgage.** Prior to the issuance of a Certificate of Completion for any Lot or Project (or portion thereof) by the Agency, Vertical Developer shall have the right to encumber such Lot or Project (or portion thereof) with any Mortgage only if such Mortgage is made for one or more of the following purposes:

- (a) to finance the costs of Constructing the Improvements;
- (b) to finance the cost of repair, rebuilding or restoration of the Improvements; or
- (c) to refinance or "take-out" the loan or financing referred to in subsections (a) or (b) above.

13.4 **Amount of Mortgage.**

(a) **Maximum Amount of Mortgages.** Notwithstanding anything herein to the contrary, prior to the issuance of a Certificate of Completion for any Lot (or portion thereof), the aggregate principal amount of all loans and financings secured by all Mortgages on any such Lot (or portion thereof), or if any Mortgage encumbers multiple Lots, the aggregate principal amount of all loans and financings secured by all Mortgages on all such Lots, shall not exceed eighty percent (80%) of the projected fair market value of such Lot(s) (or portions thereof) following Completion of the Improvements to be constructed on such Lots, as determined by the Bona Fide Institutional Lender providing such loan (or if there is more than one loan on such Lot(s), the loan secured by the senior Mortgage) at the time any Mortgage securing such loan is recorded against any such Lot(s).

(b) **Right to Advance Funds.** Notwithstanding the foregoing provisions of this Section 13.4, in the event of a default hereunder by Vertical Developer or under any Mortgage permitted under this Agreement, the Mortgagee shall have the right at its option to advance such funds as are necessary in the Mortgagee's judgment to protect its security or to cure or remedy or commence to cure or remedy such default, and any Mortgage authorized by this Agreement may secure such advance.

13.5 **Insurance and Condemnation Proceeds.** Vertical Developer shall use its commercially reasonable efforts to cause each Mortgage to contain provisions permitting the disposition and application of the insurance proceeds and condemnation awards for the repair and restoration of the Improvements, as contemplated hereunder.

13.6 **Institutional Lender; Other Permitted Mortgagees.** Any Mortgagee under a Mortgage permitted under this Article 13 shall be (i) a Bona Fide Institutional Lender, or (ii) any other lender that shall have been approved by the Agency. In the event that the Agency disapproves such other lender, the Agency's notice shall specify with particularity the reasons for such disapproval.

13.7 **Rights Subject to Agreement.** All rights acquired by any Mortgagee under a Mortgage of the Lot(s), or any portion thereof, either before or after foreclosure or transfer in lieu thereof, or by a purchaser of the Lot(s), or any portion thereof, by means of a foreclosure sale of the Lot(s), or any portion thereof, shall be subject to each and all of the terms, covenants, conditions and restrictions set forth in this Agreement to the extent applicable to the portion of the Lot(s) acquired, if less than the entire Lot(s) is acquired, none of which terms, covenants, conditions and restrictions are or shall be waived by the Agency by reason of the permitting of such Mortgage, except as specifically waived by the Agency in writing in its sole and absolute discretion. All of the terms, covenants, conditions and restrictions shall include, without limitation, the obligation (i) to Construct and Complete the Improvements for the portion of the Lot acquired, subject to the provisions of Sections 13.10(b) and (c) below, (ii) to devote the portion of the Lot(s) acquired to those uses provided or authorized in this Agreement, and (iii) to manage and operate the portions of the Lot(s) acquired, in accordance with the provisions of this Agreement, subject to the provisions of Sections 13.10 (b) and (c) below. For purposes of this Article 13, all references to the term "Mortgagee" also shall mean any participant of the mortgagee or beneficiary under a Mortgage, and any purchaser of the Lot(s), or any portion thereof, by means of a foreclosure sale of the Lot(s), or such portion thereof, or transfer in lieu thereof, and any successors and assigns of such parties.

13.8 **Required Provisions of Any Mortgage.** Vertical Developer agrees to have each Mortgage provide that the Mortgagee shall give notice to the Agency in writing by registered or certified mail of the occurrence of any default by Vertical Developer under the Mortgage, and that the Agency shall be given written notice at least ____ days prior to the time any Mortgagee initiates any Mortgage foreclosure action, and shall also include the provisions set forth in this section 13.8.

In the event of any such default on the part of Vertical Developer, the Agency shall have the right to cure such default, provided that Vertical Developer is given ten (10) days' prior notice by the Agency of the Agency's intention to cure such default. If the Agency shall elect to cure such default, then Vertical Developer shall pay the cost thereof to the Agency upon demand, together with the interest thereon at five percentage points (5%) over the Prime Rate published in the Wall Street Journal (but in no event shall interest be charged at a rate greater than the maximum interest rate, if any, permitted by applicable law), unless (i) Vertical Developer cures such default within such ten (10) day period, or (ii) if curing the default requires more than ten (10) days, Vertical Developer shall have commenced to cure such default within ten (10) days after such notice and Vertical Developer shall thereafter diligently prosecute such cure to

completion within thirty (30) days or such greater time period as may be allowed by the Mortgagee. In the event of such uncured default on the part of Vertical Developer under the Mortgage and subject to the foregoing ten (10) day prior notice requirement, Vertical Developer hereby authorizes the Agency in the Agency's name, without any obligation to do so, to perform any act required of Vertical Developer in order to prevent a default or acceleration under any Mortgage, or the taking of any foreclosure or other action to enforce the collection of the indebtedness secured by the Mortgage.

13.9 **Notice of Mortgagee.** No Mortgagee shall be entitled to exercise the rights set forth in this Article 13 unless and until written notice of the name and address of the Mortgagee shall have been given to the Agency by Vertical Developer or Mortgagee, notwithstanding any other form of notice, actual or constructive.

13.10 **Mortgagee's Right to Cure.** If Vertical Developer shall create a Mortgage on the Lot(s), or any portion thereof, in compliance with the provisions of this Article 13 and the Agency shall have been given notice of the name and address of the Mortgagee in accordance with Section 13.9, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) **Copies of Notices.** The Agency, upon serving Vertical Developer any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon each Mortgagee (with a copy to Developer) at the address provided to the Agency pursuant to Section 13.9, and no notice by the Agency to Vertical Developer hereunder shall affect any rights of a Mortgagee of which the Agency has been given notice of its name and address in accordance with Section 13.9, unless and until a copy thereof has been so served on such Mortgagee; provided, however, as between the Agency and Vertical Developer, failure to deliver any such notice shall in no way affect the validity of the notice sent to Vertical Developer, unless cured by the Mortgagee as hereinafter provided.

(b) **Limitation on Obligation to Complete Construction.** Unless the Mortgagee has elected to proceed as set forth in Section 13.10 (c) and has satisfied all the conditions thereunder, nothing contained in any section or provision of this Agreement shall be deemed to obligate such Mortgagee, either before or after foreclosure or transfer in lieu thereof, to undertake or continue the Construction or Completion of the Improvements for any Lot(s).

(c) **Right to Cure.** If Vertical Developer shall be in default hereunder, Mortgagee shall have the right to remedy, or cause to be remedied, such default within the same cure period provided to Vertical Developer for such default, plus an additional period of thirty (30) days with respect to a monetary default and sixty (60) days with respect to a non-monetary default, and subject to the limitation on the Agency's termination rights as provided pursuant to Section 13.10(d) of this Agreement, the Agency shall accept such performance by or at the insistence of the Mortgagee as if the same had been timely made by Vertical Developer.

(i) Notwithstanding the foregoing, if the default occurs prior to Completion of Construction of the Improvements on any Lot(s) encumbered by such Mortgage or if the Mortgagee becomes the owner of such Lot(s) prior to the Completion of the Improvements for such Lot(s), nothing contained in any section or provision of this Agreement

shall be deemed to permit or authorize such Mortgagee, either before or after foreclosure or transfer in lieu thereof, to undertake or continue the Construction or Completion of the Improvements for such Parcel beyond the extent necessary to conserve or protect the Improvements for such Lot(s) or Construction already made on such Lot(s) unless all of the following conditions are satisfied: (A) the express assumption by the Mortgagee (or a third party procured by the Mortgagee and reasonably acceptable to the Agency) by written agreement satisfactory to the Agency of Vertical Developer's obligations to Complete, in the manner provided in this Agreement, the Improvements on such Lot(s) and otherwise to perform all of Vertical Developer's obligations under this Agreement as they relate to such Lot(s); (B) the submittal of evidence satisfactory to the Agency that such Mortgagee (or a third party procured by the Mortgagee and reasonably acceptable to the Agency) has the financial capacity necessary to perform such obligations; and (C) the submittal of evidence satisfactory to the Agency that such Mortgagee (or a third party procured by the Mortgagee and reasonably acceptable to the Agency) has the construction expertise to complete Vertical Developer's Construction obligations as set forth in this Agreement with respect to such Lot(s). If the Mortgagee fails to satisfy all of the requirements in the foregoing clauses (A), (B) and (C) within the Mortgagee's cure period set forth herein, then such failure shall constitute a default under this Agreement giving rise to the Agency's remedies set forth in Article 12.

(ii) Upon assuming Vertical Developer's obligations, the Mortgagee shall be required only to exercise due diligence in Completion of the Construction of the Improvements on any Lot(s) encumbered by the Mortgage and shall not be required to Complete Construction of the Improvements for any such Lot(s) within the dates set forth therefore in the Schedule of Performance. Any such assuming Mortgagee properly Completing such Improvements shall be entitled, upon written request made to the Agency, to a Certificate of Completion for such Lot(s) from the Agency with respect to such Improvements to the same extent and in the same manner as Vertical Developer would have been entitled if Vertical Developer had not defaulted.

(d) **Rights Prior to Termination.** Notwithstanding anything to the contrary contained herein, upon the occurrence of a default by Vertical Developer hereunder, the Agency shall not take any action to effect a termination of this Agreement without first giving to each Mortgagee of which the Agency has been given notice of its name and address in accordance with Section 13.9, written notice thereof and a reasonable time thereafter within which either to (i) obtain possession of the Lot(s), or any portion thereof subject to the Mortgage (including possession by a receiver) or (ii) institute, prosecute and complete foreclosure proceedings with diligence or otherwise acquire the Lot(s), or any portion thereof subject to the Mortgage, with diligence, provided that if such default is reasonably susceptible of being cured at any time, the Mortgagee shall commence and diligently prosecute such cure to completion as a condition to the Agency's taking no action as set forth above. A Mortgagee upon acquiring the Lot(s), or any portion thereof, shall be required promptly to cure all other defaults by Vertical Developer then reasonably susceptible of being cured by such Mortgagee with respect to the portion of the Lot(s) acquired by such Mortgagee, if less than all of the Lot is acquired by such Mortgagee, other than a default by Vertical Developer with respect to Constructing the Improvements for any Lot(s) (unless the Mortgagee has assumed such obligations pursuant to Section 13.10 (c) above); provided, however: (A) such Mortgagee shall not be obligated to continue such foreclosure proceedings after such defaults have been cured; (B) nothing herein contained shall preclude the

Agency, subject to the provisions of this Article, from exercising any rights or remedies under this Agreement with respect to any other default by the Vertical Developer during the pendency of such foreclosure proceedings; and (C) such Mortgagee shall agree with the Agency in writing to comply during the period of such forbearance with such of the terms, conditions and covenants of this Agreement as are reasonably susceptible of being complied with by such Mortgagee.

(e) **Manner of Giving Notice.** Any notice or other communication which the Agency shall desire to give to the Mortgagee or is required to give or serve upon the Mortgagee shall be in writing and shall be served by personal delivery, registered or certified mail, addressed and delivered to the Mortgagee at the address provided for in Section 13.9.

(f) **When Notice is Given.** Any notice or other communication which the Mortgagee shall give to or serve upon the Agency shall be deemed to have been duly given or served if sent by registered or certified mail addressed to the Agency at the address set forth in Section 19.2 or at such other address as shall be designated by the Agency by notice in writing given to the Mortgagee at the address provided for in Section 13.9 by registered or certified mail.

(g) **Benefit of Permitted Mortgagees Only.** Notwithstanding anything to the contrary contained herein, the provisions of this Article 13 shall inure only to the benefit of the Mortgagees under Mortgages that are permitted hereunder.

13.11 **No Impairment of Mortgage.** No default by Vertical Developer under this Agreement shall invalidate or defeat the lien of any Mortgage. Neither a breach of any obligation secured by any Mortgage or other lien against the mortgaged interest nor a foreclosure under any Mortgage or other lien or transfer in lieu thereof, shall, in and of itself, defeat, diminish, render invalid or unenforceable or otherwise impair Vertical Developer's rights or obligations or constitute a default under this Agreement, unless any such breach, foreclosure or transfer in lieu thereof referred to above is itself an event which constitutes an event of default of Vertical Developer under the express terms hereof.

13.12 **Multiple Mortgages.** If at any time there is more than one Mortgage constituting a lien on a single Lot (or portion thereof), the lien of the Mortgagee prior in time to all others on that mortgaged Lot (or portion thereof) shall be vested with the rights under this Article 13 to the exclusion of the holder of any junior mortgage; provided, however, if the holder of the senior Mortgage fails to exercise the rights set forth in this Article 13, each holder of a junior Mortgage shall succeed to the rights set forth in this Article 13 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 13. No failure by the senior Mortgagee to exercise its rights under this Article 13 and no delay in the response of any Mortgagee to any notice by the Agency shall extend any cure period or Vertical Developer's or any Mortgagee's rights under this Article 13. For purposes of this Section 13.12, in the absence of an order of a court of competent jurisdiction that is served on the Agency, a title report prepared by a reputable title company licensed to do business in the State of California and having an office in the City, setting forth the order of priority of lien of the mortgages, may be relied upon by the Agency as conclusive evidence of priority.

14. **TRANSFERS AND ASSIGNMENT**

14.1 **Vertical Developer's Right to Transfer.** Vertical Developer (and any Transferee) shall have the right to Transfer all or any portion of the Lot(s) (the "Transferred Property"), to any Person at any time and from time to time during the Term of this Agreement, subject to the following terms and conditions:

(a) Subject to the provisions of Section 14.1(b), Vertical Developer shall have the right at any time to assign all or a portion of its rights and obligations under this Agreement without the consent of the Agency if:

(1) The Transferee is an Affiliate; or

(2) Either (i) the Transferee has experience developing or operating major commercial or industrial or residential projects reasonably related to those contemplated under this Agreement or, if applicable, to the Project contemplated on the Transferred Property or (ii) Vertical Developer is a general partner in such Transferee; or

(3) The Transfer is effected by the consolidation or merger of Vertical Developer into or with any other business organization whether or not Vertical Developer is the surviving entity pursuant to the General Corporation Law of the jurisdiction of Vertical Developer's incorporation; or

(4) The Transferee is neither an Affiliate nor of the experience as specified in Sections 14.1(a)(1) and 14.1 (a)(2) above so long as Vertical Developer has satisfied or remains obligated to satisfy the following obligations as they may relate to the Project Area or the portion thereof transferred by Vertical Developer: compliance with the requirements of the Prevailing Wage Requirements; the Card Check Agreement; the Minimum Compensation Policy; the Health Care Accountability Policy; the Equal Benefits Policy; the Community Benefits Agreement; the Equal Opportunity Program; the Housing Program; and related requirements; or

(5) A Certificate of Completion has been issued for all of the Project Area or the portion thereof to be Transferred; or

(b) Upon any such Transfer to an Affiliate with a Net Worth equal to at least Twenty-Five Million Dollars (\$25,000,000) or a Transfer as described in Subsection 14.1(a)(2) through Section 14.1(a)(5) and provided the Agency shall have received the Assumption Agreement as provided in Subsection 14.1(e), the Agency shall, within thirty (3) days of such Transfer, provide Vertical Developer with a written release from any obligations under this Agreement applicable to the Transferred Property in a form and substance reasonably satisfactory to Vertical Developer (but excluding from such release (i) any default in an obligation to pay money where such default occurred prior to the date of the Transfer or (ii) if prior to issuance of a Certificate of Completion for the Project Area or the portion thereof to be Transferred, obligations which may remain pursuant to Subsection 14.1 (a)(4).

(c) In addition to the Transfers permitted by Subsection 14.1(a), the Vertical Developer may Transfer all or a portion of its interest in the Project Area or its interest in this Agreement or any of the rights and obligations of Vertical Developer hereunder, if the Agency approves the proposed Transferee, which approval shall not be unreasonably withheld or

delayed, provided Agency may condition such approval in a manner consistent with Section 14.1 (a)(4) as to Transfers arising under that Section. Written notice of the Agency approval shall be delivered to Vertical Developer within thirty (30) days of the Agency's receipt of written notice of such proposed Transfer. If such written notice of the Agency approval is not received within thirty (30) days, the proposed Transferee shall be deemed disapproved. Upon Agency's approval of the Transferee and Transferee's written assumption pursuant to an Assumption Agreement of Vertical Developer's obligations applicable to the Transferred Property hereunder, Vertical Developer shall be released from all obligations under this Agreement (but excluding from such release any default in an obligation to pay money where such default occurred prior to the date of the Transfer), and the Agency shall provide Vertical Developer a written instrument to such effect in a form and substance reasonably satisfactory to Vertical Developer.

(d) The provisions of this Article 14 shall not be deemed to prohibit or otherwise restrict (1) the granting of easements, leases, subleases, licenses or permits to facilitate the development, operation and use of the Project Area, in whole or in part, (2) the grant or creation of a Mortgage, (3) the sale or transfer of the Project Area or a portion thereof or any interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu of foreclosure or exercise of such power of sale, or (4) any Transfer to the Agency, the City, City agencies or any other governmental agency contemplated by this Agreement.

(e) Whether or not any consent of the Agency is required, Vertical Developer shall provide Agency no less than ten (10) days' prior notice of the proposed Transfer, including the identity, address and telephone number of the proposed Transferee, and the Transferee shall deliver to the Agency an Assumption Agreement stating that it has assumed the obligations of the Vertical Developer under this Agreement applicable to the Transferred Property (except as may be excluded pursuant to Subsection 14.1 (a)(4)). This provision shall not create any obligation on or duty of a Mortgagee other than as set forth in Article 14.

(f) Vertical Developer's rights and obligations under this Agreement may be Transferred only in conjunction with the Transfer of the portion of the Transferred Property to which the rights and obligations apply and subject to Section 14.2. The Transferee, upon taking title (or in the case of a ground lease, possession), of the Transferred Property shall succeed to all of Vertical Developer's rights (including without limitation the right to Transfer) and obligations under this Agreement that relate to the Transferred Property.

14.2 **Liability for Default.** Except only where Vertical Developer or a Transferee is not released from such obligations, no Transferee shall be liable for the default by Vertical Developer or another Transferee in the performance of its respective obligations under this Agreement, and Vertical Developer shall not be liable for the default by any Transferee in the performance of its respective obligations. Without limiting the foregoing, a default under this Agreement by Vertical Developer or a Transferee shall not entitle the Agency to modify or terminate this Agreement, or otherwise affect any rights hereunder, with respect to any portion of the Project Area other than that portion that is owned or leased by the party in default.

14.3 **Restrictions on Speculation.** Vertical Developer represents and warrants to Developer and the Agency that it is acquiring the subject Lot(s) and entering into this Agreement

for the purpose of developing and operating the Project in accordance with the terms of this Agreement, and not for speculation or excess profit-taking in land.

14.4 **Restrictions on Agency Transfer.** The Agency shall have the right to transfer all or any portion of the Project Area to which it holds title, or its rights and obligations under this Agreement without Developer's or Vertical Developer's consent. The Agency agrees, however, not to Transfer any portion of the Project Area or any interest therein acquired by it to any Person where such Transfer would preclude the Agency's or Vertical Developer's performance under this Agreement or the uses, densities, rights or intensity of development contemplated under this Agreement or the Redevelopment Plan.

14.5 **Sale of Individual Residential Units.** Notwithstanding any other provision of this Agreement, the provisions relating to Transfers shall not apply to buyers of completed individual Residential Units for which, on or prior to the date of sale, a Certificate of Occupancy has been issued; provided, however, that Vertical Developer, as Transferor, remains fully obligated under this Agreement as to any remaining obligation to complete the Vertical Improvements of which the subject Residential Unit is a part, including without limitation any obligations enumerated in Section 14.1(a)(4), and Vertical Developer retains the exclusive right to request a Certificate of Completion and is not otherwise seeking a release from any obligations under Section 14.1(b).

Except with respect to Inclusionary Units, which shall be handled according to the provisions set forth in the Affordable Housing Program, the Agency will not (i) require notice or assumption of obligations for subsequent resales of any such Residential Units; (ii) require prior written notice under Section 14.1(e) or the assumption of the transferring Vertical Developer's obligations, if any, under Section 14.1(f) for the transfer of Residential Unit project condominium common areas to an owner's association for which a Certificate of Occupancy has been issued and shall not otherwise impose any obligations with respect to completion of Improvements on completed individual Residential Units; nor (iii) otherwise impose any obligations with respect to completion of the Improvements on completed individual Residential Units, so long as the above criteria of this Section 14.5 have been satisfied with respect to remaining Vertical Developer obligations.

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

Vertical Developer must provide a copy of the Article 31 Brochure to any potential Owner or Occupant of an individual Residential Unit no later than the execution of a purchase

and sale agreement (or other agreement for transfer of an individual Residential Unit) and obtain the potential Owner's or Occupant's written acknowledgement of his receipt, review and understanding of the contents of the Article 31 Brochure. In addition, Vertical Developer must incorporate into any purchase and sale agreement (or other agreement for transfer of an individual Residential Unit) a requirement that before the Owner or Occupant of an individual Residential Unit sells, leases or otherwise transfers the unit to a subsequent Owner or Occupant, the prospective Owner or Occupant (as applicable) of the individual Residential Unit must receive a copy of the Article 31 Brochure and acknowledge the receipt in writing.

This Section 14.5 is for the express benefit of Vertical Developer, and nothing herein shall be construed to: (a) confer on an individual Residential Unit purchaser the status of Transferee or Vertical Developer; or (b) provide such purchaser, as opposed to Vertical Developer, with the right to request a Certificate of Completion for an individual Residential Unit.

15. **GENERAL INDEMNITY**

15.1 **General Indemnification By Vertical Developer.** Except as provided in Section 15.4 and subject to Section 14.2, Vertical Developer agrees to and shall indemnify, defend and hold harmless the Indemnified Parties from and against any and all Losses arising out of, in response to, or in any manner relating to (i) the noncompliance of the Vertical Improvements with any federal, state or local laws or regulations (except as to those obligations accepted by Agency under Section 7.3), including those relating to handicap access or any patent or latent defects therein (excluding therefrom any Agency-owned property or portion thereof on which Vertical Developer has not constructed Improvements), or (ii) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur in any portion of the Project Area owned by Vertical Developer, except (as to any particular Indemnified Party) to the extent such Losses are directly or indirectly caused by the willful misconduct or the active negligence of that Indemnified Party .

Vertical Developer agrees to indemnify, defend and hold the Indemnified Parties harmless from and against any and all Losses from or caused by (i) Vertical Developer's ownership and/or operation of the Lot(s); (ii) Vertical Developer's development of the Lot(s); (iii) any acts or omissions of Vertical Developer relating to the Lot(s); (iv) any misrepresentation or breach of representation, warranty or covenant by Vertical Developer in this Agreement or any document delivered to Developer pursuant to this Agreement; (v) any bodily injury, property damage, accident, fire or other casualty to or involving Vertical Developer or any of its representatives or contractors; and (vi) any violation or alleged violation by Vertical Developer, or any representative or contractor of Vertical Developer, of any law, ordinance, or regulation now or hereafter enacted or of any provision of this Agreement

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

15.2 **Common Law Remedies.** The agreement to indemnify, defend and hold harmless set forth in Section 15.1 is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Vertical Developer may have to Developer or the Agency in this Agreement, at common law or otherwise except as same may be limited by the provisions of Article 12 hereof.

15.3 **Defense of Claims.** Both Developer and the Agency agree to give prompt notice to Vertical Developer with respect to any suit or claim initiated or threatened against either Party which it believes is likely to give rise to a claim for indemnity hereunder. In no event will such notice be given later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim. If notice is not given to Vertical Developer within the time periods specified above, then Vertical Developer's liability hereunder shall continue except to the extent Vertical Developer can show that it was prejudiced as a result of such delay. At its option but subject to the reasonable consent and approval of Developer and the Agency, Vertical Developer shall be entitled to control the defense, compromise or settlement of any such matter through counsel of Vertical Developer's own choice; provided, however, that in all cases Developer and/or the Agency shall be entitled to participate in such defense, compromise or settlement at their own expense. If Vertical Developer shall fail, however, in the Agency's reasonable judgment, within a reasonable time following notice from Developer or the Agency alleging such failure (which in no event will exceed thirty (30) days after Vertical Developer's receipt of such notice), to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Developer or the Agency (as appropriate) shall have the right promptly to hire counsel at Vertical Developer's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to either Developer or the Agency (as applicable) upon the appropriate party's delivery to Vertical Developer of a properly detailed invoice therefor.

15.4 **Limitations of Liability.** It is understood and agreed that no Indemnified Parties shall be personally liable to Vertical Developer nor shall any officers, directors, shareholders, agents or employees of Vertical Developer (or of its successors or assigns) be personally liable to Developer or the Agency in the event of any default or breach of this Agreement by Developer, the Agency or Vertical Developer or for any amount which may become due to Vertical Developer, Developer or the Agency or any obligations under the terms of this Agreement. Further, notwithstanding anything to the contrary set forth in this Article 15, the foregoing indemnities of Vertical Developer shall exclude any Losses relating to Hazardous Substances. Vertical Developer's contractual obligations and indemnities regarding Hazardous Substances shall be governed by the terms of Article 5.

16. **ALL-PARTY INDEMNITY**

16.1 **Indemnity.** Each Party agrees to indemnify, defend and hold harmless each other Party from and against any and all claims, demands, liabilities, costs, expenses, obligations, damages, losses, causes of action and suits of any nature whatsoever arising from any breach of express representation, warranty or covenant by made by each Party in Section 19.13 hereof. This indemnity does not apply, however, to any item, matter, occurrence or condition that was

known or reasonably discoverable by any Vertical Developer, Developer or the Agency (as applicable).

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

17. **CEQA MITIGATION MEASURES**

In order to mitigate the significant environmental impacts of the development contemplated hereby, the construction and subsequent operation of all or any part of the Vertical Improvements shall be in accordance with all applicable Environmental Laws and the mitigation measures imposed by the Redevelopment Requirements or otherwise imposed as a condition to any development entitlement (including without limitation those measures relating to archeological investigation, study and removal) and including, without limitation, those set forth in Attachment _____. These mitigation measures shall be incorporated by Vertical Developer into any contract or subcontract for any environmental investigations (both pre- and post-Closing, the construction or operation of the Vertical Improvements.

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

As stated above, Vertical Developer and its contractors and subcontractors for any environmental investigations, construction or operation of the Vertical Improvements, shall comply with all applicable laws and requirements (as set forth in Section 19.17 hereof), including, without limitation all applicable Environmental Laws and the applicable provisions of Article 31, the Article 31 plans or Supplement. In the event the Agency or Vertical Developer (or any of Vertical Developer's contractors or subcontractors) receives a complaint concerning compliance with the Article 31 plans or Supplement during construction of the Vertical Improvements, Vertical Developer, together with the contractor or subcontractor that is the subject of the complaint (if applicable), shall meet and confer with the complainant in the presence of Agency project or contract compliance staff and shall attempt to resolve in good faith, the issues presented in the complaint as expeditiously as possible. The Agency, in its sole

discretion, shall determine whether or not the requirements of the Article 31 plans or Supplement are being satisfied. In the event the Agency determines that the requirements of the Article 31 plans or Supplement are not being satisfied, the Agency may, in its sole discretion, set a cure period within which Vertical Developer together with any applicable contractor or subcontractor shall comply with the requirements of the Article 31 plans or Supplement. If the Agency determines (in its sole judgment) that compliance has not been reached within the cure period, the Agency shall be entitled to suspend all Agency and City approval processes until such time as the Agency determines, in its sole discretion, that appropriate measures have been taken to effect compliance with the requirements of the Article 31 plans or Supplement.

18. **INSURANCE**

Vertical Developer shall provide insurance in the forms and amounts, and subject to the terms and conditions, described in Attachment ____.

19. **MISCELLANEOUS PROVISIONS**

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

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

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

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Telefacsimile: 415/749-2525

with a copy to:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Legal Division
Telefacsimile: 415/749-2575

- (ii) In the case of a notice or communication to Developer:

Lennar/BVHP Partners
c/o Lennar Partners
18401 Von Karman, Suite 540
Irvine, California 92612
Attn: Hunter's Point Asset Manager
Telefacsimile: 949/442-6175

with copies to:

Lennar Partners
18401 Von Karman, Suite 540
Irvine, California 92612
Attn: General Counsel
Telefacsimile: 949/442-6175

and

Sheppard, Mullin, Richter and Hampton, LLP
Four Embarcadero Center, 17th Floor
San Francisco, California 94111-4106
Attn: Robert A. Thompson, Esq.
Telefacsimile: 415/434-3947

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

Attn: _____
Telefacsimile: _____

with copies to:

Attn: _____
Telefacsimile: _____

and

Attn: _____
Telefacsimile: _____

For the convenience of the Parties, copies of notices may also be given by telefacsimile, but such copies do not constitute official notice.

The Agency, upon serving Vertical Developer any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also give a copy of such notice to Developer.

Every notice given to a party hereto pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of, or consent to, the subject matter of the notice;
- (d) if approval is being requested, shall be clearly marked "Request for Approval"; and
- (e) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. No party may give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

19.3 **Time for Performance.**

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

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

19.4 **Unavoidable Delay.**

(a) **Postponement.** A party who is subject to Unavoidable Delay in the performance of an obligation hereunder, or in the satisfaction of a condition to another Party's performance hereunder, shall be entitled to a postponement of the time for performance of such

obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Unavoidable Delay, subject to the provisions of this Section 19.4.

(b) Notice of Enforced Unavoidable Delay. The Unavoidable Delay provisions of this Section shall not apply unless (i) the party seeking to rely upon such provisions shall have given notice to the other party, within thirty (30) days after obtaining knowledge of the beginning of an Unavoidable Delay, of such delay and the cause or causes thereof, to the extent known, and (ii) the party claiming the Unavoidable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a reasonable alternative means of performance.

19.5 Extensions. Upon the request of Vertical Developer or Developer (as applicable), the Agency, acting through its Executive Director, may extend for a period not to exceed six (6) months, in the aggregate, for each date or deadline extended, by written instrument and in the Executive Director's sole and absolute discretion, the time for Vertical Developer's or Developer's (as applicable) performance of any term, covenant or condition of this Agreement or permit the curing of any default upon such terms and conditions as it determines appropriate; provided, however, in no event shall the cumulative effect of all such extensions extend by more than six (6) months the date for the Completion of the Vertical Improvements, as set forth in the Schedule of Performance, and provided further, any such extension or permissive curing of any particular default shall not operate to release any of the Vertical Developer's or Developer's (as applicable) obligations nor constitute a waiver of the Agency's rights with respect to any other term, covenant or condition of this Agreement or any other event of default under this Agreement. Vertical Developer and Developer acknowledge that changes in the Schedule of Performance and any other amendments to this Agreement will require Agency Commission approval.

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

19.6 Attorneys' Fees.

(a) Should any Party hereto institute any action or proceeding in court to enforce any provision hereof or should the Agency or Developer (as applicable) institute any action or proceeding in court for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party court costs or expenses incurred by the prevailing party, including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 19.6 include attorneys' fees on any appeal, and, in addition, a Party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

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

(c) Notwithstanding anything in this Section 19.6, those disputes required to be resolved pursuant to arbitration and mediation as set forth in Article 12 hereto, shall be governed according to the provisions set forth in Article 12.

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

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

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

19.10 **Estoppel Certificates**. The Agency or Vertical Developer, within fifteen (15) days after receipt of written notice from the other, shall execute and deliver to the requesting Party an estoppel certificate certified by Vertical Developer and the Agency, as applicable, and containing the following information:

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

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

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

19.11 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts may be assembled to form a single document; provided, however, that the counterpart original retained by the Agency shall be controlling in the event of any material difference between counterparts.

19.12 **Modification.** Any modification or waiver of any provision of this Agreement or any amendment thereto must be in writing and signed by a Person having authority to do so, on behalf of the Agency, Developer, and Vertical Developer.

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

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

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

19.16 **Brokers.** Developer and Vertical Developer each represents and warrants to the other that it has not employed a broker or a finder in connection with the transactions contemplated by this Agreement, and agrees to defend, indemnify and hold the other harmless from any Losses arising from or in connection with the claims of any broker or finder asserted through the indemnifying Party.

19.17 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. It is the responsibility of Vertical Developer to be informed of local, state and federal laws and requirements applicable to this Agreement and to perform all work in compliance with those laws and requirements.

19.18 **Effect on Other Party's Obligation.** In the event Vertical Developer's, Developer's or the Agency's performance is excused or the time for performance is extended hereunder, the performance of the applicable party that is conditioned on such excused or extended performance is also excused or extended.

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

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

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

19.22 **Entire Agreement; Supersedure.** This Agreement (including all attachments and provisions of the Horizontal DDA referenced herein), the Hunters Point Shipyard Redevelopment Plan, the Interagency Cooperation Agreement, the Design for Development, **the Community Benefits Agreement**, and the Open Space Master Plan, contain all the representations and the entire agreement by and among Vertical Developer, Developer and the Agency with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by Vertical Developer, Developer or the Agency or any other Person, and no court or other body shall consider those drafts in interpreting this Agreement.

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

19.24 **Further Assurances.** Vertical Developer, Developer and the Agency each covenant, on behalf of itself and its successors, heirs and assigns, to take all actions and to do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and

writings that may be reasonably necessary or proper to achieve the purposes and objectives, or to correct inadvertent errors in the drafting of this Agreement. The Agency's Executive Director is authorized to execute on behalf of the Agency any closing or similar documents and any contracts, agreements, memoranda or similar documents with state, regional and local entities or enter into any tolling agreement with any Person that are necessary or proper to achieve the purposes and objectives of this Agreement, if the Executive Director determines that the document or agreement is necessary or proper and is in the Agency's best interests.

19.25 Approvals and Consents. Unless otherwise expressly provided in this Agreement, whenever approval, consent or satisfaction is required of Vertical Developer, Developer or the Agency pursuant to this Agreement, it shall not be unreasonably withheld or delayed. The reasons for disapproval of consent shall be stated in reasonable detail in writing. Approval by Vertical Developer, Developer or the Agency of any act or request by another party hereto shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests. Unless otherwise expressly provided in writing, approvals or consents of the Agency will be given by the Agency's Executive Director; provided that, only the Agency Commission has authority to amend this Agreement. The requirements for approvals under this Agreement shall extend to and bind the partners, officers, directors, shareholders, trustees, beneficiaries, agents, elective or appointive boards, commissions, employees and other authorized representatives of Vertical Developer, Developer and the Agency, and each such Person shall make or enter into, or take any action in connection with, any approval in accordance with these requirements.

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

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

19.28 **Recordation**. After complete execution, the Agency may cause this Agreement to be recorded in the Official Records. If this Agreement is terminated pursuant to its terms, any party hereto may record a notice of termination as provided in Article 12.

19.29 **Conflicts**. In the event of a conflict between the terms of this Agreement and the Purchase and Sale Agreement and Joint Escrow Instructions, the terms of this Agreement shall prevail.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first set forth above.

Authorized by Agency Resolution No. _____
adopted _____.

REDEVELOPMENT AGENCY OF
THE CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate
and politic

Approved as to form:

By: _____
James B. Morales
Agency General Counsel

By: _____
Marcia Rosen
Executive Director

LENNAR/BVHP, LLC, a California
limited liability company dba
LENNAR/BVHP PARTNERS

By: _____

Its: _____

[insert name of Vertical Developer]
a _____

By: _____

Its: _____

LIST OF ATTACHMENTS

- A. Legal Description [**to be added at time of contract**]
- B. Map of Subdivided Lot(s) [**to be added at time of contract**]
- C. Form of Purchase and Sale Agreement and Joint Escrow Instructions
 - 1. Legal Description of Property [**to be added at time of contract**]
 - 2. Quitclaim Deed [**to be added at time of contract**]
 - 3. Certificate of Non-Foreign Status
 - 4. Memorandum of Repurchase Agreement
 - 5. Form of Assignment, Assumption and Indemnification Agreement [**to be added at time of contract**]
 - 6. Confidentiality Agreement
- D. Form of Reversionary Grant Deed
- E. Form of Release of Horizontal DDA [**to be added at time of contract**]
- F. Affordable Housing Program
 - 1. Declaration of Rental Use Restrictions
 - 2. Declaration of Restrictions for For-Rent Affordable Housing Units
 - 3. Declaration of Restrictions for For-Sale Affordable Housing Units and Option to Purchase Agreement
 - 4. Memorandum of Option
 - 5. Release of Option Rights
 - 6. Major Phase Housing Data Table
 - 7. Project Housing Data Table
 - 8. Marketing and Operating Obligations
- G. Insurance [**to be added at time of contract**]
- H. Prevailing Wage Requirements

- I. Form of Card Check Agreement
- J. Minimum Compensation Policy
- K. Health Care Accountability Policy
- L. Equal Benefits Policy
- M. Equal Opportunity Program [**provided under separate cover**]
- N. Form of Engineer's/Architect's Certificate Re. Compliance of Design with Laws re. Access
- O. Form of Engineer's/Architect's Inspection Certificate
- P. Form of Engineer's/Architect's Certificate Re. Compliance of Construction with Laws re. Access
- Q. Form of Certificate of Completion
- R. Form of License to Enter [**to be added at time of contract**]
- S. Schedule of Performance [**to be added at time of contract**]
- T. CEQA Mitigation Measures
- U. Vertical Design Review and Document Approval Procedure

ATTACHMENT A
LEGAL DESCRIPTION
[To Be Added]

ATTACHMENT B
MAP OF SUBDIVIDED LOT(S)
[To Be Added]

ATTACHMENT C
PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
LOT _____**

BY AND BETWEEN

LENNAR/BVHP, LLC, a California limited liability company

AS "SELLER,"

AND

_____,
a _____,

AS "BUYER"

DATED AS OF _____, 2004

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EXHIBITS

- EXHIBIT A Legal Description
- EXHIBIT B Form of Grant Deed
- EXHIBIT C Form of Non-Foreign Investor Affidavit
- EXHIBIT D Memorandum of Repurchase Option and Right of First Refusal
- EXHIBIT E Assignment, Assumption and Indemnification Agreement
- EXHIBIT F Form of Confidentiality Agreement

**PURCHASE AND SALE AGREEMENT
AND JOINT ESCROW INSTRUCTIONS
LOT _____**

THIS PURCHASE AND SALE AGREEMENT AND JOINT ESCROW INSTRUCTIONS (the "Agreement") is dated as of _____, 2004, between LENNAR / BVHP, LLC, a California limited liability company ("Seller"), and _____, a _____ ("Buyer").

RECITALS

A. Seller is the owner of that certain real property, located in the City and County of San Francisco, State of California, more particularly described in Exhibit _____, attached to this Agreement ("Property").

B. Agency and Seller (as "Developer") have entered into a Disposition and Development Agreement for Hunters Point, Phase 1, dated December 2, 2003, and recorded in San Francisco Official Records on December _____, 2003 as Document No. _____ (the "Horizontal DDA"). Agency, Seller (as "Developer") and Buyer (as "Vertical Developer") have entered into a Disposition and Development Agreement Hunters Point Shipyard Vertical Development Lot _____ (the "Vertical DDA"), which is intended to supplement the terms of this Agreement with respect to the involvement of the Agency in the development of Lot _____.

C. Buyer desires to purchase the Property from Seller and Seller desires to sell the Property to Buyer, on the terms and conditions contained in this Agreement.

D. Defined terms are indicated in this Agreement by initial capital letters. Any terms with initial capital letters not defined in this Agreement shall have the meanings set forth in the Vertical DDA.

In consideration of the mutual covenants, agreements and representations contained in this Agreement, the adequacy and sufficiency of which are hereby acknowledged, Seller and Buyer agree as follows:

**ARTICLE I
PURCHASE AND SALE; BUYER'S ANTICIPATED USE**

1.1 Purchase and Sale. Buyer agrees to purchase the Property from Seller and Seller agrees to sell the Property to Buyer, subject to the conditions, covenants and terms contained in this Agreement. The Property consists of approximately _____ acres of land located in the City and County of San Francisco, State of California, commonly known as Lot _____ and as more particularly described in Exhibit A.

1.2 Buyer's Anticipated Use. As a material consideration inducing Seller to convey the Property to Buyer, Buyer has represented to Seller that Buyer is acquiring the Property to develop the Property for the operation of _____ (the "Buyer's Anticipated Use"), on the Property in accordance with the terms of this Agreement. Buyer agrees to operate the Buyer's Anticipated Use on the Property and acknowledges that Seller agreed to

sell the Property to Buyer in part in reliance on Buyer's representation that it would develop the Property for the operation of the Buyer's Anticipated Use.

ARTICLE II

PURCHASE PRICE AND DEPOSITS

2.1 Escrow. Within one (1) business day after this Agreement is executed by both parties, Seller and Buyer shall open an escrow ("Escrow") with _____, located at _____: ATTN: _____, Escrow Officer ("Escrow Agent"), by delivering an executed copy of this Agreement to Escrow Agent ("Opening of Escrow"). Within one (1) business day after the Opening of Escrow, Buyer shall deliver the Initial Deposit (as defined in Section 2.2A below) to Escrow Agent. The Escrow Agent shall deposit the Initial Deposit into a federally insured interest bearing account as designated by Buyer. The closing of the Escrow ("Close of Escrow") shall be in accordance with Article IV of this Agreement. Promptly following the Opening of Escrow and at the request of Escrow Agent, Seller and Buyer shall execute Escrow Agent's standard escrow instructions. This Agreement and any such escrow instructions executed by the parties shall constitute the escrow instructions for this transaction. In the event of any inconsistency between such escrow instructions and this Agreement, this Agreement shall control the rights and obligations of the parties.

2.2 Purchase Price. The total purchase price ("Purchase Price") for the Property shall be \$ _____.

A. Initial Deposit. Within one (1) day after the Opening of Escrow, Buyer shall deposit with the Escrow Agent in cash or cash equivalent in accordance with Section 2.4 below, the amount of \$ _____ (the "Initial Deposit").

B. Additional Deposit. On or before the expiration of the Review Period (as defined in Section 3.1E below), Buyer shall deposit with the Escrow Agent in cash or cash equivalent in accordance with Section 2.4 below, the amount of \$ _____ (the "Additional Deposit"). The Initial Deposit and Additional Deposit, any other funds deposited into Escrow by Buyer and all interest earned in Escrow on such funds are collectively referred to as the "Deposit."

C. Release of Deposit. Except as expressly provided otherwise in this Agreement, the Deposit shall be non-refundable upon the expiration of the Review Period. Escrow Agent shall, without further instruction, release the Deposit to Seller the day immediately following the expiration date of the Review Period.

D. Balance of Purchase Price. Upon the Close of Escrow, the amount of the Deposit shall be credited toward the Purchase Price. No later than 1:00 p.m. (PST or PDT, as applicable) two (2) business days prior to the Closing Date, Buyer shall deposit with the Escrow Agent the balance of the Purchase Price in cash or a cash equivalent, as described below in Section 2.4, such that the Escrow Agent will be able to disburse the cash proceeds accruing to Seller on the Close of Escrow. If Buyer fails to deliver into Escrow any portion of the Deposit or the Purchase Price in accordance with the terms and conditions of this Agreement, then Buyer

agrees to pay interest on any such late payment at a rate equal to ten percent (10%) per annum or the maximum rate permitted by law, if lower.

2.3 Liquidated Damages. IF THE TRANSACTION CONTEMPLATED UNDER THIS AGREEMENT IS NOT CONSUMMATED DUE TO A BREACH OR DEFAULT OF BUYER THAT IS NOT CURED IN ACCORDANCE WITH THIS AGREEMENT, THEN SELLER SHALL HAVE THE RIGHT TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES AS SELLER'S SOLE AND EXCLUSIVE REMEDY, EXCEPT THIS SECTION SHALL NOT LIMIT SELLER'S CLAIMS FOR ATTORNEYS' FEES UNDER THIS AGREEMENT OR SELLER'S CLAIMS PURSUANT TO BUYER'S INDEMNITY OBLIGATIONS UNDER THIS AGREEMENT. THE RETENTION OF THE DEPOSIT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF THE CALIFORNIA CIVIL CODE, BUT IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLER PURSUANT TO THE CALIFORNIA CIVIL CODE. BUYER AND SELLER AGREE THAT (A) THE AMOUNT OF LIQUIDATED DAMAGES IS REASONABLE CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AS OF THE DATE OF THIS AGREEMENT, INCLUDING THAT ASCERTAINING THE AMOUNT OF SELLER'S ACTUAL DAMAGES WOULD BE COSTLY AND INCONVENIENT; AND (B) THE AMOUNT OF THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE ESTIMATE OF THE DAMAGES TO SELLER, INCLUDING THE COST OF NEGOTIATING AND DRAFTING THIS AGREEMENT, COSTS OF COOPERATING IN SATISFYING CONDITIONS TO CLOSING, COSTS OF SEEKING ANOTHER BUYER, OPPORTUNITY COSTS IN KEEPING THE PROPERTY OUT OF THE MARKETPLACE AND OTHER COSTS INCURRED IN CONNECTION WITH THIS AGREEMENT. BUYER HAS REVIEWED THE EFFECT OF THIS PROVISION WITH LEGAL COUNSEL AND HAS AGREED THAT SUCH DAMAGES ARE A REASONABLE AND FAIR ESTIMATE OF THE DAMAGES SELLER WILL SUSTAIN IF AN EVENT OF DEFAULT BY BUYER OCCURS. UPON ANY BREACH OR DEFAULT BY BUYER UNDER THIS AGREEMENT THAT HAS NOT BEEN CURED IN ACCORDANCE WITH THE TERMS HEREOF, THIS AGREEMENT SHALL BE TERMINATED AND NEITHER PARTY SHALL HAVE ANY FURTHER RIGHTS OR OBLIGATIONS HEREUNDER, EXCEPT FOR THE RIGHT OF SELLER TO RETAIN THE DEPOSIT AS LIQUIDATED DAMAGES IN ACCORDANCE WITH THIS SECTION. BY INITIALING THIS SECTION IMMEDIATELY BELOW, SELLER AND BUYER ACKNOWLEDGE THEIR APPROVAL OF THIS LIQUIDATED DAMAGES PROVISION AND AFFIRM THEIR RESPECTIVE AGREEMENTS CONTAINED IN THIS SECTION.

Buyer's Initials

Seller's Initials

2.4 Form of Payment. All money payable under this Agreement, for the Deposit, the balance of the Purchase Price or otherwise, shall be paid in cash, by wire transfer, or by a cashier's check or certified check of immediately available federal funds of the United States. Seller and Buyer hereby acknowledge and agree that covenants set forth in this Article are separate, independent covenants of each party, as applicable, and, subject to the terms of this

Agreement, the performance of such covenants shall not be conditioned upon either party's performance of its respective obligations as set forth in this Agreement.

ARTICLE III **CONDITIONS PRECEDENT**

The purchase and sale under this Agreement shall be subject to the satisfaction of the conditions precedent set forth in this Article III (unless waived in writing by the party to whom the benefit runs) on or before the Closing Date or such earlier date as is specified in this Agreement.

3.1 Conditions to Buyer's Obligations.

A. Delivery of Title Report. Within ten (10) days after the Opening of Escrow, Seller shall cause _____ (the "Title Insurer") to deliver to Buyer a preliminary title report for the Property together with copies of any exceptions referred to in Schedule B of the preliminary title report ("Title Report"). Prior to the Closing, Buyer shall have the right to obtain an ALTA boundary line survey of the Property ("ALTA Survey") at Buyer's sole cost and expense and at Buyer's sole direction; provided, however, in no event shall the delivery of the ALTA Survey or any other survey be a condition to the Closing or delay the Closing of Escrow. Within twenty (20) days after Buyer's receipt of the Title Report from Seller, Buyer shall provide Seller with written notice specifying Buyer's disapproval of any item or exception shown on the Title Report and Buyer's suggested cure thereof. Failure of Buyer to disapprove any item or exception shown on the Title Report on or before the expiration of such twenty (20) day period shall be deemed to be an approval of title to the Property in its entirety. If Buyer disapproves of any item or exception shown in the Title Report, Buyer shall specify in writing its reason for such disapproval and Seller shall have the right, but not the obligation to: (i) remove or cure the defect to the reasonable satisfaction of Buyer; or (ii) elect not to cure such defect. If Seller fails to notify Buyer of Seller's election to cure such item or exception within five (5) days after Seller's receipt of Buyer's notice of disapproval, Seller shall be deemed to have elected not to cure such defect. If Seller elects not to cure any such defect then Buyer's exclusive remedy shall be to: (a) accept such item or exception and proceed to take title to the Property without either deduction or offset to the Purchase Price and waive such defect without cause of action under this Agreement against Seller; or (b) terminate this Agreement and the Escrow by delivering written notice of such termination to Seller and Escrow Agent within five (5) days after Buyer's receipt or deemed receipt of Seller's election not to cure. Buyer's failure to provide Seller and Escrow Agent with such termination notice within such five (5) day period shall constitute Buyer's election under clause (a) above.

If Seller elects to cure any item disapproved by Buyer pursuant to this Section, then Seller shall cure such disapproved item to the reasonable satisfaction of Buyer prior to the Closing Date. If, on the date five (5) business days prior to the Closing, Seller fails to, or is prevented from, curing any such item on or before the Closing Date, despite Seller's commercially reasonable efforts to do so, then Buyer's exclusive remedy shall be to either: (x) accept such disapproved item and proceed to take title to the Property without either deduction or offset to the Purchase Price and waive such defect without cause of action under this Agreement against Seller; or (y) terminate this Agreement and the Escrow by giving written

notice of such termination to Seller and Escrow Agent at least three (3) days prior to the Closing Date. Buyer's failure to provide Seller and Escrow Agent with such termination notice within such three (3) day period shall constitute Buyer's election under clause (x) above.

B. Delivery of Title and Title Insurance. Seller shall convey title to the Property to Buyer at the Closing, subject only to the "Permitted Exceptions." The term "Permitted Exceptions" as used in this Agreement shall mean: (i) liens for real property taxes shown as exceptions in the Title Report provided that the taxes are not delinquent; (ii) the standard exclusions to coverage under Title Insurer's 1992 CLTA Owner's Standard Coverage Policy of Title Insurance ("Title Policy"); (iii) any utility, sideyard, setback and landscaping easements reasonably required in connection with the development of property adjacent to the Property (the "Adjacent Property") in accordance with Section 7.5 below; (iv) the "Redevelopment Requirements" as defined in the Vertical DDA hereof, (v) Seller's Repurchase Option (as defined in Section 10.1 below); (vi) any and all conditions of approval for Subdivision Map _____ (collectively, the "Subdivision Map Conditions") applicable to the Property; and (vii) any other lien, encumbrance, title exception or defect that Buyer has approved in writing, or is deemed to have approved, during the Review Period or during any supplementary review period under Section 3.1E, or that was caused by Buyer prior to the Closing Date. Buyer agrees that Seller's obligation to convey title to Buyer shall be deemed satisfied upon Title Insurer's willingness to issue the Title Policy subject only to the Permitted Exceptions.

C. Inspection. Buyer acknowledges that only during the Review Period (i) Buyer, at Buyer's sole cost and expense, may conduct such surveys, investigations and inspections and make such boring, percolation, geologic, environmental and soils tests and other studies of the Property and (ii) Seller shall provide Buyer with adequate opportunity to make such inspection of the Property (including an inspection for zoning, land use, environmental and other laws, regulations and restrictions and the availability of water and other utilities) as Buyer has, in Buyer's sole discretion, deemed necessary to determine the physical and land use characteristics of the Property (including its subsurface) and the Property's suitability for Buyer's Anticipated Use. Buyer shall keep the Property free and clear of any mechanics' liens or materialmen's liens related to Buyer's examination and investigation and Buyer shall protect, defend, indemnify and hold Seller (and Seller's general partners, agents, employees, partners, unitholders, shareholders, affiliates, officers and directors, collectively, the "Indemnitees") harmless from and against any and all losses, costs, expenses (including reasonable attorneys' fees and actually incurred court costs), claims, damages, liens and stop notices whatsoever and shall repair any and all damages to any portion of the Property arising out of or related (directly or indirectly) to Buyer's and/or Buyer's consultants conducting such inspections, surveys, tests and studies. Buyer shall provide Seller with written notice at least two (2) days prior to Buyer's entry onto the Property together with details of the scope and nature of Buyer's entry onto the Property and with evidence that Buyer and/or Buyer's consultants have named Seller as an additional insured on Buyer's and/or its consultants' commercial general liability insurance policies, with a combined single limit liability amount of not less than \$ _____, and on its comprehensive automobile liability policy with a combined single limit of not less than \$ _____. All such policies shall be issued on an occurrence basis by an insurance company licensed to do business in the State of California and with a Best Insurance Guide rating of not less than A-VIII. All such policies shall require the insurer to notify Seller in

writing thirty (30) days prior to cancellation, material change or non-renewal of such insurance. Buyer's entry onto the Property shall not unreasonably interfere with Seller's use or enjoyment of the Property or development of any Adjacent Property.

D. Review and Approval of Documents. Within five (5) business days after the Opening of Escrow, Seller shall provide Buyer with copies of the following documents to the extent that, to the best of Seller's knowledge (as defined in Section 3.4 below), Seller has any such documents in its possession for Buyer's review and approval during the Review Period: (i) the soils reports, if any, relating to the Property; (ii) any environmental report for the Property; (iii) any soil compaction reports for the Property; (iv) the rough grading plan for the Property ("Grading Plan") and (v) the Subdivision Map Conditions. The foregoing items and the Title Report are the only items in Seller's possession with respect to the Property that Seller shall deliver to Buyer. Buyer shall be responsible for obtaining from the Agency and reviewing all documents and other items included in the Redevelopment Requirements.

E. Review Period and Buyer's Approval Rights. Buyer shall have until _____, 20__ (the "Review Period"), to examine and investigate the Property pursuant to Section 3.1C of this Agreement, to examine the documents supplied to Buyer pursuant to Section 3.1D of this Agreement and the Redevelopment Requirements obtained from the Agency, and perform and investigate any and all aspects of the Property as determined by Buyer in Buyer's sole discretion. Buyer shall have the right to terminate this Agreement for any reason in its sole discretion before the expiration of the Review Period and receive a refund of the Deposit, less one-half (½) of the Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees if any. Upon the expiration of the Review Period, Buyer waives its right to terminate this Agreement, except due to a Seller default or pursuant to Section 3.1 or Article IX of this Agreement. If Seller or Title Insurer provides Buyer with any documentation that is subject to Buyer's approval under this Agreement after the date that is five (5) days prior to the expiration of the Review Period, then Buyer shall have the right to review such supplemental documentation for a period of five (5) days commencing on the date Buyer receives such supplemental documentation, which approval shall not be unreasonably withheld, conditioned or delayed. If Buyer reasonably disapproves of any such supplemental documentation during any such five (5) day period, Buyer shall specify its reasons for disapproval and shall specify what action Seller needs to take to obtain Buyer's approval of any disapproved supplemental documentation. If Seller refuses to take any such reasonable action that is required by Buyer to obtain Buyer's approval of any such disapproved supplemental documentation within five (5) days after Seller's receipt of notice of Buyer's reasonable disapproval, Buyer shall have the right to terminate this Agreement based upon Buyer's reasonable disapproval of any such supplemental documentation within five (5) days after Seller's election not to correct any such item. Any condition or documentation relating to the Property that Buyer fails to disapprove in writing before the expiration of the Buyer's Review Period or any supplemental documentation during any additional five (5) day period, will be deemed to have been approved by Buyer. Seller shall have no obligation to remove or cure any item disapproved by Buyer. If Buyer elects to terminate this Agreement pursuant to this Section 3.1E, then: (a) each party shall promptly execute and deliver to Escrow Agent such documents as Escrow Agent may reasonably require to evidence such termination; (b) Escrow Agent shall return all documents to the respective parties who delivered such documents to Escrow Agent; (c) Buyer shall promptly return all documents, plans, specifications and any other due diligence items delivered to Buyer by Seller

and copies of Buyer's architectural and engineering plans, specifications, surveys, reports, studies and other due diligence materials pertaining to the Property; (d) after Seller's receipt of the all of the items referenced in clause (c) above, Buyer shall receive a refund of the Deposit, less one-half (½) of the Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees; and (e) the respective obligations of Buyer and Seller under this Agreement shall terminate (except for Buyer's confidentiality and indemnity obligations under this Agreement). Any costs incurred by Buyer in examining and investigating the Property in accordance with this Agreement shall be at Buyer's sole cost and expense.

F. Representations and Warranties. Each of the representations and warranties by Seller contained in Article VIII below was true and correct in all material respects as of the date made and continues to be true and correct in all material respects as of the Closing.

G. Delivery of Closing Documents. Execution, delivery and acknowledgement as appropriate by Seller of the closing documents set forth in Section 4.1B(i) below and other necessary closing documents as may be reasonably requested by Buyer or Escrow Agent.

3.2 Conditions to Seller's Obligations.

A. Delivery of Purchase Price. At least two (2) business days prior to the Closing Date, the Purchase Price shall be delivered to Escrow Agent in cash or a cash equivalent, as described in Section 2.4 above.

B. Delivery of Financial Statements. Within five (5) business days after the Opening of Escrow, Buyer shall deliver to Seller for Seller's approval copies of Buyer's financial statements for the past three (3) years and any other financial information reasonably requested by Seller, including, but not limited to, operating leases, off-balance sheet leases and synthetic leases (collectively, the "Financial Information"). Seller shall have until ten (10) business days after the delivery of the Financial Information to Seller to notify Buyer of Seller's approval or disapproval of the Financial Information.

C. Representations and Warranties. Each of the representations and warranties by Buyer contained in Article VIII below shall be determined to have been true and correct in all material respects as of the date made and shall continue to be true and correct in all material respects as of the Closing.

D. Delivery of Closing Documents. Execution, delivery and acknowledgement as appropriate by Buyer of the closing documents set forth in Section 4.1B(ii) below and other necessary closing documents as may be reasonably requested by Buyer or Escrow Agent.

3.3 Failure of Conditions. If any of the conditions precedent contained in this Article III are not satisfied within the time periods specified in this Agreement (or waived or the time for satisfaction extended by the party to whose benefit the condition runs), the party to whose benefit the condition runs shall have the right to terminate this Agreement by delivering written notice to the other party and Escrow Agent within the time period specified by this Agreement. If Seller terminates this Agreement due to a failure of any condition set forth in Sections 3.2B above, then

Buyer shall have the right to receive a refund of the Deposit less one-half (1/2) of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees. If Seller terminates due to a failure of any condition set forth in Sections 3.2A or 3.2C above, Seller shall have the right to retain the Deposit plus any accrued interest thereon and exercise its right under Article V of this Agreement. If Buyer terminates this Agreement due to a failure of any condition set forth in Section 3.1 above, then Buyer shall have the right to receive a refund of the Deposit less one-half (1/2) of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees. If Buyer terminates this Agreement due to a failure of any condition set forth in Sections 3.1F above, then Buyer shall have the right to exercise its remedies under Article V of this Agreement. Nothing contained in this Agreement is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default. After any termination of this Agreement prior to the Closing and prior to the return of the Deposit by Seller or Escrow Agent, as applicable, Buyer shall deliver to Seller copies of all of Buyer's architectural and engineering plans, specifications, surveys, reports, studies and other due diligence materials pertaining to the Property.

3.4 Seller's Knowledge. As used in this Agreement, "to the best of Seller's knowledge" means that the facts in question are actually known (as opposed to imputed or constructive knowledge) to _____, Seller's _____, without any due diligence. Seller shall have no duty of investigation with respect to any representation made to the best of its knowledge and shall not be charged with constructive or deemed knowledge. Further, Seller's obligations to disclose matters "known to Seller" or words of like import as used in this Agreement shall be deemed breached only if _____ had actual knowledge (as opposed to imputed or constructive knowledge) of the falsity of such matter not disclosed to Buyer.

ARTICLE IV CLOSING

4.1 Closing. The purchase and sale of the Property shall be consummated through a closing ("Closing") in accordance with the following:

A. Closing Date. The closing date shall occur on or before 8:00 a.m. on _____, 20__ (the "Closing Date"), at the office of the Escrow Agent or such other location as is acceptable to the parties to this Agreement. Notwithstanding the foregoing, Seller shall have the right to extend the Closing Date for up to _____ (____) days upon written notice to Buyer and Escrow Agent at least ten (10) days prior to the Closing Date.

B. Closing Documents.

(i) Seller. No later than 1:00 p.m. (PST) on the date two (2) business days prior to the Closing Date, Seller shall duly execute and acknowledge as appropriate and deliver to Escrow Agent the following:

(a) A quitclaim deed ("Deed") conveying the Property to Buyer in the form attached to this Agreement as Exhibit B;

(b) A Non-foreign Entity Affidavit ("Affidavit"), in the form attached to this Agreement as Exhibit C, pursuant to Section 12.3 below;

(c) Memorandum of Repurchase Option ("Memorandum") in the form of Exhibit D attached hereto in accordance with Articles X below;

(d) An Assignment, Assumption and Indemnification Agreement in the form of Exhibit E hereto in accordance with Article XI below; and

(e) Such documents and instruments as Escrow Agent or Title Insurer may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Seller under this Agreement and to issue the Title Policy.

The obligations of Seller to deliver documents and instruments into Escrow in accordance with this Section 4.1B(i) are separate, independent covenants of Seller and shall not be conditioned upon Buyer's deliveries in accordance with Section 4.1B(ii) below.

(ii) Buyer. No later than 1:00 p.m. (PST) on the date two (2) business days prior to the Closing Date, Buyer shall duly execute and acknowledge as appropriate and deliver to the Escrow Agent the following:

- (a) The Purchase Price, plus Buyer's share of any costs and expenses to be paid to or through Escrow Agent;
- (b) The Memorandum;
- (c) The Assignment, Assumption and Indemnification Agreement;
- (d) A Change of Ownership Statement, as required by Title Insurer or Escrow Agent; and
- (e) Such documents and instruments as Escrow Agent or Title Insurer may reasonably require to evidence the due authorization and execution of the documents and instruments to be delivered by Buyer under this Agreement and to issue the Title Policy.

The obligations of Buyer to deliver funds, documents and instruments into Escrow under this Section 4.1B(ii) shall be separate, independent covenants of Buyer and shall not be conditioned upon Seller's deliveries in accordance with Section 4.1B(i) above.

C. Closing Procedure. At such time as the Escrow Agent has received all of the items specified in Section 4.1B above, and at such time as Title Insurer is prepared to issue the Title Policy in accordance with Section 3.1B above or the ALTA Policy in accordance with

Section 4.2A below, Buyer and Seller hereby authorize and instruct Escrow Agent to: (i) cause Title Insurer to record (in the following order) the Deed and the Memorandum and issue the Title Policy or ALTA Policy, as applicable, to Buyer; (ii) pay to the authorities lawfully entitled thereto any recordation fees and transfer taxes in connection with this Agreement; (iii) compute prorations relating to rents, income, profits and expenses for the accounts of Seller and Buyer; (iv) pay to Seller an amount equal to the Purchase Price less the released Deposit, any prorations chargeable to Seller and any amounts payable by Seller to Escrow Agent for its services and expenditures in connection with this Agreement; (v) pay to Buyer the balance of the funds then held by Escrow Agent, less any prorations chargeable to Buyer and any amounts payable by Buyer to Escrow Agent for its services and expenditures in connection with this Agreement; the Deed and the Memorandum showing the recording information; and (vii) deliver to Buyer an executed original of the Affidavit. Following the recordation of the documents set forth in Section 4.1B, above, it is anticipated that the San Francisco Recorder's Office shall: (a) deliver to Buyer the executed original Deed; and (b) deliver to Seller the executed original of the Memorandum.

4.2 Fees; Expenses; Prorations.

A. Fees, Expenses, Transfer Taxes.

(i) Seller. Seller shall pay and/or satisfy, as applicable: (a) all documentary transfer taxes imposed in connection with the recording of the Deed; (b) any recordation fees in connection with the Memorandum; (c) one-half (1/2) of the Escrow fees; (d) the cost of the Title Policy for Buyer in the amount of the Purchase Price; and (e) the brokerage commission, if any, in accordance with Section 4.2C below. The parties agree that the amount of documentary transfer taxes will not be referred to in the Deed.

(ii) Buyer. Buyer shall pay: (a) one-half (1/2) of the Escrow fees and (b) the cost of recording the Deed and any other documents recorded at the Closing and; Buyer shall have the right to procure an ALTA Extended Coverage Owner's Policy of Title Insurance ("ALTA Policy") and Buyer shall pay for the increased cost of such ALTA Policy above the cost of the Title Policy, the cost of any survey that the Title Insurer requires for issuance of an ALTA Policy and for the cost of any other increase in the amount or scope of title insurance if Buyer elects to increase the amount or scope of title insurance coverage or to obtain endorsements to the Title Policy or ALTA Policy. All other costs, if any, shall be apportioned in the customary manner for real estate transactions in the City and County of San Francisco, State of California.

B. Real Property Taxes, Assessments and Rents. All real property taxes and assessments for the fiscal years of the taxing and assessing authorities in which the Closing occurs shall be prorated on the basis of a three hundred sixty-five (365) day year at the Closing with appropriate debits and credits to the accounts of Buyer and Seller so that Seller shall be responsible for paying all of the same, to the extent duly allocable to the period ending on the day immediately prior to the Closing Date and Buyer shall be responsible for paying all of the same, to the extent duly allocable to the period commencing upon the Closing Date. At the Closing, Buyer shall reimburse Seller for any taxes and assessments which are allocable to the period commencing upon the Closing Date and which Seller has already paid. In addition, all rents, incomes and profits, if any, derived from the Property or attributable to the Property shall

be prorated at the Closing with appropriate debits and credits to the accounts of Buyer and Seller so that Seller shall pay and receive, as appropriate, all of the same to the extent duly allocable to the period ending on the Closing Date and Buyer shall pay and receive, as appropriate, all of the same to the extent duly allocable to the period commencing upon the day after the Closing Date.

C. Commissions. [Buyer and Seller hereby acknowledge that _____ represents Seller ("Seller's Broker") and _____ represents Buyer ("Buyer's Broker"). Seller's Broker and Buyer's Broker are collectively referred to in this Agreement as the "Brokers." Seller shall pay the Brokers a commission at the Close of Escrow for the sale of the Property pursuant to a separate written agreement between Seller and Seller's Broker.] Buyer and Seller represent and warrant to each other that to the best of their knowledge, [other than Brokers,] no [other person] or entity may claim or is entitled to a real estate commission, finder's fees or any similar payments with respect to this Agreement or the sale of the Property. Buyer and Seller shall each protect, defend, indemnify and hold the other harmless from and against all claims for real estate commissions, finder's fees or any similar payments with respect to the sale of the Property made by or through the indemnifying party.

ARTICLE V **BREACH**

5.1 General. If either party breaches its obligations under this Agreement prior to the Closing, then the other party may, without terminating this Agreement, suspend performance by giving written notice to the other party until such breach is cured by the other party. Except for Seller's and Buyer's respective delivery obligations under Section 2.2 and Article IV above, including, without limitation, Buyer's delivery to the Escrow Agent of any portion of the Deposit or the Purchase Price, neither party shall be in default under this Agreement unless it fails to cure a breach of such party's obligations under this Agreement within twenty-four (24) hours after receipt of written notice of such breach from the non breaching party. Nothing contained in this Agreement is intended nor shall permit any party in default to terminate this Agreement or the Escrow provided for in this Agreement as a result of such default. After any termination of this Agreement prior to the Closing and prior to the return of the Deposit by Seller or Escrow Agent, as applicable, Buyer shall deliver to Seller copies of all of Buyer's architectural and engineering plans, specifications, surveys, reports, studies and other due diligence materials pertaining to the Property.

5.2 Buyer's Pre-Closing Breach. Except as expressly provided otherwise in Sections 5.1 and 3.3 above, if Buyer breaches any of its obligations under this Agreement prior to Closing and Buyer fails to cure such breach within _____ days after Buyer's receipt of written notice from Seller, then Seller may terminate this Agreement and retain the Deposit as liquidated damages in accordance with Section 2.3 above as Seller's sole remedy. Notwithstanding the foregoing, Buyer's indemnity obligations under this Agreement and Seller's right to recover attorneys' fees pursuant to Section 12.4 below shall survive any termination of this Agreement pursuant to this Section. Buyer hereby acknowledges and agrees that in no event shall the notice and cure rights set forth in Section 5.1 above apply to Buyer's failure to deliver any of the items into Escrow in accordance with Section 2.2 and Article IV above, including, without limitation, any portion of the Deposit or the Purchase Price.

5.3 Seller's Pre-Closing Breach. Except as expressly provided otherwise in Sections 5.1 and 3.3 above, if Seller breaches its obligations under this Agreement prior to Closing and Seller fails to cure such breach within _____ days after Seller's receipt of written notice from Buyer, Buyer shall have the right to elect one, but not both, of the remedies set forth in this Section 5.3.

A. Termination. Buyer shall have the right to terminate this Agreement and receive a refund of the Deposit.

B. Specific Performance. Buyer shall have the right to obtain specific performance by Seller provided Buyer is not in breach of its obligations under this Agreement and provided further that Buyer delivers the Purchase Price to Escrow Agent prior to filing any notice of pendency of action or lis pendens as an encumbrance against the Property. Buyer acknowledges that Seller shall have the right to expunge any such lis pendens without posting a bond if Buyer fails to so deliver the Purchase Price to Escrow Agent prior to filing any such lis pendens.

5.4 Buyer's Post-Closing Claims; Nonrecourse to Partners. In accordance with Section 12.13 of this Agreement, the obligations of the Seller under this Agreement shall be without recourse to the assets, properties or funds of any member, partner, officer, shareholder, director, unitholder or employee of Seller or any of their respective partners. Pursuant to Section 12.13 below, after the Closing Date, the exclusive recourse of Buyer for any obligation of the Seller under this Agreement shall be limited solely to the assets of Seller up to a maximum amount of the Purchase Price.

ARTICLE VI **GRADING AND UTILITIES**

6.1 Seller's Improvements. Prior to the Closing Date, Seller shall complete the rough grading of the Property in accordance with the Grading Plan and provide construction access to the Property to provide Buyer with sufficient access to the Property to design and engineer the construction of Buyer's Improvements (as defined in Section 10.3, below) on the Property. Prior to the Buyer obtaining a certificate of occupancy from the City and County of San Francisco and a Certificate of Completion from the Agency for Buyer's Improvements ("Anticipated CofO Date"), Seller shall construct and install at no cost to Buyer those improvements adjacent to and servicing the Property included in the Infrastructure Plan attached as Attachment _____ to the Horizontal DDA. [Identify any improvements that will not be completed prior to the Closing Date.] The improvements described above in this Section 6.1, shall be collectively referred to as "Seller's Improvements." Seller's obligation to substantially complete Seller's Improvements shall survive the Close of Escrow and shall not unreasonably interfere with Buyer's construction of Buyer's Improvements on the Property.

6.2 Buyer's Improvements. Buyer hereby acknowledges and agrees that after the Closing Date, Buyer, at Buyer's sole cost and expense, shall be responsible for: (i) obtaining services from the utility companies; (ii) stubbing and connecting to the utilities serving the Property; (iii) paying any and all fees with respect to the Property and the construction of the Buyer's Improvements on the Property, including, without limitation, all governmental approval,

utility connection fees, water connection fees (and any fees for such usage), sanitation connection fees, fire protection fees, transit fees and any and all other fees and exactions imposed upon vertical development of the Property under the Vertical DDA or otherwise, (iv) any grading and removal or recompaction of soil on the Property beyond the scope of the Grading Plan; (v) satisfying any and all on-site and off-site (i.e. inside and outside of the perimeter boundary of the Property) conditions of approval, construction and other obligations with respect to the Property; and (vi) Completion of Construction of the Vertical Improvements.

ARTICLE VII

CONDITION OF PROPERTY

7.1 Condition of Property. Buyer represents and warrants that, as specified in Section 3.1C above, it has or shall have inspected and conducted tests, inspections, investigations and studies of the Property and that it is familiar with the general condition of the Property. Buyer understands and acknowledges that the Property may be subject to earthquake, fire, floods, erosion, highwater table, dangerous underground soil conditions, unavailability or shortages of water and other utilities and similar occurrences that may alter its condition or affect its suitability for any proposed use. Seller shall have no responsibility or liability with respect to any such occurrence. Buyer represents and warrants that it is acting and will act only upon information obtained by it directly from its own inspection and investigation of the Property. The suitability or lack of suitability of the Property for any proposed or intended use or availability or lack of availability of permits or approvals of governmental or regulatory authorities with respect to any such proposed or intended use of the Property shall not affect the rights or obligations of the Buyer under this Agreement.

7.2 No Warranties. Except as expressly provided in this Agreement, the Property is purchased and sold in "AS IS" condition. The Purchase Price and the terms and conditions set forth in this Agreement are the result of arm's-length bargaining between entities familiar with transactions of this kind and said price, terms and conditions reflect the fact that Buyer shall have the benefit of, and is relying upon, no statements, representations or warranties whatsoever made by or enforceable directly against Seller relating to the condition, operations, dimensions, descriptions, soil condition, suitability, availability of water and other utilities, compliance or lack of compliance with any state, federal, county or local law, ordinance, order, permit or regulation or any other attribute or matter of or relating to the Property. Buyer represents, warrants and covenants to Seller that, except for Seller's express representations and warranties specified in Section 8.2 below, Buyer is relying solely upon its own inspection and investigation of the Property. If Seller obtains or has obtained the services, opinions or work product of surveyors, architects, engineers, Escrow Agent, Title Insurer, governmental authorities or any other person or entity with respect to the Property, Buyer and Seller agree that Seller shall do so only for the convenience of both parties and the reliance by Buyer upon any such services, opinions or work product shall not create or give rise to any liability of or against Seller.

7.3 Governmental Approvals. Nothing contained in this Agreement shall be construed as authorizing Buyer to apply for a Redevelopment Plan change or variance, subdivision map, lot line adjustment, or other discretionary governmental act, approval or permit with respect to the Property prior to the Close of Escrow and Buyer agrees not to do so without Seller's prior written approval, which approval may be withheld in Seller's sole and absolute

discretion. Buyer agrees not to submit any reports, studies or other documents, including, without limitation, plans and specifications, impact statements for water, sewage, drainage or traffic, environmental review forms or energy conservation checklists to any governmental agency or any amendment or modification to any such instruments or documents prior to the Close of Escrow unless first approved by Seller, which approval Seller may withhold in Seller's sole and absolute discretion.

7.4 Environmental Conditions.

Buyer shall rely solely upon its own inspection of the Property in determining the Property's physical and environmental condition and shall have the right to review and approve during the Review Period all reports, documents and studies described in Sections 3.1C and 3.1D above. Buyer waives its right to recover from Seller and Seller's Indemnitees any and all damages, losses, liabilities, costs or expenses whatsoever (including reasonable attorneys' fees and costs) and claims therefor, whether direct or indirect, known or unknown or foreseen or unforeseen, which may arise from or be related to (i) the physical condition of the Property and/or (ii) the Property's compliance or lack of compliance with any law or regulation thereto, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. Sections 9601 *et seq.*), the Resources Conservation and Recovery Act of 1976 (42 U.S.C. Sections 6901 *et seq.*), the Clean Water Act (33 U.S.C. Sections 466 *et seq.*), the Safe Drinking Water Act (14 U.S.C. Sections 1401-1450), the Hazardous Materials Transportation Act (49 U.S.C. Sections 1801 *et seq.*), the Toxic Substance Control Act (15 U.S.C. Sections 2601-2629), the California Hazardous Substances Act (Health & Safety Code Sections 25100-25600), the California Porter-Cologne Water Quality Control Act (Water Code Sections 13000 *et seq.*) and all regulations, rulings and orders promulgated or adopted pursuant thereto. Buyer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BUYER'S INITIALS

Buyer hereby acknowledges that applicable law requires Buyer to comply with all hazardous waste rules and regulations then in effect, including without limitation the self-containment of all hazardous waste in a safe condition and location on the Property and a safe disposal of same.

If Buyer discovers any hydrocarbon substances, polychlorinated biphenyls or any other hazardous or toxic substances, wastes or materials (as determined under federal, state or local law then in effect), asbestos or asbestos-bearing materials or other environmental conditions subject to legal requirements for corrective action on or affecting the Property (collectively "hazardous substances"), Buyer shall immediately notify Seller if such discovery is made after

the Close of Escrow with respect to the Property and comply with applicable law to the extent required by any regulatory authority having jurisdiction over the Property and such hazardous substances.

Buyer shall protect, defend, indemnify and hold Seller and Seller's Indemnitees harmless from and against any and all claims (including third-party claims), demands, liabilities, damages, costs and expenses, including, without limitation, investigatory expenses, clean-up costs, reasonable attorneys' fees and court costs of whatever kind or nature arising from or in any way connected with any environmental condition of the Property that has been caused by Buyer. The obligations of indemnity set forth in this Agreement shall survive the Close of Escrow and shall not be merged with the Deed.

The obligations, releases and other provisions of this Section 8.4 are in addition to, and shall in no way diminish or otherwise affect, comparable provisions set forth in Section ____ of the Vertical DDA.

7.5 Cooperation with Development of Adjacent Property. Buyer shall cooperate fully with Seller or others that are the owners of certain property adjacent to the property described in Exhibit E hereto (the "Adjacent Property") in any development of the Adjacent Property, including by providing temporary access to the Adjacent Property in connection with grading, construction of the Seller's Improvements such as streets, curbs, gutters, pedestrian bridges and underpasses and other similar public, off-site improvements and the development of the Adjacent Property. Upon the request of Seller, Buyer shall also execute appropriate documents necessary to construct the Seller's Improvements, develop the Adjacent Property or obtain any government approvals necessary to construct the Seller's Improvements or to develop the Adjacent Property. Buyer shall not construct or erect any improvement on the Property if such improvement or construction thereof would unreasonably impair or adversely affect the development of the Adjacent Property or any drainage easements relating to water run-off from the Adjacent Property. Following construction of any improvements on the Property in accordance with this Agreement, Seller shall not have any right to require Buyer to relocate or remove any improvements constructed on the Property due to the development of Adjacent Property. If requested by Seller, Buyer shall execute and record easements provided for hereunder precisely describing the location of any such easements required in connection with the development of the Property and/or the Adjacent Property.

7.6 Drainage, Erosion Control and Storm Water Pollution Prevention Plans. Buyer shall comply with all state, local and federal governmental and regulatory requirements with respect to drainage, erosion control, the National Pollution Discharge Elimination System ("NPDES") or Storm Water Pollution Prevention Plans ("SWPPP's"), on or relating to the Property commencing on the Closing Date, including but not limited Sections 7.6A and 7.6B below.

A. Erosion Control Devices and Requirements. Buyer shall maintain erosion control devices, including those installed by Seller, for the benefit of the Property during the erosion control season and comply with the erosion control plan for the Property. If Buyer fails to comply with any such requirements, Buyer shall reimburse Seller for all of its costs and expenses, including any penalties, fines, damages and attorneys' fees, incurred by Seller as a

result of Buyer's failure to comply with these requirements, plus an administration fee equal to fifteen percent (15%) of such costs. If Buyer intends to grade, regrade, move or recompact any soil on the Property, Buyer shall obtain all necessary grading permits and approvals from the City and County of San Francisco including filing any governmentally required erosion control or SWPPP's plan for the Property and obtaining approval of same from the applicable governmental agency.

B. SWPPP's. Buyer shall comply with all SWPPP's regulations and requirements as mandated by the NPDES as administered by the California State Water Resources Control Board ("CSWRCB"), including but not limited to: (i) notifying CSWRCB that Buyer is the responsible party for the Property; (ii) filing a "Notice of Intent" to comply with all requirements of NPDES and a SWPPP's; (iii) obtaining an NPDES permit (and subsequently required permits); and (iv) complying with the "Best Management Practices" (BMPs), if any, as recommended by the City and County of San Francisco regarding SWPPP's regulation compliance.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Buyer's Representations and Warranties. Buyer represents and warrants to Seller that, as of the date this Agreement is executed and as of the Closing Date: (i) Buyer is a corporation, partnership or limited liability company that has been duly formed and is validly existing under the laws of the state of its formation and is qualified to do business in California; (ii) Buyer has full right, power and authority to execute and deliver this Agreement and to perform the undertakings of Buyer contained in this Agreement; (iii) Buyer is not insolvent; (iv) this Agreement constitutes valid and binding obligations of Buyer that are legally enforceable in accordance with their terms (except to the extent that such enforcement may be limited by applicable bankruptcy, moratorium and other principles relating to or limiting the right of contracting parties generally); (v) to the best of Buyer's knowledge none of the undertakings of Buyer contained in this Agreement violates any applicable statute, law, regulation or ordinance or any order or ruling of any court or governmental entity or conflicts with or constitutes a breach or default under, any agreement by which Buyer is bound or regulated; and (vi) all information delivered by Buyer to Seller pursuant to this Agreement is true and correct.

8.2 Seller's Representations and Warranties. Seller represents and warrants to Buyer that, as of the date this Agreement is executed, and as of the Closing Date: (i) Seller is a California limited liability company duly formed and validly existing under the laws of the State of California; (ii) Seller is not insolvent; (iii) this Agreement and all the documents executed by Seller which are to be delivered to Buyer at the Closing are duly authorized, executed and delivered by Seller and constitute legal, valid and binding obligations of Seller enforceable against Seller in accordance with their respective terms (except to the extent that such enforcement may be limited by applicable bankruptcy, moratorium and other principles relating to or limiting the right of contracting parties generally) are sufficient to convey title (if they purport to do so); and (iv) the undertakings of Seller under this Agreement do not violate any provision of any agreement to which Seller is a party or to which it is subject.

ARTICLE IX
CONDEMNATION, DAMAGE AND DESTRUCTION

9.1 Condemnation. If, between the date of this Agreement and the Closing Date, condemnation or eminent domain proceedings affecting any portions of the Property are initiated or are threatened to be initiated, to such extent that it would prevent Buyer's Anticipated Use of the Property, then, Buyer shall have the right to either: (i) affirm this Agreement, which shall remain in full force and effect without any diminution of the Purchase Price and Seller shall assign to Buyer upon the Closing Date all of Seller's rights to any condemnation awards by depositing an assignment of said award with the Escrow Agent; or (ii) terminate this Agreement and Escrow Agent or Seller, as applicable, shall return the Deposit to Buyer, less one-half (½) of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees; and neither party shall have any further obligations or liabilities to each other, except that Buyer's indemnity obligations under this Agreement shall survive any such termination.

9.2 Damage and Destruction. Buyer hereby acknowledges that the Property will be unimproved as of the Closing Date. If, between the date of this Agreement and the Closing Date, any portion of the Property is materially damaged or destroyed by an earthquake, flood or any other acts of God to such an extent that it would prevent Buyer's Anticipated Use of the Property, then Buyer shall have the option by written notice to Seller to: (i) terminate this Agreement and Buyer shall have no obligation to purchase the Property and Seller shall have no obligation to sell the Property to Buyer and Escrow Agent or Seller, as applicable, shall return to Buyer the Deposit, less one-half (½) of Escrow Agent's and Title Insurer's normal escrow and title insurance cancellation fees; or (ii) affirm this Agreement, which shall remain in full force and effect without delaying the Closing and without diminution of the Purchase Price. If, between the date of this Agreement and the Closing Date, any portion of the Property is materially damaged or destroyed by a third party not under the control of Buyer, to such an extent that it would prevent the operation of the Buyer's Anticipated Use of the Property, then Seller shall have the right to cure such damage or destruction and only if Seller elects not to cure, then Buyer shall have the option to terminate or affirm this Agreement in accordance with the terms set forth in this Section.

ARTICLE X
REPURCHASE OPTION

10.1 Grant of Option. Buyer has represented to Seller that Buyer is acquiring the Property to develop the Buyer's Improvements for the operation of the Buyer's Anticipated Use. Buyer acknowledges that Seller is engaged in master-planning the development of its lands in Hunters Point Shipyard, of which the Property is a part. Buyer acknowledges that patchwork development or the holding of land for speculative purposes will retard and adversely affect the orderly development of and value of Seller's master planned community. To achieve orderly development and as provided in the Horizontal DDA, it is necessary to control the sale of parcels to selected developers in order to encourage development by persons or entities desiring to construct improvements and having the knowledge, expertise, good reputation and financial capability to do so in a timely fashion. Seller has agreed to sell the Property to Buyer in part in reliance on Buyer's representation that it would develop the Property as represented in this Agreement. Effective upon Close of Escrow, Buyer hereby grants to Seller or Seller's nominee

an option to repurchase the Property (in part or in whole) upon the terms and conditions specified below in this Article X ("Repurchase Option").

10.2 Exercise of Option. Seller or Seller's nominee has the right to exercise the Repurchase Option if: (i) Buyer has failed to Commence Construction of the Buyer's Improvements on the Property on or before the date prescribed therefore in the Vertical DDA, subject to extension due to Unavoidable Delay in accordance with Section ____ of the Vertical DDA and Events of Force Majeure in accordance with Section 10.6 below; or (ii) if Buyer, having commenced construction of Buyer's Improvements, fails to Complete Construction of the Buyer's Improvements within the time period(s) prescribed in the Vertical DDA, subject to extension due to Unavoidable Delay in accordance with Section ____ of the Vertical DDA and Events of Force Majeure in accordance with Section 10.6 below; or (iii) if, after the Construction Commencement Date, Buyer fails to continuously construct the Buyer's Improvements to completion as required by the Vertical DDA. The Repurchase Option shall be evidenced by recordation of the Memorandum in the real estate records of the City and County of San Francisco, which will be prepared by Seller prior to the Close of Escrow in substantially the same form as Exhibit D attached hereto.

A. Commencement of Construction. For purposes of this Article X, the term "Commenced Construction" shall have the meaning set forth in Section ____ of the Vertical DDA.

B. Construction Completion. The term "Complete Construction" as used in this Agreement shall have the meaning set forth in Section ____ of the Vertical DDA.

C. Subordination of Option. Seller agrees to subordinate its Repurchase Option to a construction deed of trust that secures Buyer's obligation to repay a construction loan that Buyer obtains from an independent third party to finance the construction of the Buyer's Improvements that complies with the terms of Section ____ of the Vertical DDA.

D. Exercise of Option. In the event that Buyer fails to Commence Construction or Complete Construction by the dates prescribed by Section ____ of the Vertical DDA and the Schedule of Performance set forth as Attachment ____ thereto, or to continuously construct the Buyer's Improvements to completion as required by the Vertical DDA, Seller shall have the right to exercise the Repurchase Option for the Property or any portion thereof, by delivering written notice to Buyer of Seller's election to exercise its Repurchase Option; provided, however, in any event, the Repurchase Option shall expire upon the earlier of: (i) the date Buyer Completes Construction of the Buyer's Improvements for the Buyer's Anticipated Use; or (ii) the ____ anniversary of the Closing Date. Upon Buyer's delivery of a written request, Seller shall execute an estoppel certificate confirming Buyer's compliance with this Section, provided that any and all fees, charges or costs (including Seller's reasonable attorneys' fees) reasonably incurred by Seller in processing such request for an estoppel certificate shall be paid by Buyer.

10.3 Development. Buyer shall construct _____ building(s) containing approximately _____ square feet of building area on the Property and ancillary landscaping, parking (surface parking or otherwise) and other required improvements

encumbrances, unless the delinquency was caused by Seller's failure to perform its obligations under this Agreement.

10.5 License. During any period of time that Seller or its nominee has the right to exercise the Repurchase Option and during any period of time that Buyer is in default under its construction obligations, Buyer agrees that Seller and its agents, representatives, contractors and subcontractors may enter upon the Property in order to inspect the Property and any improvements thereon so long as such activities do not: (i) damage the Property; (ii) unreasonably interfere with any activities of Buyer; (iii) damage any work of improvement on the Property; or (iv) impair the drainage of the Property; provided, however, that Seller shall keep the Property free and clear of any mechanics' liens or materialmen's liens arising out of any such activities; and provided further, Seller shall indemnify, defend, protect and hold Buyer harmless from and against any such mechanics' or materialmen's lien claims arising out of the Seller's inspection of the Property.

10.6 Extension of Construction Commencement Date. The time periods used to calculate the Construction Commencement Date and the date Buyer is deemed to Complete Construction for Buyer's Improvements shall be subject to extension for the period of any delay encountered by Buyer following the Close of Escrow in commencing or completing the construction of Buyer's Improvements described in Section 10.3 above resulting from Events of Force Majeure as defined in Section 12.2 below; provided that Buyer gives written notice to Seller of the occurrence of the event causing such delay within five (5) days after the occurrence of any such Event of Force Majeure. If Buyer fails to deliver timely written notice of any such Event of Force Majeure, Buyer shall not be entitled to any such extension. Once construction of Buyer's Improvements has commenced, Buyer's obligation to diligently prosecute the same to completion shall be subject to delay for any Events of Force Majeure, provided that Buyer gives written notice to Seller of the occurrence of the event causing such delay within five (5) days of the occurrence of any such event.

10.7 Assignment of Warranties and Plans. In the event the Property or any portion thereof is transferred to Seller or its nominee hereunder, all warranties in which Buyer may then have an interest relating to work, labor, skill or materials furnished in connection with the construction of any improvements on the Property or portion thereof transferred shall thereupon be deemed assigned to and the property of Seller or its nominee without further act or consideration. Also, in the event of such transfer, all plans and specifications which have been prepared by or for Buyer related to improvements on the Property or portion thereof transferred or to the adjacent lands of Seller, whether constructed or not, shall be deemed assigned to Seller or its nominee without consideration or expense to Seller or its nominee. Buyer agrees to execute, within ten (10) days of a request by Seller or its nominee, such documents as Seller or its nominee reasonably requests to document the foregoing assignments.

10.8 Subordination to Agency Right of Reverter. Seller and Buyer each agree and acknowledge that Seller's Repurchase Option shall be subject and subordinate to the Agency's right of reverter set forth in Section _____ of the Vertical DDA and that Seller shall have no right to exercise such Repurchase Option unless and until (i) the time period set forth in Section _____ of the Vertical DDA for exercise of such right of reverter shall have expired without Agency's

initiation of enforcement proceedings thereof or (ii) Agency shall have notified Seller and Buyer that it chose not to exercise right of reverter.

ARTICLE XI **ASSIGNMENT, ASSUMPTION AND INDEMNIFICATION**

Buyer and Seller hereby acknowledge that certain obligations of Seller under the Horizontal DDA and the Community Benefits Agreement relate to the ownership and operation of the Lot(s) and that those obligations will be assumed and performed by Buyer and that Buyer shall indemnify Seller with respect to the performance of such obligations, as well as to the performance of Buyer's obligations under the Vertical DDA, all as more particularly set forth in the Assignment, Assumption and Indemnification Agreement attached as Exhibit E hereto.

ARTICLE XII **MISCELLANEOUS**

12.1 Assignment.

A. Consent Required. Except as permitted in Section 12.1B below, Buyer shall neither assign its rights nor delegate its obligations under this Agreement without obtaining Seller's prior written consent, which consent may be withheld in Seller's sole and absolute discretion. Upon the receipt of Seller's written consent, Buyer, Seller and Buyer's proposed assignee shall execute a written assignment and assumption agreement in a form reasonably acceptable to Seller, in which such assignee assumes all of Buyer's obligations under this Agreement. In no event shall any such assignment release Buyer from any obligations or liability under this Agreement or delay the Close of Escrow. Prior to the delivery of any such assignment executed by Seller, Buyer shall reimburse Seller for Seller's reasonable attorneys' fees and costs incurred by Seller in connection with facilitating any such assignment.

B. Permitted Assignment. Notwithstanding the foregoing, Buyer shall have the right to assign this Agreement to (i) a partnership of which Buyer is the managing general partner, (ii) a limited liability company in which Buyer is the managing member, or (iii) an entity in which Buyer holds at least a majority of each class of voting stock and controls all of the major decisions of such partnership or entity (an "Affiliate"), provided Buyer obtains Seller's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed, and any such Affiliate assumes in writing, the obligations of Buyer under this Agreement. Seller's consent to a proposed assignment shall be based upon the proposed assignee's reputation, experience, financial resources and access to credit, and capability to successfully carry out the development of the Property to completion. Except as expressly provided otherwise in this Section 12.1, any purported or attempted assignment or delegation without obtaining Seller's prior written consent shall be void and of no effect and shall constitute a breach of this Section. In no event shall any such assignment shall release Buyer from any obligations or liability under this Agreement or delay the Close of Escrow. Prior to the delivery of any such assignment executed by Seller, Buyer shall reimburse Seller for Seller's reasonable attorneys' fees and costs incurred by Seller in connection with facilitating any such assignment.

C. Vesting Information. Within ten (10) days prior to the Closing Date, Buyer shall notify Seller and Escrow Agent, in writing, of Buyer's vesting information, unless Buyer intends to vest title to the Property in _____, a _____. If Buyer fails to notify Seller and Escrow Agent of Buyer's correct vesting information prior to such ten (10) day period, Buyer shall pay Seller's cost to amend this Agreement and revise the closing documents set forth in Section 4.1B.

12.2 Events of Force Majeure. As used in this Agreement, "Event of Force Majeure" shall mean any delay encountered by Buyer or Seller in carrying out its obligations under this Agreement resulting from strikes, lockouts, earthquakes, floods, unavailability of labor, inclement weather, unavailability of standard materials or customary facilities, equipment or supplies, governmental building moratoriums, governmental or administrative action or inaction, riot, insurrection, mob violence or civil commotion, war, acts of God or other acts beyond the reasonable control of Buyer or Seller (financial condition of Buyer, volatility of the capital markets and/or a downturn in the economy excepted) (individually or collectively, "Events of Force Majeure").

12.3 No Foreign Investors. Seller warrants and represents to Buyer that Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations). Seller shall execute and deliver to Buyer at the Closing the Affidavit substantially in the form of Exhibit C attached to this Agreement, certifying the representations and warranties made pursuant to this Section.

12.4 Attorneys' Fees. If any action, proceeding or arbitration is brought to interpret or enforce the terms of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to all other damages, all costs and expenses of such action, proceeding or arbitration, including but not limited to actual attorneys' fees, witness fees' and court costs. The phrase "prevailing party" as used in this Section shall mean the party who receives substantially the relief desired whether by dismissal, summary judgment or otherwise. The terms of this Section shall survive the Close of Escrow and shall not be merged with the Deed.

12.5 Notices. All notices and requests under this Agreement shall be in writing and shall be sent by personal delivery, facsimile or e-mail (with hard copy to follow the next business day by overnight mail), by certified or registered mail, postage prepaid, return receipt requested, nationally recognized overnight mail carrier such as FedEx or delivered in person to the following street addresses:

SELLER:

Lennar/BVHP Partners
c/o Lennar Partners
18401 Von Karman, Suite 540
Irvine, California 92612
ATTN: Hunter's Point Asset Manager
Phone: - _____
Facsimile: (949) 442-6175
E-Mail: _____

With a copy to:

Lennar Partners
18401 Von Karman, Suite 540
Irvine, California 92612
ATTN: General Counsel
Phone: - _____
Facsimile: (949) 442-6175
and

Sheppard, Mullin, Richter and Hampton, LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA j 94111-4106
Attn: Robert A. Thompson, Esq.
Facsimile: (415) 434-3947

BUYER:

Attention: _____
Telephone: _____
Facsimile: _____
E-Mail: _____

With a copy to:

Attention: _____
Telephone: _____
Facsimile: _____
E-Mail: _____

Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Facsimile: (415) 749-2525

With a copy to:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Legal Division
Facsimile: (415) 749-2525

All notices shall be effective upon the earlier of personal delivery or receipt of a facsimile confirmation statement, if sent by facsimile, or receipt of confirmation of delivery, if delivered by e-mail or a nationally recognized overnight mail carrier or seventy-two (72) hours after deposit in the United States mail; provided, however, receipt of the Purchase Price shall only be effective upon actual receipt in the form required under Section 2.4 above. Either party may change its address or designate a new street address for notices under this Agreement by notice complying with the terms of this Section.

12.6 Cooperation. Buyer and Seller acknowledge that it may be necessary to execute documents other than those specifically referred to in this Agreement to complete the acquisition of the Property. Each party shall fully cooperate with the other in connection with the requirements imposed by this Agreement upon the other, to the end that neither party shall act in any manner to impede the other in performing its obligations under this Agreement. Buyer and Seller hereby agree to cooperate with each other by executing such other documents or taking such other action as may be reasonably necessary in accordance with the intent of the parties as evidenced by this Agreement, provided such documents do not create any additional liability or expense for such party not contemplated by this Agreement.

12.7 Survival. Seller's representations and warranties shall not survive the Close of Escrow. Buyer's representations, warranties and obligations under this Agreement shall survive the Close of Escrow and shall not be merged into or defeated by the execution, delivery or recordation of the Deed given in connection with this Agreement. By consummating the transaction contemplated by this Agreement, Buyer waives its rights under any written disclosures made to Buyer by Seller or any other entity prior to the Closing. If prior to the Closing, Buyer receives notice of any information which indicates that any of Seller's representations and warranties are untrue, Buyer shall promptly notify Seller in writing of such information. If Buyer fails to promptly notify Seller prior to the Closing, Buyer shall be deemed to have waived its rights with respect to any such representation and warranty. If Buyer waives any representation or warranty, then Seller shall have no liability under this Agreement for such representation or warranty to the extent waived. Notwithstanding anything to the contrary in this Agreement, Buyer's obligations under Section 12.4 (Attorneys' Fees), Section 12.11 (Confidentiality) of this Agreement and Buyer's indemnity obligations shall survive any early termination of this Agreement or the recordation of the Deed.

12.8 Interpretation. This Agreement shall be construed and enforced in accordance with the laws of the State of California as applicable to contracts entered into in California among parties doing business therein. This Agreement contains the entire agreement between the parties respecting the purchase and sale of the Property and supersedes all prior negotiations, discussions, understandings and agreements, both oral and written, between the parties with respect to such matters. This Agreement may not be modified or amended in any way except by a writing executed by both Buyer and Seller. Exhibits A through ___ as attached to this Agreement, are hereby incorporated by this reference in this Agreement. The section headings of this Agreement are for convenience only and are not to be construed as part of this Agreement and do not in any way amplify or define the terms, conditions, and covenants of this Agreement and shall not be used in construction or interpretation of this Agreement. There are no third-party beneficiaries to this Agreement. Unless the context otherwise indicates, whenever used in

this Agreement, the word "party" or "parties" means Buyer or Seller or both, as the context may require. Time is of the essence in the performance of each term of this Agreement.

12.9 Successors and Assigns. Subject to the restrictions set forth in Section 12.1, this Agreement shall be binding upon and inure to the benefits of the heirs, successors and assigns of the parties to this Agreement. In no event shall Buyer have any right to delay or postpone the Closing to create a partnership, corporation or other form of business association or to obtain financing to acquire title to the Property or to coordinate with any other sale, transfer, exchange or conveyance.

12.10 Severability. If any term or provision of this Agreement is determined to be invalid or unenforceable, the remaining terms and provisions shall not be affected thereby and shall remain in full force and effect to the maximum extent permitted by law.

12.11 Duty of Confidentiality. Buyer represents and warrants that Buyer shall keep all information related to or connected with the terms of this Agreement and this transaction, confidential and will not disclose any such information to any person or entity without obtaining the prior written consent of the Seller, except that Buyer shall have the right to disclose to: (i) attorneys, consultants, accountants, lenders and other professionals required to perform Buyer's obligations or exercise Buyer's rights under the Agreement; and (ii) if required by applicable law or court order. Buyer shall enter into confidentiality agreement(s), in the form attached hereto as Exhibit F, with all contractors, subcontractors, consultants and architects that Buyer hires to assist Buyer in developing the Property and/or constructing any portion of Buyer's Improvements.

12.12 Trade Names and Trademarks. Neither Buyer nor any lessee of Buyer shall make any use, commercial or otherwise (except to the extent necessary to identify the Property or such party's business), of the names or marks "BVHP Partners" "Lennar Communities" "Lennar Homes" "LNR Property", and/or any other similar names or marks without the prior written consent of Seller, nor shall Buyer or any lessee of Buyer otherwise engage in any conduct inconsistent with Seller's sole and exclusive rights to its trade names, service marks and trademarks, including but not limited to the foregoing.

12.13 Buyer's Post-Closing Claims; Nonrecourse to Partners. If Seller breaches this Agreement, no claim may be made by Buyer against any partner, officer, director, agent, employee, shareholder, unitholder, affiliate or attorney of Seller or any of their respective partners (individually and collectively, "Seller Related Parties") and no Seller Related Parties shall have any personal liability to Buyer for any damages, including, without limitation, any special, indirect, consequential or punitive damages, in respect to any claim for breach of contract or any other theory of liability arising out of or related to the transaction contemplated by this Agreement or any act, omission or event occurring in connection therewith. Buyer hereby waives, releases and agrees not to sue the Seller Related Parties on any claim for any such damage, whether or not accrued and whether or not known or suspected to exist in its favor. Prior to the Closing, if Seller breaches this Agreement, Buyer's sole recourse shall be limited to Seller's interest in the Property and the profits and proceeds therefrom. After the Closing, if Buyer makes any claim against Seller, Buyer's sole recourse shall be limited to the assets of Seller up to a maximum amount of the Purchase Price.

12.14 Execution Date. The execution date of this Agreement for all purposes shall be the date set forth on page 1 hereof.

12.15 Dates. Whenever any determination is to be made or action is to be taken on a date specified in this Agreement, if such date shall fall on Saturday, Sunday or legal holiday under the laws of the State of California, then in such event said date shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

12.16 Marketing. Prior to the later of the expiration of the Review Period or the release of the Deposit to Seller, Seller reserves the right to continue to market the Property for sale prior to the Closing. In connection with the foregoing, Seller shall also have the right to accept offers for the purchase and sale of the Property from third parties; provided, however, such offers shall be contingent upon the termination of this Agreement prior to the Closing Date.

12.17 Signage. Within sixty (60) days after the Close of Escrow, Buyer shall install at least one (1), but not more than two (2) temporary signs (individually and collectively, the "Signs"), within the setback area of the Property describing the Buyer's Anticipated Use of the Property. Buyer shall install and maintain the Signs in accordance the Redevelopment Requirements, all applicable ordinances and governmental regulations, Buyer shall have the right to temporarily remove and/or relocate the Signs to facilitate Buyer's construction of the Buyer's Improvements on the Property. If Buyer fails to install the Signs within such sixty (60) day period, then Seller shall have the right, but not the obligation, at Buyer's sole cost and expense, to install the Signs on the Property. If Seller installs the Signs on the Property pursuant to this Section, then Buyer shall reimburse Seller for the reasonable costs and expenses incurred by Seller to install the Signs plus an administrative fee of fifty percent (50%) of such costs, within thirty (30) days after delivery of a written demand from Seller.

12.18 Counterparts; Telefacsimile Execution. This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same or original counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement. Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) document.

(Signature Page Follows Immediately)

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

"BUYER":

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Dated: _____, 20____

"SELLER":

Lennar/BVHP, LLC,
a California limited liability company

By: _____

Name: _____

Its: Managing Member

By: _____

Name: _____

Its: _____

Dated: _____, 20____

EXHIBIT A

(Legal Description of the Property)

EXHIBIT C

(Form of Non-Foreign Investor Affidavit)

AFFIDAVIT

The undersigned is _____ of Lennar/BVHP, LLC, a California limited liability company ("Seller"), and hereby certifies to _____, a _____ ("Buyer"), as follows:

1. Seller understands and acknowledges that this Affidavit may be disclosed to the Internal Revenue Service by Buyer in connection with that certain Standard Purchase and Sale Agreement and Escrow Instructions dated as of _____, 2003 (collectively, with any and all amendments thereto, the "Purchase Agreement"), between Buyer and Seller, as evidence of Buyer's compliance with Section 1445 of the Internal Revenue Code;

2. Seller is not a foreign individual, foreign corporation, foreign partnership, foreign trust or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

3. Seller's U.S. Employer Identification Number is _____;

4. Seller's office address is _____;

5. Seller further understands and acknowledges that this Affidavit may be disclosed to the Franchise Tax Board of California by Buyer in connection with the Purchase Agreement;

6. Sections 18805 and 26131 of the California Revenue and Taxation Code provide that a buyer may be required to withhold 3 1/3% of the sales price of the California property sold by a non-resident seller, unless the sales price of the property is less than \$100,000.00;

7. Seller is a California resident and not subject to any withholding pursuant to Sections 18805 and 26131 of the California Revenue and Taxation Code; and

8. Seller's California residence address is _____

The undersigned understands that any false statements contained in this Affidavit could be punished by fine or imprisonment or both. The undersigned certifies under penalty of perjury that the foregoing is true and correct.

Dated as of this ____ day of _____, 20____, at _____, California.

Lennar/BVHP, LLC
(a California Limited liability company)

By: _____
Its: Managing Member

By: _____
Its: _____

EXHIBIT D

(Memorandum of Repurchase Option)

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:
Lennar/BVHP LLC
(A California limited liability company)

Attention: _____

THIS SPACE ABOVE FOR RECORDER'S USE

MEMORANDUM OF REPURCHASE OPTION

THIS MEMORANDUM OF REPURCHASE OPTION ("Memorandum") is made and entered into as of this ____ day of _____, 20__, by and between Lennar/BVHP, LLC (a California limited liability company) ("Seller") and _____, a _____ ("Buyer").

RECITALS

By that certain Purchase and Sale Agreement and Joint Escrow Instructions dated as of _____, 20__ (collectively, with any and amendments thereto, the "Agreement"), executed by Buyer and Seller, Buyer agreed to purchase from Seller that certain real property ("Property") located in the City and County of San Francisco, State of California, more particularly described in Exhibit A attached to this Memorandum and incorporated into this Memorandum by this reference.

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller agree as follows:

AGREEMENT

1. Buyer hereby grants to Seller an option to repurchase the Property or any portion thereof ("Repurchase Option") for the period and upon the terms, covenants, conditions and provisions set forth in Article X of the Agreement. All of the terms, covenants and provisions of such Repurchase Option are hereby incorporated into this Memorandum by reference.
2. Seller covenants, for itself, its successors and assigns, as the holder of the Repurchase Option, to execute and deliver to Buyer, its successors or assigns, as the owner of the Property, upon written request, a quitclaim deed sufficient to terminate (or partially terminate) the Repurchase Option of record, at any time following expiration (or partial expiration, as the case may be) of the Repurchase Option.
3. This Memorandum is to be recorded in the Official Records of the City and County of San Francisco, California, immediately following the recordation of the deed pursuant to which Seller has conveyed its fee interest in the Property to Buyer.

4. This Memorandum may be executed in counterparts, all of which shall constitute the same Memorandum, notwithstanding that all parties to this Memorandum are not signatory to the same or original counterpart.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first set forth above.

"BUYER":

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Dated: _____, 20____

"SELLER":

Lennar/BVHP, LLC, a California limited liability company

By: _____

Its: Managing Member

By: _____

Name: _____

Its: _____

Dated: _____, 20____

EXHIBIT E
(DESCRIPTION OF ADJACENT PROPERTY)

EXHIBIT F

(Form of Confidentiality Agreement)

CONFIDENTIALITY AGREEMENT

This Confidentiality Agreement ("Agreement") is made by and among Lennar/BVHP, LLC (a California limited liability company) ("Owner"), _____, a _____ ("Buyer"), and _____, a ("Consultant"), in connection with the work performed by Consultant as the contractor, subcontractor, consultant or architect with respect to that certain real property commonly referred to as _____, located in the City and County of San Francisco, California (the "Property"). The terms "Consultant" and "Buyer" shall include their respective employees, directors, officers, members, agents and partners.

For valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner, Buyer and Consultant agree as follows:

1. Consultant may be supplied with or may obtain certain data and information (including terms of a purchase and sale agreement or removal and recompaction specifications) regarding the Property in connection with Consultant's supply of labor, materials, advice, plans, and blueprints, among other things, for the development of the Property for Buyer, all of which data and information is confidential and proprietary property ("Confidential Information") of the Owner and/or Buyer.

2. Consultant and Buyer agree that any Confidential Information shall be maintained in strict confidence by Consultant and/or Buyer and shall not be disclosed to any third person without the prior express written consent of the Owner unless required by applicable law or court order. Consultant and Buyer agree to limit the dissemination of and access to the Confidential Information only to persons within Consultant's and/or Buyer's organization who have a need for the Confidential Information and who have entered into a restrictive agreement prohibiting such personnel from doing anything with respect to the Confidential Information that Consultant and Buyer would itself be prohibited from doing under this Agreement. Upon the written request of the Owner, Consultant shall deliver to Owner all Confidential Information received by or generated by Consultant and all copies, notes, compilations, extracts and other written materials of Consultant relating to the Confidential Information.

3. This Agreement shall be governed by the laws of the State of California. Consultant, Buyer and Owner agree that Owner will be irreparably damaged by a breach of this Agreement by Consultant and/or Buyer and that the Owner shall be entitled to injunctive relief to bar the disclosure of any Confidential Information and the recovery of reasonable attorneys' fees and expenses in addition to any other rights or remedies Owner may have against Consultant and/or Buyer under this Agreement or applicable law.

4. This Agreement may be executed in counterparts, all of which shall constitute the same Agreement, notwithstanding that all parties to this Agreement are not signatory to the same or original counterpart. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver an original executed counterpart of this Agreement, but the failure to deliver an original executed counterpart shall not affect the validity, enforceability and binding effect of this Agreement.

Signature and acknowledgement pages may be detached from the counterparts and attached to a single copy of this Agreement to physically form one (1) document.

IN WITNESS, WHEREOF, the parties hereto have executed this Agreement as of this ____ day of _____, 20__.

"CONSULTANT":

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

Dated: _____, 20__

"BUYER":

a _____

By: _____

Name: _____

Its: _____

By: _____

Name: _____

Its: _____

"OWNER":

Lennar/BVHP, LLC
(a California limited liability company)

By: _____

Its: Managing Member

By: _____

Its: _____

ATTACHMENT D

FORM OF REVERSIONARY GRANT DEED

WHEN RECORDED MAIL TO:

Redevelopment Agency of the City and
County of San Francisco
770 Golden Gate Avenue
San Francisco, CA 94102

Parcel _____, Assessor's Block _____, Lot(s) _____

Space Above This Line Reserved for Recorder's Use

Exempt from documentary transfer tax
pursuant to California Revenue and
Taxation Code § 11922.

GRANT DEED

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged,
_____, a _____,
hereby GRANTS to the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and politic, of the State of California ("the Agency"), the real
property in the City and County of San Francisco, State of California, described in the attached Exhibit
1.

SUBJECT, however, to: (a) the Disposition and Development Agreement Hunters Point Shipyard
Phase I, between the Agency and LENNAR/BVHP, LLC, a California limited liability company doing
business as Lennar/BVHP Partners, dated December 2, 2003, and recorded on _____, 200_ as
Document No. _____ in the Office of the Recorder of the City and County of San Francisco (the
"Official Records"), as amended from time to time (the "Horizontal DDA"); (b) the Disposition and
Development Agreement Hunters Point Shipyard Vertical Development Phase ___, Lot___, by and
among LENNAR/BVHP, LLC, a California limited liability company dba Lennar/BVHP Partners, the
Agency and _____, a _____ dated _____, 200_,
and recorded on _____, 200_ as Document No. _____ in the Official Records, as amended
from time to time (the "Vertical DDA"); (c) the Redevelopment Plan prepared by the Agency and
approved by the City, acting through its Board of Supervisors, by Ordinance No. _____ adopted
on July 14, 1977 and recorded on _____, ___ as Document No. _____ in the Official
Records, as amended from time to time (the "Redevelopment Plan"); (d) the Declaration of
Restrictions [describe], and recorded on _____, ___ as Document No. _____ in the
Official Records of the City, as amended from time to time (the "Declaration of Restrictions); and (e)
the exceptions, covenants, conditions and restrictions listed on the attached Exhibit 2 and incorporated
by this reference.

Dated _____, a
STATE OF CALIFORNIA }
COUNTY of _____ }

On _____
before me, the understated, a Notary Public in and for said State,
personally appeared _____
personally known to me (or proved to me on the basis of satisfactory
evidence) to be the person(s) whose name(s) is/are subscribed to the

within instrument and acknowledged to me that he/she/they
executed the same.
WITNESS my hand and official seal.

Signature _____

By: _____
Its: _____

ATTACHMENT E
FORM OF RELEASE OF HORIZONTAL DDA

ATTACHMENT F

AFFORDABLE HOUSING PROGRAM

This Affordable Housing Program (the "Program") is attached to and made a part of the Disposition and Development Agreement Hunters Point Shipyard Vertical Development Lot ____ (the "Vertical DDA"), pursuant to that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1, by and between the Redevelopment Agency of the City and County of San Francisco (the "Agency") and Lennar/BVHP, LLC ("Developer") Lot ____ (the "Horizontal DDA"). This Attachment sets forth the rights and obligations of Agency and Vertical Developer in connection with the Program. Agency and Vertical Developer are bound by this Program as part of the obligations they assume, and benefits they receive, under the Vertical DDA.

Section 1 Overview.

1.1 Affordable Units. Pursuant to the Horizontal DDA, Phase 1 will include approximately 1,600 Residential Units. At least thirty-two percent (32%), and as much as forty-four percent (44%), of the Residential Units will comprise Affordable Housing for low- and moderate-income residents.

1.2 Baseline Affordable Housing. The baseline Phase 1 Affordable Housing Units will consist of (a) approximately three hundred twenty (320) Agency Affordable Housing Units to be built on Agency Housing Parcels and (b) Inclusionary Units comprising fifteen percent (15%, or approximately one hundred ninety-two (192) units) of the total Vertical Developer Residential Units to be built by third-party Vertical Developers, including Developer Affiliates, in Phase 1.

1.3 Option Units. Agency will also have the right to purchase up to an additional fifteen percent (15%, or approximately one hundred ninety-two (192) units) of the total Vertical Developer Residential Units to be built in Phase 1, on the terms and conditions set forth in this Program.

1.4 Income Targets. The median income in the Bayview Hunters Point community is approximately eighty percent (80%) of AMI. For-Sale Affordable Housing Units will be priced for households earning an average of eighty percent (80%) of AMI. For-Rent Affordable Housing Units will be priced for households earning no more than fifty percent (50%) of AMI. These income targets are approximately ten percent to twenty percent (10-20%) lower than those typically required for affordable housing units built in the City. Current HUD income levels are available from the Agency.

1.5 Affordable Residential Unit Distribution. Pursuant to the Horizontal DDA, Affordable Housing Units will be evenly distributed throughout Phase 1. The overall Phase 1 housing program for all Vertical Developer Residential Units will feature a mix of For-Rent and For-Sale Residential Units with thirty percent (30%) For-Rent and seventy percent (70%) For-Sale. The Agency will consider minor variations to this rate so long as the overall weighted average affordability level of the Inclusionary Units does not exceed sixty-eight percent (68%) of AMI (as defined in Section 2 below). The distribution of Affordable Units within Phase 1 (including the allocation of Affordable Units between For-Rent and For-Sale) consists of a fifteen percent (15%) Inclusionary Unit Requirement for each Residential Project, unless Agency and Developer or

Vertical Developer agree otherwise. A Declaration of Rental Use Restriction, restricting Residential Units to For-Rent rather than For-Sale, substantially in the form attached as Exhibit 1, will be recorded against each For-Rent Residential Unit in Phase 1, whether the Residential Unit is Affordable or Market Rate. A Declaration of Restrictions for For-Rent Affordable Housing Units, restricting For-Rent Affordable Residential Units to the specified affordability level, substantially in the form attached as Exhibit 2, will be recorded against each For-Rent Affordable Residential Unit in Phase 1. Each For-Sale Affordable Residential Housing Unit must be sold to qualified members of the public as evidenced by an Affordable Housing Parcel Deed substantially in the form specified in Exhibit 3. A Declaration of Restrictions for For-Sale Affordable Housing Units and Option to Purchase Agreement, restricting For-Sale Affordable Residential Units to the specified affordability level, substantially in the form attached as Exhibit 3, will be recorded against each For-Sale Affordable Residential Unit.

1.6 Buyer Assistance. Vertical Developer will coordinate with appropriate agencies and financial institutions to provide qualified home buyers with access to down payment assistance, first-time buyer financing programs (from such entities as Fannie Mae, Federal Home Loan Bank, and similar entities) and homeownership counseling services as needed.

Section 2 Definitions.

Terms not defined in this Program have the meanings given to them in the Vertical DDA.

Addendum to Deed of Trust has the meaning set forth in Section 3.3 and is substantially in the form of Appendix C to Exhibit 3.

Affiliate has the meaning set forth in the Agreement as follows: A Person in which Vertical Developer directly or indirectly owns and/or controls (a) twenty five percent (25%) or more (or if such Person is not publicly traded, fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (b) twenty five percent (25%) or more (or if such Person is not publicly traded, fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person.

Affordable means, (a) with respect to a For-Rent Residential Unit, a monthly rental charge, including a utility allowance in an amount determined by the San Francisco Housing Authority, which does not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income, based upon Imputed Household Size; and (b) with respect to a For-Sale Residential Unit, a purchase price based on a five percent (5%) down payment and a rate for a thirty (30) year fixed mortgage based on } the higher of 1) the ten-year rolling average interest rate, as calculated by the Agency (or its successor) based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage financing institution, or 2) the current, commercially reasonable rate available through an Agency-approved lender, with a total of annual payments for principal, interest, taxes, assessments and homeowner's association dues which does not exceed thirty-three percent (33%) of the Program Income Level.

[Agency Affordable Housing Units means the Residential Units constructed on Agency Housing Parcels.]

[**Agency Housing Parcels** means the parcels to be retained by Agency and designated as Agency Housing Parcels on the map attached as Attachment 2 to the Horizontal DDA.]

Area Median Income (AMI) means the area median income for a household, adjusted solely for actual household size, and not adjusted for other factors, including but not limited to, HUD high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

[**Business Day** has the meaning set forth in the Agreement, as follows: A day other than a Saturday, Sunday or a state or federal holiday.]

City means the City and County of San Francisco, California, a municipal corporation.

Close or Closing for Option Units means the recordation of the deed evidencing the conveyance of Option Units to the Agency.

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

Declaration of Rental Use Restriction has the meaning set forth in Section 3.1 and is substantially in the form attached as Exhibit 1.

Declaration of Restrictions for For-Rent Affordable Housing Units has the meaning set forth in Section 3.3 and is substantially in the form attached as Exhibit 2.

Declaration of Restrictions for For-Sale Affordable Housing Units and Option to Purchase Agreement has the meaning set forth in Section 3.3 and is substantially in the form attached as Exhibit 3.

Design Review and Document Approval Procedure for Vertical Improvements means the document by that name, attached to the Vertical DDA as Attachment __, as it may be amended from time to time.

Developer means LENNAR/BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners.

Direct Costs means all costs incurred by Vertical Developer in constructing the Units, excluding Land Cost, Indirect Costs, and Vertical Developer Profit, for each Major Residential Phase. Direct Costs shall include costs and expenses actually incurred and paid for construction of the Units, including fees for inspections and building permits and other permit fees, the fees of engineers, surveyors and architects providing services in connection with the construction of Units for each Major Phase, and the costs of options and upgrades to the Units, but shall specifically exclude amounts paid to any Affiliate of the Vertical Developer unless Agency gives its prior written approval. Agency will not unreasonably withhold its approval so long as Vertical Developer provides supporting information substantiating that any such payments do not exceed amounts that would be payable to non-related parties in an arms length transaction for similar services within the City. The amount of any Direct Costs is subject to verification and reasonable approval by Agency.

Any costs that cannot be reasonably verified through statements and invoices shall not be included as "Direct Costs." Vertical Developer shall timely provide to Agency a schedule specifically identifying and substantiating all Direct Costs claimed, showing in particular the basis on which Direct Costs were allocated to the Units in a particular Major Phase, together with supporting materials, in a form reasonably satisfactory to Agency.

Escrow has the meaning set forth in Section 3.5(h).

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

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

Grant Deed has the meaning set forth in Section 3.3.

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

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

Inclusionary Unit means an Affordable Residential Unit to be constructed by a Vertical Developer pursuant to this Program and the Vertical DDA, which shall be either For-Rent or For-Sale housing offered in accordance with the terms of this Program.

Indirect Costs means all costs and charges incurred by the Vertical Developer in constructing Units for each Major Phase, excluding Land Cost, Direct Costs and Vertical Developer Profit. By way of example, Indirect Costs shall include without limitation costs and charges such as site indirect costs, overhead or charges for on-site personnel, depreciation of capital expenditures or equipment, real property taxes and assessments, insurance expenses, financing expenses or interest, the cost of performing warranty work and maintaining warranty reserves, legal fees and expenses, general business taxes or licenses, closing costs incurred in connection with sales of Units and other costs customarily treated as "soft costs" in the home building industry; provided that, Indirect Costs shall specifically exclude (a) sales or marketing expenses, since this term is used to calculate the Option Purchase Price and no marketing or sale expenses are required for Option Units and (b) amounts paid to any Affiliate of the Vertical Developer unless the Agency gives its prior written approval. Agency will not unreasonably withhold its approval so long as Vertical Developer provides supporting information substantiating that any such payments do not exceed amounts that would be payable to non-related parties in an arms length transaction for similar services within the City. The amount of any Indirect Costs is subject to verification and reasonable approval by Agency. Any costs that cannot be reasonably verified through statements and invoices shall not be included as "Indirect Costs." The Vertical Developer shall timely provide to Agency a schedule substantiating all Indirect Costs claimed, showing in particular the basis on which Indirect Costs were allocated to the Units in a particular Major Phase, together with supporting materials, in a form reasonably satisfactory to Agency. The parties agree that irrespective of the Indirect Costs

actually incurred, the amount designated as Indirect Costs for purposes of determining the Option Purchase Price shall not exceed twenty percent (20%) of Direct Costs, provided that builder's risk and property insurance costs will be included in the Option Purchase Price even if they cause Indirect Costs to exceed twenty percent (20%) of Direct Costs.

Infrastructure has the meaning set forth in the Horizontal DDA.

Infrastructure Plan means the document by that name, attached to the Horizontal DDA as Attachment 9, as it may be amended from time to time.

Land Cost means the verified cash purchase price allocated among the Residential Units to be developed in the relevant Major Phase. The Land Cost is subject to verification and reasonable approval by Agency. Any costs that cannot be reasonably verified through closing statements and other documentation shall not be included as "Land Cost." The Vertical Developer shall timely provide to Agency a schedule substantiating all Land Costs claimed, showing in particular the basis on which Land Costs were allocated to the Units in a particular Major Phase, together with supporting materials, in a form reasonably satisfactory to Agency.

Lot(s) means Lot(s) _____ as described in the Vertical DDA to be acquired by Vertical Developer pursuant to the Vertical DDA.

Major Phase means a development segment comprising one or more of the numbered parcels or portions of parcels included with a numbered parcel (or a remainder parcel if so approved by Agency pursuant to the Design Review and Document Approval Procedure for Vertical Improvements), as shown on Attachment 2 to the Horizontal DDA containing one or more Residential Projects.

Major Phase Housing Data Table has the meaning set forth in Section 3.6 and is substantially in the form attached as Exhibit 6.

Market Rate or **Market Rate Residential Unit** means a Residential Unit that has no restrictions under this Affordable Housing Program or the Vertical DDA with respect to affordability levels or income restrictions for occupants.

Memorandum of Option has the meaning set forth in Section 3.5(a) and is substantially in the form attached as Exhibit 5 hereto.

Option Purchase Price has the meaning set forth in Section 3.5(e).

Option Units has the meaning set forth in Section 3.5(a).

Owner means the person or entity holding fee title to a parcel or Residential Unit in Phase 1.

Option Unit Exceptions has the meaning set forth in Section 3.5(c):

Phase 1 means that portion of the Hunters Point Shipyard addressed by, and described in, the Horizontal DDA.

Project Housing Data Table has the meaning set forth in Section 3.7 and is substantially in the form attached as Exhibit 7.

Program Income Level means the maximum AMI allowed for Affordable Units within a development based on Imputed Household Size.

Project Site has the meaning set forth in the Vertical DDA.

Promissory Note Secured By Deed of Trust has the meaning set forth in Section 3.3 and is substantially in the form of Appendix A to Exhibit 3.

Qualified Land Buyer has the meaning set forth in the Agreement.

Redevelopment Requirements has the meaning set forth in the Agreement.

Release of Option Rights means the document, substantially in the form attached as Exhibit 5, in which the Agency releases its right to purchase Vertical Developer Residential Units in a specific Residential Project, other than those specific Option Units that Agency has elected to purchase under this Attachment.

Residential Project means a development containing Residential Units and possibly containing other uses permitted under the Redevelopment Plan for the Hunters Point Naval Shipyard and this Affordable Housing Program, which is undertaken by the Vertical Developer through the Vertical DDA or other land transfer agreements, including but not limited to, ground leases.

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

Short Form Deed of Trust and Assignment of Rents has the meaning set forth in Section 3.3 and is substantially in the form of Appendix B to Exhibit 3.

Title Company has the meaning set forth in Section 3.5(h).

Title Report has the meaning set forth in Section 3.5(b).

Total Residential Units has the meaning set forth in Section 3.

Vertical Developer(s) has the meaning set forth in the Vertical DDA.

Vertical Developer Inclusionary Unit has the meaning given in the definition for Inclusionary Unit.

Vertical Developer Inclusionary Unit Requirement has the meaning set forth in Section 3.2(a).

Vertical Developer Profit has the meaning set forth in Section 3.5(e).

Vertical Improvements has the meaning set forth in the Agreement.

Section 3 Housing Program Under Horizontal DDA.

Under the Horizontal DDA, up to one thousand six hundred (1,600) Residential Units will be constructed in Phase 1 ("Total Residential Units"). Of the Total Residential Units, approximately three hundred twenty (320) Affordable Residential Units may be constructed on Agency Housing Parcels. In addition, Vertical Developers will construct one thousand two hundred eighty (1,280) Residential Units, as further described in this Program. At least thirty percent (30%) of the Vertical Developer Residential Units in Phase 1 will be For-Rent Units, and approximately seventy percent (70%) will be For-Sale Units. Notwithstanding the above, Vertical Developer, with the Agency's consent, may lease the For-Sale Units on an interim basis, prior to sale, for a lease term of up to one year, not to be extended without the Agency's consent. Such For-Sale Units will continue to be identified as For-Sale Units during the lease term and will be sold as For-Sale Units following the expiration of the lease term. At least fifteen percent (15%) of such For-Rent Units and at least fifteen percent (15%) of such For-Sale Units will be Inclusionary Units, as further described below. In addition, Agency has the option to purchase up to an additional fifteen percent (15%) with regard to any of Vertical Developer Residential Units, allocated between For-Rent and For-Sale Units in such proportion as Agency in its sole and absolute discretion elects, as described in Section 3.5. Except as expressly set forth herein, Vertical Developer shall have no obligations under the Horizontal DDA, including, without limitation, performance of the overall affordable housing program pursuant to Attachment ___ thereto, and including, without limitation, any requirement regarding percentage allocation of For-Rent Affordable Units and For-Sale Affordable Units required for the entirety of Phase 1 under the Horizontal DDA.

3.1 Declaration of Rental Use Restriction. As a condition of closing under the Vertical DDA, if such has not already occurred, Vertical Developer will record against any Lot(s) or portions thereof designated for the construction of For-Rent Residential Units a Declaration of Rental Use Restriction substantially in the form attached as Exhibit 1. Vertical Developer will promptly provide to Agency copies of the recorded documents, showing the date of recording and document numbers.

3.2 Vertical Developer Inclusionary Unit Requirement.

(a) Allocation. The Vertical Developer Inclusionary Unit Requirement equals fifteen percent (15%) of the Vertical Developer Residential Units constructed in each Residential Project, unless Agency, Developer and Vertical Developer agree otherwise.

(b) Affordability.

(1) At least fifteen percent (15%) of the For-Rent Residential Units constructed by Vertical Developer in each Residential Project shall be For-Rent Inclusionary Units. These Units can be rented at rates no higher than the Program Income Levels for households earning fifty percent (50%) of AMI, less the utility allowance calculated pursuant to schedules and procedures established by the San Francisco Housing Authority.

(2) At least fifteen percent (15%) of each Residential Project of the For-Sale Residential Units constructed by Vertical Developer in Phase 1 shall be For-Sale Inclusionary Units. These units must be priced such that they are Affordable to households earning no more than eighty percent (80%) of AMI. The pricing is pursuant to the Agency's Limited Equity Homeownership Program, substantially in the form provided as Exhibit D to this Attachment, as may be amended by the Agency from time to time.

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

(d) Marketing and Operations Guidelines. The Vertical Developer's obligations with respect to the marketing and operation of the Inclusionary Units, including without limitation the rental rates of Rental Units, sales prices of For-Sale Units, tenant qualifications and reporting requirements and the Vertical Developer's obligations with respect to marketing and occupancy preferences for the Vertical Developer Market Rate Residential Units are described in Exhibit 8 to this Program.

3.3 Continued Affordability of Inclusionary Units. In no event later than the first rental of a For-Rent Inclusionary Unit or sale of a For-Sale Inclusionary Unit, if such has not already occurred, Vertical Developer will record against such Unit, as applicable, either the Declaration of Restrictions for For-Rent Affordable Housing Units substantially in the form attached as Exhibit 2 hereto or the Declaration of Restrictions for For-Sale Affordable Housing Units and Option to Purchase Agreement substantially in the form attached as Exhibit 3 hereto to ensure continued affordability for a ninety (90) year period after the initial lease or sale of the Unit. Vertical Developer will promptly provide to Agency a copy of the recorded documents, showing the date of recording and document numbers. Any condominium map for each Vertical Developer Residential Project containing Inclusionary Units shall also reflect the above restrictions. Further, Vertical Developer will upon sale of each For-Sale Affordable Housing Unit, promptly provide to Agency a copy of each recorded grant deed, showing the date of recording and document number. The Owner of the For-Sale Affordable Housing Unit shall execute the Short Form Deed of Trust and Assignment of Rents, the Addendum to Deed of Trust, and the Promissory Note Secured By Deed of Trust, in the forms attached as Appendices to Exhibit 3 hereto. The Vertical Developer or Owner will promptly provide to Agency a copy of the recorded documents, showing the date of recording and document numbers.

3.4 Disability Access. Vertical Developer shall comply with all applicable federal, state and local disability access laws, including without limitation the Americans With Disabilities Act, Section 504 of the Rehabilitation Act, the Fair Housing Amendments Act and any other applicable disability access laws. Vertical Developer is responsible for determining those disability access laws applicable to the Project. In addition, prior to occupancy of the Project, Vertical Developer shall provide to the Agency a written reasonable accommodations policy which indicates how Vertical Developer will respond to requests by disabled individuals for accommodations in Units and common areas of the Project.

3.5 Memorandum of Option; Closing.

(a) Option Units. Subject to overall limitation to fifteen percent (15%) of all Vertical Developer Residential Units in Phase 1 set forth in Section ___ of Attachment ___ to the Horizontal DDA, Agency may purchase up to fifteen percent (15%) of the Vertical Developer Residential Units located on each Major Phase from Vertical Developer (the "Option Units") allocated between For-Rent and For-Sale Units in such proportion as Agency in its sole and absolute discretion elects (the "Option"). As a condition to closing under the Vertical DDA, if such has not already occurred, Vertical Developer will record against all Lots in the Project Site the Memorandum of Option in the form attached as Exhibit 4, evidencing Agency's Option, and promptly provide to Agency a copy of the recorded documents, showing the date of recording and document numbers.

(b) Procedure for Exercise of Option. Promptly after completion of the Design Review and Document Approval Procedure for Vertical Development for each Major Phase containing Residential Units, Vertical Developer will deliver to Agency a written notice informing Agency of such completion. The notice will include a description of the Residential Units approved (as For-Sale or For-Rent, number of bedrooms, amenities) and a preliminary title report covering the Residential Units issued by the Title Company (the "Title Report"), together with copies of all documents relating to title exceptions showing in the Title Report. Agency will have ninety (90) days after receipt of the notice and other required information to exercise its Option by written notice to the Vertical Developer, specifying in its notice the Residential Units it intends to purchase (the "Option Units"). Agency may exercise its Option, in whole or in part, until such time as Agency has purchased up to fifteen percent (15%) of the total Phase 1 Vertical Developer Residential Units. Subject to the foregoing limitation, for each Major Phase including Residential Units constructed by Vertical Developer, Agency may purchase up to fifteen percent (15%) of the available Vertical Developer Residential Units in that Major Phase.

(c) Due Diligence. During the ninety (90) day period after Agency's receipt of Vertical Developer's notice and other required information under Section 3.5(b), (i) Vertical Developer will permit Agency and its designated representatives, at reasonable times and after reasonable notice, to review all non-privileged reports, plans, specifications and other information relating to the approved Residential Units and to inspect the site where the approved Residential Units will be or are being constructed and (ii) Agency may object to any exception shown on the Title Report, other than Permitted Exceptions as set forth in the Vertical DDA or any other liens or encumbrances agreed to by Agency in the course of Infrastructure or Vertical Improvement development or otherwise contemplated by the Vertical DDA. If Agency fails to so object, then the new exception will be deemed to be a Permitted Exception. If Agency does so object, then the Vertical Developer at its cost will remove any exceptions created by or on behalf of the Vertical Developer prior to the Close of Escrow on the Option Unit, and in its sole discretion may elect to remove any other exception to which Agency objected. If the Vertical Developer does so elect, it will notify Agency within ten (10) days after receipt of Agency's objection. The title exceptions to which Agency did not object, as well as those to which Agency objected but Vertical Developer elected not to remove, or which are otherwise permitted hereunder are the "Option Unit Exceptions."

(d) Release of the Option. Within ten (10) days after Agency exercises its Option but in no event later than the initial marketing of Residential Units in such Major Phase, Agency will record against the Units in each Major Phase which are not Option Units a Release of Option

Rights in the form attached as Exhibit 5, evidencing Agency's release of its Option as to such Units, and promptly provide to Vertical Developer a copy of the recorded document, showing the date of recording and document number.

(e) Purchase Price. Agency shall pay Vertical Developer an "Option Purchase Price" that is the lesser of the price offered to the public or a price comprised of the following:

- (1) The Land Cost attributable to each Unit; plus
- (2) Actual Direct Costs and Indirect Costs attributable to each Unit; plus
- (3) Vertical Developer fees and profit equal to ten percent (10%) on the sum of Direct and Indirect Costs (the "Vertical Developer Profit").

(f) Time For Payment. Promptly after Complete Construction of an Option Unit, or a number of Option Units for which Complete Construction occurred reasonably contemporaneously, the Vertical Developer will deliver to Agency a written notice of Complete Construction of the Option Units, together with a copy of a recorded final subdivision map for the Major Phase in which the Option Units are located, showing the date of recording and document number, which creates separate legal parcels for each of the Option Units. The notice will include a calculation of the Option Purchase Price, together with schedules substantiating all Land, Direct and Indirect Costs claimed, showing in particular the basis on which Land, Direct and Indirect Costs were allocated to the Units in a particular Major Phase, together with supporting materials, in a form reasonably satisfactory to Agency. Agency may object to such calculation within ten (10) days after receipt, specifying the basis for its objection and its corrected calculation. The parties will negotiate in good faith in an attempt to resolve their differences, but if they are unable to do so within ten (10) days after delivery of Agency's objection, then Closing on the Option Unit will proceed on the basis of the midpoint between the Vertical Developer's and Agency's calculation of the Option Purchase Price and the dispute will be resolved pursuant to the binding arbitration procedure in Section 3.5(q). Agency must pay the Option Purchase Price to Vertical Developer through Escrow within thirty (30) days after Agency's receipt of Vertical Developer's notice of Complete Construction (the "Close of Escrow"), subject to extensions of such period for any delay caused by Vertical Developer.

(g) Right of Access. After exercise of Agency's Option, Vertical Developer will continue to permit Agency and its designated representatives, at reasonable times and after reasonable notice, to review all non-privileged reports, plans, specifications and other information relating to the Option Units and to inspect the Option Units under construction.

(h) Escrow. Within five (5) Business Days after Complete Construction of each Option Unit or a number of Option Units for which Complete Construction occurred reasonably contemporaneously, Vertical Developer shall establish an escrow ("Escrow") with Chicago Title Company at _____ ("Title Company") and shall notify Agency in writing of the Escrow number and contact person at the same time it delivers the notice specified in Section 3.5(f).

(i) Title Policy. As a condition precedent to Agency's obligation to accept conveyance of the Option Units, the Title Company shall be irrevocably committed to issue to

Agency an CLTA owner's title insurance policy with such endorsements, reinsurance and direct access agreements as Agency shall reasonably designate and the Title Company shall accept. The title policy will be in the amount of the Option Purchase Price, and will insure that fee title to the Option Units and all easements appurtenant thereto are vested in Agency, subject only to the Option Unit Exceptions.

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

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

(l) Deliveries into Escrow.

(1) Agency will deliver into Escrow:

(A) the Option Purchase Price; and

(B) escrow instructions and funds consistent with this Program.

(2) The Vertical Developer will deposit into Escrow:

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

(B) escrow instructions and funds consistent with this Program.

(m) Conditions Precedent to Closing.

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

(A) The Title Company shall be irrevocably committed to issue to Agency title insurance required by Section 3.2(i);

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

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

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

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

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

(n) Closing. Provided that the conditions to Agency's obligations and the conditions to Vertical Developer's obligations with respect to the Option Units have been satisfied, then on the Close of Escrow on the Option Units, the Title Company will record the deed referenced in Section 3.5(1)(2)(A) in the City's official records, issue the title policy referenced in Section 3.5(m)(1)(C), prorate and pay amounts in accordance with Section 3.5(j) and the escrow instructions, release to Vertical Developer the portion of the Option Purchase Price due to the Vertical Developer and deliver to Agency and the Vertical Developer signed settlement statements.

(o) Expiration of Option. Agency's Option shall automatically expire and all rights and obligations thereunder shall be released and be of no further force and effect after the Agency purchases the full fifteen percent (15%) of Vertical Developer Residential Units located in Phase 1 [located in the Major Phase in question]. [or purchases the full fifteen percent (15%) of Vertical Developer Residential Units]

(p) Cooperation With Agency Requests. Vertical Developer shall reasonably cooperate with Agency requests to be a co-applicant on any Agency tax credit financing application for the financing of the Option Units described in the Memorandum of Option, provided that such reasonable cooperation shall be at no cost to Vertical Developer and Vertical Developer shall assume no liability whatsoever relating to or arising out of Vertical Developer's being a co-applicant.

(q) Binding Arbitration. In the even of a dispute, the Agency and the affected Vertical Developer agree to submit to binding arbitration by an impartial third party pursuant to the applicable provision of Section __ of the Vertical DDA.

3.6 Submissions for Major Phase Approvals.

In order to verify and to track compliance with the Affordable Housing Program, each Vertical Developer shall submit a Major Phase Housing Data Table as part of the application

package for each Major Phase including Residential Units. Such Major Phase Housing Data Table shall be in a form mutually agreed upon by Vertical Developer and Agency and will contain the information described in subsections (a) and (b) below, and as attached in Exhibit 6 hereto. Agency shall review and approve the Major Phase Housing Data Table in accordance with the procedures set forth in the Design Review and Document Approval Procedure, and development of such Major Phase shall proceed in accordance with such approvals. Agency will cooperate with Vertical Developers in providing the information required to complete the following Tables to the extent known by Agency and not known or reasonably discoverable by the Vertical Developer.

(a) Major Phase Data. The Major Phase Housing Data Table shall identify for the entire Major Phase:

- (1) The total acreage of Vertical Developer Residential Projects;
- (2) The total number of Residential Units proposed;
- (3) The total number of Market Rate Residential Units proposed;
- (4) The total number of Inclusionary Units proposed;
- (5) The allocation of Inclusionary Units among For-Rent and For-Sale Affordable Residential Units for the Major Phase; and
- (6) The location of For-Rent and For-Sale Inclusionary Units within the Major Phase, including a description of such Inclusionary Units in terms of size, number of bedrooms and amenities.

(b) Major Phase Parcel Data. For each parcel identified within a Major Phase, the Major Phase Housing Data Table shall identify the proposed:

- (1) Use (e.g., residential, retail, commercial, office, research and development);
- (2) Parcel acreage;
- (3) Maximum building height;
- (4) Total number of Residential Units; and
- (5) Number of Inclusionary Units, if any.

(c) Major Phase Housing Data Tables for subsequent Major Phases submitted after the first Major Phase Housing Data Table shall include aggregate development data in relation to the total allowable building program, including the data described above for prior Major Phases adjusted for Residential Projects which have received Schematic Design approval.

3.7 Submissions for Project Approvals.

In order to verify and to track compliance with the Affordable Housing Program, Vertical Developer shall submit a Project Housing Data Table as part of the application package at the time each Residential Project is submitted for its Project Basic Concept Design approval, as described in the Design Review and Document Approval Procedure for Vertical Development. Such Project Housing Data Table shall be in a form mutually agreed upon by Vertical Developer and Agency, and will contain the information described in subsections (a) and (b) below, and as attached in Exhibit 7. The Agency shall review and approve the Project Housing Data Table in accordance with the procedures set forth in the Design Review Document Approval Procedure and development of such Project shall proceed in accordance with such approvals.

(a) Major Phase Data. The Project Housing Data Table shall identify the following information with respect to the entire Major Phase in which such Residential Project is located:

- (1) The total number of allowed Residential Units for the Major Phase;
- (2) The total number of acres and the number of Market Rate Residential Units including, for Residential Projects which have received Schematic Design approval, the number of For-Sale and For-Rent Residential Units, and the number of Inclusionary Units projected for the Major Phase, adjusted for Residential Projects which have received Schematic Design approval;
- (3) The total number of Vertical Developer Residential Units which have received Schematic Design approval, including the allocation of Inclusionary Units between For-Rent and For-Sale Residential Units for each Residential Project;
- (4) The total number of Vertical Developer Residential Units for which Building Permits have been issued;
- (5) The total number of Vertical Developer Residential Units which have received Certificates of Occupancy;
- (6) The total number of Vertical Developer Residential Units for which applications for Schematic Design approval are pending;
- (7) The total number of the remaining Vertical Developer Residential Units allowed for the Major Phase;
- (8) The total number of Inclusionary Units that have been approved in a Residential Project;
- (9) The total number of Inclusionary Units approved in the Major Phase;
- (10) The remaining total number of Inclusionary Units to be constructed in the Major Phase; and
- (11) The allocation of Inclusionary Units between For-Rent and For-Sale Residential Units;

(12) The total number of Inclusionary Units, and the allocation of For-Sale and For-Rent Inclusionary Units, that have received Certificates of Occupancy.

(b) Project and Parcel Data. For each parcel within the Major Phase, including the subject Residential Project, the Project Housing Data Table shall identify:

(1) The current Owner;

(2) The current development status, including:

(A) Whether a Residential Project within the Major Phase has received Basic Concept Design and Schematic Design approval, and

(B) Whether a Building Permit, Certificate of Occupancy, and/or Certificate of Completion has or have been issued for a Residential Project and the dates thereof;

(3) The use and, if such Vertical Developer Residential Project has received Schematic Design approval, whether it is a For-Sale or For-Rent Residential Project;

(4) The parcel acreage;

(5) The maximum (or, if a Residential Project has already been constructed in that Major Phase, its actual) building height;

(6) The number of Total Vertical Developer Residential Units (for Projects which have received a Schematic Design approval) or the Major Phase approved number of Residential Units if the Project has not received Schematic Design approval;

(7) The number of For-Sale and For-Rent Inclusionary Units for Residential Projects which have received Schematic Design approval, or the number of For-Sale and For-Rent Inclusionary Units for Residential Projects which have not received Schematic Design approval.

Section 4 Agency Affordable Housing Program.

From time to time, the Agency may modify the forms of the documents used to implement its Affordable Housing Program to reflect changes in Agency policy or applicable law, but these changes will not affect the obligations of Vertical Developer as set forth in this Attachment.

LIST OF EXHIBITS

- Exhibit 1 Declaration of Rental Use Restriction
- Exhibit 2 Declaration of Restrictions for For-Rent Affordable Housing Units
- Exhibit 3 Declaration of Restrictions for For-Sale Affordable Housing Units and Option to Purchase Agreement
- Exhibit 4 Memorandum of Option
- Exhibit 5 Release of Option Rights
- Exhibit 6 Major Phase Housing Data Table
- Exhibit 7 Project Housing Data Table
- Exhibit 8 Marketing and Operating Obligations

ATTACHMENT F

EXHIBIT 1

DECLARATION OF RENTAL USE RESTRICTION

Free Recording Requested Pursuant to Government Code Section 27383

When recorded, mail to: San Francisco Redevelopment Agency 770 Golden Gate Avenue San Francisco, California 94102 Attn: Real Estate Division

----- Space Above This Line for Recorder's Use -----

DECLARATION OF RENTAL USE RESTRICTION

THIS DECLARATION OF RENTAL USE RESTRICTION ("Declaration") is made as of _____, 20__, by _____ [name of Vertical Developer] ("Owner"), in favor of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California ("Agency"). Owner is fee owner of record of that certain real property located in the City and County of San Francisco (the "City"), State of California more particularly described in the attached Attachment A (the "Property").

Section 1. Recitals.

A. The Property is in the City within the Hunters Point Shipyard and is subject to the provisions of the Hunters Point Naval Shipyard Redevelopment Plan adopted by Ordinance No. _____, on _____, 200__. Owner intends to construct on the Property _____ () For-Rent Affordable Housing Units and _____ () For-Rent Market Rate Housing Units (as herein defined).

B. The Agency and Lennar/BVHP, LLC ("Developer") have entered into the Disposition and Development Agreement for Hunters Point, Phase 1, dated _____, 200__, and recorded on in the City's Official Records on _____, 200__, as Document No. _____ (the "Agreement"), including the Affordable Housing Program attached thereto as Attachment 22 (the "Program"), concerning the development of affordable housing units on the Property. The Agreement and Program are on file with the Agency as public records and are incorporated herein by reference. This Declaration is executed and recorded in accordance with the Agreement and the Program, and partially satisfies the requirements therein.

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

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

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

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

Section 2. Definitions.

Terms not defined in this Declaration shall have the meanings given to them in the Agreement, including the Affordable Housing Program attached as Attachment 25 thereto.

Affordable Rent means a monthly Rental Rate, including a Utility Allowance in an amount determined by the San Francisco Housing Authority, which does not exceed thirty percent (30%) of fifty percent (50%) of the maximum Area Median Income, based upon Household Size.

Agency has the meaning set forth in the Preamble.

Agreement has the meaning set forth in Section 1.B.

Area Median Income (AMI) has the meaning set forth in the Agreement, as follows: The median income for a household, adjusted solely for Household Size, and not adjusted for other factors, including but not limited to, United States Department of Housing and Urban Development (HUD) high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

City has the meaning set forth in the Preamble.

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

Declaration has the meaning set forth in the Preamble.

Developer has the meaning set forth in Section 1.B.

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

For-Rent Market Rate Housing Unit means a For-Rent Residential Unit that has no restrictions under this Affordable Housing Program or the Agreement with respect to affordability levels or income restrictions for occupants.

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

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

Owner has the meaning set forth in the Preamble.

Program has the meaning set forth in Section 1.B.

Property has the meaning set forth in the Preamble.

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

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

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

Section 3. Rental Use Restriction and Term.

The Residential Project contains _____ () For-Rent Affordable Housing Units and _____ () For-Rent Market Rate Housing Units. All of the For-Rent Affordable Housing Units and For-Rent Market Rate Housing Units on the Property shall be restricted to use and occupancy as For-Rent Residential Units for a continuous period of ninety (90) years after the initial lease of each Residential Unit.

Section 4. Covenants.

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

Section 5. Remedies Cumulative.

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

Section 6. Governing Law.

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

Section 7. Severability.

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

IN WITNESS WHEREOF, Owner has executed this instrument the day and year first hereinabove written.

“OWNER”

[name of Vertical Developer]

By: _____

Its: _____

ALL SIGNATURES MUST BE NOTARIZED.

----- Space Below This Line for Acknowledgment -----

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, the undersigned, a Notary Public in and for said State personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(Seal)

Attachment A

PROPERTY DESCRIPTION

[To be provided prior to recordation of the Declaration.]

EXHIBIT 2

DECLARATION OF RESTRICTIONS FOR

FOR-RENT AFFORDABLE HOUSING UNITS

ATTACHMENT F

EXHIBIT 2

**DECLARATION OF RESTRICTIONS FOR
FOR-RENT AFFORDABLE HOUSING UNITS**

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102
Attn: Real Estate Division

----- Space Above This Line for Recorder's Use -----

**DECLARATION OF RESTRICTIONS FOR
FOR-RENT AFFORDABLE HOUSING UNITS**

THIS DECLARATION OF RESTRICTIONS FOR FOR-RENT AFFORDABLE HOUSING UNITS ("Declaration") is made as of _____, 20__ by _____ [name of Vertical Developer] ("Owner"), in favor of the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California ("Agency"). Owner is fee owner of record of that certain real property located in the City and County of San Francisco (the "City"), State of California more particularly described in the attached Attachment A (the "Property").

Section 1. Recitals.

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

A. The Property is in the City within the Hunters Point Shipyard and is subject to the provisions of the Hunters Point Naval Shipyard Redevelopment Plan adopted by Ordinance No. _____, on _____, 200__. Owner intends to construct on the Property _____ () For-Rent Affordable Housing Units and _____ () Market Rate Housing Units (as herein defined).

B. The Agency and Lennar/BVHP, LLC ("Developer") have entered into the Disposition and Development Agreement for Hunters Point, Phase 1, dated _____, 200__, and recorded in the City's Official Records on _____, 200__, as Document No. _____ (the "Agreement"), including the Affordable Housing Program

attached thereto as Attachment 22 (the "Program"), concerning the development of affordable housing units on the Property. The Agreement and Program are on file with the Agency as public records and are incorporated herein by reference. This Declaration is executed and recorded in accordance with the Agreement and the Program, and partially satisfies the Affordable Housing Units requirements therein.

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

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

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

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

Section 2. Definitions.

Terms not defined in this Declaration have the meanings given to them in the Agreement, including the Affordable Housing Program attached as Attachment 25 thereto.

Affordable Rent means a monthly Rental Rate, including a Utility Allowance in an amount determined by the San Francisco Housing Authority, which does not exceed thirty percent (30%) of fifty percent (50%) of the maximum Area Median Income, adjusted solely for household size, and not adjusted for other factors, including but not limited to, U.S. Department of Housing and Urban Development's (HUD) high cost adjustments, as determined by HUD for the San Francisco Primary Metropolitan Statistical Area, from time to time.

Agency has the meaning set forth in the Preamble.

Agreement has the meaning set forth in Section 1.B.

Area Median Income (AMI) means the median income for a household, adjusted solely for Household Size, as determined by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, from time to time.

City has the meaning set forth in the Preamble.

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

Declaration has the meaning set forth in the Preamble.

Developer has the meaning set forth in Section 1.B.

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

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

Income Certification has the meaning set forth in Section 5 and Attachment B.

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

Owner has the meaning set forth in the Preamble.

Program has the meaning set forth in Section 1.B.

Property has the meaning set forth in the Preamble.

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

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

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

Section 3. Restricted Affordable Housing Units.

3.1 For-Rent Affordable Housing Units. The Residential Project contains _____ () For-Rent Affordable Housing Units, distributed throughout the Residential Project as set forth on the diagram attached hereto as Attachment A-1. The occupancy of all of the For-Rent Affordable Housing Units shall be restricted to housing for low-income households at Affordable Rents.

3.2 Term of Declaration. The For-Rent Affordable Housing Units shall remain available at an Affordable Rent for a continuous period of ninety (90) years after the initial lease of each Unit. The For-Rent Affordable Housing Units shall remain available at an Affordable Rent for the entire ninety (90) year period, regardless of any termination of the Agreement.

Section 4. Lease Terms and Rental Rates.

4.1 Lease Term. The lease term for each For-Rent Affordable Housing Unit and for each Market Rate Housing Unit offered for rent shall not exceed one (1) year. The lease term for each For-Rent Affordable Housing Unit shall be renewable annually only upon the completion of the Income Certification process described in Section 5.

4.2 Rental Rate. The Rental Rate, including the Utility Allowance, for each For-Rent Affordable Housing Unit shall initially be determined based upon Household Size for that Affordable Housing Unit, and then shall be adjusted so that the Rental Rate shall not exceed thirty percent (30%) of fifty percent (50%) of AMI, based upon Household Size.

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

Section 5. Income Certification For Tenants of Affordable Housing Units.

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

5.2 Household Income After Occupancy.

(a) The Owner shall require all households applying for a lease renewal to submit a new Income Certification annually, within sixty (60) days before the expiration date of the current lease on the For-Rent Affordable Housing Unit. The Owner shall make reasonable efforts to verify such Income Certifications, including without limitation calling such applicants' employers or other income sources to confirm the income shown.

(b) Changes in incomes of households occupying For-Rent Affordable Housing Units shall not affect the classification of Residential Units as For-Rent Affordable Housing Units until the household income exceeds one hundred and twenty percent (120%) of AMI. At that point, the lease may be renewed for one additional year, and the household shall be informed that it no longer qualifies and may be subject to non-renewal of such lease at expiration. On or before the ninetieth (90th) day prior to the expiration date of such lease, the Owner shall designate the next available Residential Unit of comparable size within the Residential Project as a replacement For-Rent Affordable Housing Unit, using commercially reasonable efforts to match the

distribution of For-Rent Affordable Housing Units and Market Rate Housing Units shown on Attachment A-1. The Owner shall then restrict the Rent on the replacement For-Rent Affordable Housing Unit to the level specified in Section 4.2 and 4.3, the Residential Unit occupied by the household that no longer qualifies for low-income housing under this Declaration shall no longer be considered a For-Rent Affordable Housing Unit, and the household may execute a new lease on the Residential Unit at the Market Rate. However, if the Owner is unable to designate a replacement For-Rent Affordable Housing Unit on or before the date specified, and the most recent Income Certification shows that the household no longer qualifies for low-income housing under this Declaration, then the Owner shall not renew the household's lease on the For-Rent Affordable Housing Unit. Thereafter, the For-Rent Affordable Housing Unit shall be rented to a low-income household, subject to this Declaration, the Agreement and the Program. The Owner shall keep the household that no longer qualifies for low-income housing reasonably informed of the Owner's attempts to obtain a replacement For-Rent Affordable Housing Unit.

(c) At all times the number of For-Rent Affordable Housing Units in the Residential Project must be at least the number specified in Section 3.1.

Section 6. Records and Reporting Requirements for For-Rent Affordable Housing Units.

6.1 Reports. The Owner shall provide reports regarding the For-Rent Affordable Housing Units to the Agency on a quarterly basis, commencing on the 15th of the month after issuance of a Certificate of Occupancy for the Residential Project, in the form attached hereto as Attachment C, as well as any additional reports or information reasonably requested by the Agency as to the availability, maintenance and operation of the For-Rent Affordable Housing Units and the Residential Project. The report shall separately identify any replacement For-Rent Affordable Housing Units, the For-Rent Affordable Housing Units replaced and any households in the category described in Section 5.2(b) (households whose income has increased to the level that the household no longer qualifies for low-income housing under this Declaration).

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

Section 7. Covenants.

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

Section 8. Remedies Cumulative.

Agency's rights and remedies, whether provided by law, in equity or by this Declaration, shall be cumulative, and the exercise of any one or more of such rights or remedies shall not

preclude the exercise of any other or further rights or remedies for the same or any other default or breach. No waiver with respect to the performance of any of Owner's obligations shall be effective except to the extent the particular obligation is expressly waived, nor shall it be a waiver with respect to any other rights or remedies of any other of Owner's obligations.

Section 9. Governing Law.

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

Section 10. Severability.

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

IN WITNESS WHEREOF, Owner has executed this instrument the day and year first hereinabove written.

“OWNER”

[name of Vertical Developer]

By: _____

Its: _____

ALL SIGNATURES MUST BE NOTARIZED.

----- Space Below This Line for Acknowledgment -----

STATE OF CALIFORNIA)
) ss.
COUNTY OF _____)

On _____, 20__ before me, the undersigned, a Notary Public in and for said State personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary

(Seal)

Attachment A

PROPERTY DESCRIPTION

[To be provided prior to recordation of Declaration.]

Attachment A-1

**DISTRIBUTION OF
AFFORDABLE HOUSING UNITS AND MARKET RATE HOUSING UNITS**

[To be provided prior to recordation of Declaration.]

Attachment B

FORM OF INCOME CERTIFICATION

[To be provided for each Residential Unit prior to recordation of Declaration.]

Attachment C

AFFORDABLE HOUSING UNIT REPORT

[To be provided quarterly for each Residential Project after recordation of Declaration.]

EXHIBIT 3

**DECLARATION OF RESTRICTIONS FOR
FOR-SALE AFFORDABLE HOUSING UNITS**

ATTACHMENT F

EXHIBIT 3

LIMITED EQUITY HOME OWNERSHIP PROGRAM

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

Free Recording Requested Pursuant to Government Code Section 27383

When recorded, mail to: San Francisco Redevelopment Agency 770 Golden Gate Avenue San Francisco, California 94102 Attn: Housing Division, attn: Harriet Starkes [site address]

----- Space Above This Line for Recorder's Use -----

LIMITED EQUITY HOME OWNERSHIP PROGRAM

DECLARATION OF RESALE RESTRICTIONS AND OPTION TO PURCHASE AGREEMENT

Section 1. Parties.

THIS DECLARATION OF RESALE RESTRICTIONS AND OPTION TO PURCHASE AGREEMENT ("Declaration") is made as of _____, 20__, (the "Effective Date") by and between _____ as _____ [indicate manner in which owner takes title] ("Owner") and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California ("Agency"). Owner is purchasing that certain real property in the City with a street address of _____, San Francisco, California _____, and more particularly described on Exhibit A to the Grant Deed ("Property"). Capitalized terms used in this Declaration have the meanings given to them in Section 4 below.

Section 2. Recitals.

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

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

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

(c) Such homes constitute a valuable community resource; and

(d) It is necessary, proper and in the public interest for the Agency to protect and preserve this resource by administering occupancy and resale controls by means of this Declaration.

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

Section 3. Owner's Affordable Purchase Price.

The Owner's Affordable Purchase Price for the Property described in Section 1, above, is \$ _____. This purchase price is based on a five percent (5%) down payment and a rate for a thirty (30) year fixed mortgage based on a ten (10) year rolling average of rates published in the Wall Street Journal, with a total of annual payments for principal, interest, taxes, assessments and homeowner's association dues which does not exceed thirty-three percent (33%) of the AMI for Household Size.

Section 4. Definitions.

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

(a) "Addendum to Deed of Trust" means the supplemental document to the Deed of Trust, executed by a Qualified Purchaser in favor of the Agency, in the form attached as Attachment C.

(b) "Affordable Purchase Price" for Owner is defined in Section 3.

(c) "Agency" is defined in Section 1.

(d) "Agency Note" is the promissory note executed by Owner in favor of the Agency, which is secured by a Deed of Trust executed by Owner in favor of the Agency, in the form attached as Attachment A.

(e) "Area Median Income" ("AMI") means the median income for a household, adjusted solely for Household Size, residing in the City, as determined by the Agency pursuant to publications issued by the United States Department of Housing and Urban Development for the San Francisco Primary Metropolitan Statistical Area, from time to time.

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

(g) “Buyer Acknowledgement” means the acceptance of terms and conditions of this Exhibit D, in the Loan Disclosure Information form attached as Attachment F.

(h) “Capital Improvements” is defined in Section 10.1.

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

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

(k) “City” means the City and County of San Francisco.

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

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

(n) “DDA” is defined in Section 5.1.

(o) “Declaration” is defined in Section 1.

(p) “Deed of Trust” means one or more Deeds of Trust on this Property, executed by Owner in favor of the Agency, substantially in the form attached as Attachment B.

(q) “Developer” is defined in Section 5.1.

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

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

(t) “Effective Date” is defined in Section 1.

(u) “Events of Default” are defined in Section 11.1.

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

(w) "Household Size" means the number of persons for whom the Property will be a Principal Residence. The Affordable Purchase Price shall be established by using a Household Size which assumes occupancy by one person for one-bedroom units. For two-bedroom and larger units, the assumption is occupancy by one person per bedroom plus one.

(x) "Grant Deed" is defined in Section 8.1(b).

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

(z) "Income Certification" has the meaning set forth in Section 7.1 and is substantially in the form attached as Attachment D.

(aa) "Notice" is defined in Section 13.4.

(bb) "Notice of Proposed Transfer" is defined in Section 7.1.

(cc) "Occupancy Certificate" is defined in Section 13.3.

(dd) "Owner" is defined in Section 1, and upon Owner's death includes the personal representative administering the Owner's estate.

(ee) "Owner's Proceeds" means the amount due to Owner upon Transfer of the Property to a Qualifying Purchaser or upon exercise of the Agency's Purchase Option, according to the terms of this Declaration.

(ff) "Permitted Exceptions" means those title exceptions that are listed on Attachment E.

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

(hh) "Property" is defined in Section 1.

(ii) "Purchase Option" is defined in Section 9.1.

(jj) "Purchase Option Assignee" is defined in Section 9.3.

(kk) "Qualifying Purchaser" means persons and families who are first time homebuyers as defined in Internal Revenue Service Code Section [] and approved by the Agency whose Gross Annual Income, adjusted for Household Size, does not exceed _____ percent (___ %) of Area Median Income.

(ll) "Repair Costs" means the costs to repair Damage to the Property.

(mm) "Resale Affordable Price" means a purchase price which is affordable to a household earning _____ percent (____%) of current Area Median Income, adjusted for a Household Size of _____ persons, using a _____ percent (____%) down payment and a commercially reasonable thirty (30)-year fixed mortgage with commercially reasonable rates, points and fees, and with a total annual payment for principal, interest, taxes, insurance and homeowner's association dues which does not exceed thirty-three percent (33%) of the household's Gross Annual Income.

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

(oo) "Senior Lien" means a single deed of trust for the purpose of securing a loan from the Senior Lender to finance or refinance the purchase of the Property.

(pp) "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

(qq) "Unauthorized Transfer" is defined in Section 11.1(a).

(rr) "Vertical DDA" is defined in Section 5.1.

(ss) "Vertical Developer" is defined in Section 5.1.

Section 5. Related Documents.

5.1 Disposition and Development Agreement. The Agency and Lennar/BVHP, LLC ("Developer") entered into that certain Disposition and Development Agreement for Hunters Point, Phase 1, dated for reference purposes only as of _____, 20____ and recorded on _____, 20____ as Document No. _____ in the City's Official Records ("DDA"), including the Affordable Housing Program attached thereto as Attachment 22 (the "Housing Program"), concerning the development of affordable housing units. As provided in the DDA and Housing Program, this Declaration in turn became part of the [describe Vertical DDA], dated for reference purposes only as of _____, 20____ and recorded on _____, 20____ as Document No. _____ in the City's Official Records (the "Vertical DDA") and was imposed on the [describe "Vertical Developer"]. The DDA, Vertical DDA and the Housing Program are on file with the Agency as public records and are incorporated herein by reference. Under the DDA, the Vertical DDA and the Housing Program, the Property is income and price restricted to be affordable to persons or households earning not more than _____ percent (____%) of Area Median Income. This Declaration is being executed and recorded in accordance with the DDA, the Vertical DDA and the Housing Program, and partially satisfies the requirements therein.

5.2 Hunters Point Naval Shipyard Redevelopment Plan. The Property is in the City, within the Hunters Point Shipyard, and is subject to the provisions of the Hunters Point Naval Shipyard Redevelopment Plan adopted by Ordinance No. _____, on _____, 200____.

5.3 Agency Note and Deed of Trust. Owner executed an Agency Note in favor of Agency, dated _____, 20___, secured by a Deed of Trust and Addendum to Deed of Trust on the Property.

Section 6. Affordable Restrictions.

6.1 Restrictions. Owner shall own and occupy the Property as Owner's Principal Residence, and Owner shall not lease the Property, or any portion thereof, without the Agency's prior written consent. Owner shall submit to the Agency on an annual basis a certification that Owner has occupied the Property as Owner's Principal residence for at least ten (10) months in the preceding year.

6.2 Term. This Declaration shall remain in effect for forty-five (45) years from the Effective Date until such time as the Property is Transferred pursuant to the terms of this Declaration, at which time a declaration with the same form and substance as this Declaration shall become effective for forty-five (45) years from the effective date of such declaration. Upon the expiration of this Declaration due to completion of the 45-year Term, Owner must repay to the Agency the difference between the Resale Affordable Price and the Fair Market Value, as determined at the completion of the Term. In lieu of this payment to the Agency, Owner may renew the Term of this Agreement for an additional forty-five (45) years.

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

Section 7. Transfer Procedures.

7.1 Notice of Proposed Transfer. Except as provided in Sections 7.5 and 7.6(a), if Owner desires to Transfer the Property, Owner shall deliver written notice to Agency ("Notice of Proposed Transfer"), and Agency shall calculate the Resale Affordable Price and notify Owner of the same.

7.2 Priority to Certificate Holders. An Owner may transfer the Property only to a Qualifying Purchaser or the Agency. The Agency shall give notice to Certificate Holders who shall have priority in purchasing the Property over all other Qualified Purchasers, except for transferees under Section 7.5 and 7.6(a) and the Agency. If no Certificate Holders express interest in purchasing the Property or are not otherwise qualified, then Owner shall market the Property as set forth in Section 7.3 below.

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

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

If Owner and Broker, acting diligently and in good faith, are unable to locate a Qualifying Purchaser after one hundred and fifty (150) days from the date of Agency's receipt of the Notice of Proposed Transfer, then the percentage of AMI defining Qualifying Purchasers shall be increased to 150% of the AMI defined in Section 4(kk). The Resale Affordable Purchase Price shall remain the same.

7.4 Inspection. Within thirty (30) days after the Agency's receipt of the Notice of Proposed Transfer, Agency shall have the right to enter and inspect the Property. The Agency shall give Owner twenty-four (24) hours prior written notice before conducting an inspection. The Agency may inspect the Property to determine if any Damage exists. In the event any Damage is noted, the Agency shall determine the Repair Costs and shall deliver written notice to Owner specifying the Damage and the Repair Costs. Owner shall either: (a) repair the Damage at Owner's cost, or (b) cause the escrow agent at closing to pay the Repair Costs to Agency from Owner's Proceeds, as provided in Section 8.3. If Owner elects to repair the Damage, the Agency shall have the right to re-inspect the Property under the terms of this Section 7.4 after the repairs are complete. If the Agency determines in the Agency's sole discretion that Damage still remains, Owner shall cause the escrow agent at closing to pay the remaining Repair Costs to the Agency, but only to the extent such funds are available after payment of the Senior Lien. If Owner elects to repair the Damage, all repairs and the re-inspection shall be completed without extending the closing date, unless extended by mutual written agreement of both the Agency and Owner.

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

7.6 Transfer Upon Owner's Death.

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

(b) Upon the death of Owner and all Agency approved co-Owners, the Property may be Transferred by inheritance, will, or any other function of law to a Qualifying Purchaser. The proposed transferee shall submit an Income Certification, in the form attached as Attachment D, and any other information reasonably requested by the Agency to verify that the proposed

transferee meets the requirements for a Qualifying Purchaser. The Agency shall have forty-five (45) days after receipt of all required information to determine whether the proposed transferee is a Qualifying Purchaser. If the Agency determines that the proposed transferee is a Qualifying Purchaser, the Property may be Transferred to the proposed transferee for no consideration. The proposed transferee shall execute a new Declaration and any other Agency documents related to the Property by which the proposed transferee shall assume the same rights and responsibilities with respect to those documents as the Owner. If the Agency determines that the proposed transferee is not a Qualifying Purchaser, the Property shall be Transferred pursuant to Sections 7.1 – 7.4, inclusive.

Section 8. Closing.

8.1 Conditions to Closing. Except as provided in Sections 7.5, 7.6(a) and Transfers by foreclosure or the Senior Lender’s acceptance of a deed in lieu of foreclosure, all Transfers shall take place through an escrow with a mutually acceptable escrow company. It shall be a condition to closing, other than a Transfer to a co-Owner pursuant to Sections 7.5 or 7.6(a), that the escrow agent involved in the closing has received the following:

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

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

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

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

(e) A signed copy of the Buyer Acknowledgement contained in the Loan Disclosure Information, attached as Attachment F.

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

8.3 Owner's Proceeds. The value of the Owner's Proceeds from a Transfer of the Property shall be calculated as follows. Owner's Proceeds equal:

- (a) The Resale Affordable Price;
- (b) Less the amount necessary to release the Senior Lien;
- (c) Less Closing Costs;
- (d) Less any Repair Costs due to the Agency pursuant to Section 7.4;
- (e) Plus the amortized value of Capital Improvements.

8.4 Resale Affordable Price. Notwithstanding anything in Section 4(mm) to the contrary, if the Resale Affordable Price is less than the original value of the Senior Lien, then the Agency may increase the percentage of AMI defined in Section 4(mm) to a level sufficient to allow for a Resale Affordable Price which covers the original value of the Senior Lien, up to a maximum of one hundred and twenty percent (120%) of AMI. If, after adjustment of the Resale Affordable Price described above, if any, the Resale Affordable Price is less than the sum of the Owner's Affordable Purchase Price plus the Closing Costs, then the Agency through its Executive Director as authorized in Resolution No. [] dated [] shall deposit into escrow the funds necessary to cover the Owner's original down payment funds and Closing Costs. Such deposit into escrow shall be in addition to the Agency's deposit into escrow of the amortized value of the Capital Improvements. After such adjustment, the value of the Owner's Proceeds shall be calculated according to Section 8.3.

Section 9. Agency's Purchase Option.

9.1 Grant of Option. Owner grants to Agency an option to purchase the Property upon the occurrence of an Event of Default under Section 11.1 ("Purchase Option").

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

(a) If the Purchase Option is triggered as a result of an Event of Default under Sections 11.1(a) – (d), then the Agency may exercise the Purchase Option within ninety (90) days after the Agency gives written notice of default to Owner.

(b) If the Purchase Option is triggered as a result of Owner's default under the Senior Lien as defined in Section 11.1(e), then the Agency may exercise the Purchase Option by giving written notice to Owner and Senior Lender, at any time prior to the first to occur of: (i) five (5) business days before the date of a foreclosure sale under the Senior Lien pursuant to California Civil Code § 2924f, as the same may be postponed from time to time; (ii) five (5) business days after Agency's receipt of notice from the Senior Lender that a court intends to enter a decree of foreclosure of the Senior Lien in an action under California Code of Civil Procedure § 726; or (iii) five (5) business days after the Agency's receipt of notice from Senior Lender that Senior Lender intends to enter into a deed in lieu of foreclosure of the Property.

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

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

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

Section 10. Capital Improvements; Maintenance.

10.1 Capital Improvements. A "Capital Improvement" is a permanent improvement to the Property made during Owner's ownership of the Property which: (a) has a value in excess of one-half of one percent (0.5%) of the Affordable Purchase Price originally paid by Owner but less than ten percent (10%) of the Affordable Purchase Price originally paid by Owner; (b) has a useful life of greater than five (5) years subsequent to the proposed Transfer by Owner; and (c) has been made with all required permits and approvals, including without limitation homeowner's association and governmental approvals obtained prior to the construction or installation of the Capital Improvement(s).

10.2 Credits for Capital Improvements. Owner shall receive credit at the time of Transfer for Capital Improvements made to the Property as follows:

(a) At least thirty (30) days prior to the date of Transfer, Owner shall deliver to the Agency a list of the Capital Improvement(s), if any, made to the Property. The Agency shall determine whether the proposed improvements qualify as Capital Improvement(s), as defined in Section 10.1.

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

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

Section 11. Default and Remedies.

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

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

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

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

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

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

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

11.2 Remedies. Upon the occurrence of an Event of Default by Owner, Agency may exercise any or all of the remedies set forth below:

(a) Agency shall have the right to exercise the Purchase Option;

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

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

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

Section 12. Lender Provisions.

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

the Property. Owner shall submit to the Agency on an annual basis a certification that Owner has not refinanced the Property in violation of this Section 12.1.

12.2 Subordination. The Agency shall subordinate this Declaration to the Senior Lien by execution of Agency's standard form subordination agreement, or some other form of agreement mutually acceptable to Agency and Senior Lender.

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

- (a) cure such default pursuant to Section 12.4;
- (b) exercise its Purchase Option pursuant to Section 9.2(b); or
- (c) foreclose its Deed of Trust on the Property.

Agency's rights under this Section 12.3 shall not prevent the Senior Lender from commencing a judicial or nonjudicial foreclosure of the Senior Lien. If the Agency, in its sole discretion, does not act pursuant to Sections 12.3(a-b) above, and the Senior Lender acquires the Property through foreclosure or acceptance of a deed-in-lieu of foreclosure, future sales of the Property shall not be subject to the resale restrictions provided herein.

12.4 Right to Cure. Although the Agency has no obligation to do so, the Agency may perform any act required of Owner in order to prevent a default under, or an acceleration of the indebtedness secured by, the Senior Lien or the commencement of any foreclosure or other action to enforce the collection of such indebtedness. If the Agency elects to cure any such default, Owner shall pay the expenses incurred by the Agency in effecting any cure upon demand within thirty (30) days, together with the interest thereon at the maximum interest rate permitted by law. Failure of Owner to timely reimburse the Agency shall constitute an Event of Default under Section 11.1(d).

Section 13. Miscellaneous.

13.1 Damage and Destruction; Condemnation; Insurance. If the Property is condemned or the improvements located on the Property are damaged or destroyed, all proceeds from insurance or condemnation shall be distributed in accordance with this Section 13.1, subject to the requirements of the Senior Lien. Insurance shall be maintained in the types and amounts required under the Senior Lien. Unless Owner, the Agency, and Senior Lender otherwise agree in writing, insurance proceeds shall be applied to restore or repair the Property damaged. If Owner, the Agency and Senior Lender determine that restoration or repair cannot be made, or if the Property is condemned, the insurance or condemnation proceeds shall first be allocated to pay the outstanding value of the Senior Lien and all associated fees of the Senior Lender, with the balance distributed between the Owner and Agency as follows. The proceeds attributable to the Property shall be multiplied by a fraction. The numerator is the Resale Affordable Price as calculated under this Declaration and the denominator is the Fair Market Value of the Property

as of the date immediately prior to the damage, destruction or condemnation. The resulting amount shall be allocated to the Owner and the balance shall be allocated to the Agency.

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

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

13.4 Notices. Any notice, demand or other communication required or permitted to be given under this Declaration (a "Notice") by either party to the other party shall be in writing and sufficiently given or delivered if transmitted by (a) registered or certified United States mail, postage prepaid, return receipt requested, (b) personal delivery, or (c) nationally recognized private courier services, in every case addressed as follows:

If to Agency: San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102
Attention: Executive Director

If to Owner: at the Property address

Any such Notice transmitted in accordance with this Section 13.4 shall be deemed delivered upon receipt, or upon the date delivery was refused. Any party may change its address for notices by written Notice given to the other party in accordance with the provisions of this Section 13.4.

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

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

13.7 Integration. This Declaration constitutes an integration of the entire understanding and agreement of the Owner and the Agency with respect to the subject matter

hereof. Any representations, warranties, promises, or conditions, whether written or oral, not specifically and expressly incorporated in this Declaration, shall not be binding on any of the parties, and Owner and the Agency each acknowledge that they have not relied, in entering into this Declaration, on any representation, warranty, promise or condition, not specifically and expressly set forth in this Declaration. All prior discussions and writings have been, and are, merged and integrated into, and are superseded by, this Declaration.

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

13.9 Successors and Assigns. This Declaration shall be binding upon and inure to the benefit of the successors and assigns of the Agency. The Agency may assign or transfer its rights under this Declaration upon thirty (30) days written notice to Owner. It is expressly agreed by Owner that Owner may assign his or her rights to this Declaration only by Transfer pursuant to Section 7 or by the Agency's exercise of the Purchase Option pursuant to Section 9.

13.10 Headings. The headings within this Declaration are for the purpose of reference only and shall not limit or otherwise affect any of the terms of this Declaration.

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

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

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

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

13.15 Recordation. Owner shall cause this Declaration to be recorded in the City's Official Records.

IN WITNESS WHEREOF, Owner and the Agency have executed this Declaration as of the date written above.

AGENCY:

Redevelopment Agency of the City and
County of San Francisco

OWNER:

By: _____

Ayisha Benham
Deputy Executive Director
Finance and Administration

ALL SIGNATURES MUST BE NOTARIZED.

----- Attach All Purpose California Notary Acknowledgment -----

APPROVED AS TO FORM:

SAN FRANCISCO REDEVELOPMENT AGENCY

By: _____

James Morales
Agency General Counsel

Attachment A

PROMISSORY NOTE SECURED BY DEED OF TRUST

Date: _____

San Francisco, California

THIS NOTE MAY NOT BE PREPAID

FOR VALUE RECEIVED, the undersigned _____ (“Debtor”), promises to pay to the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California, (“Holder” or “Agency”), at 770 Golden Gate Avenue, 3rd Floor, San Francisco, California 94102, or any other place designated in writing by Holder to Debtor, the amount calculated under the formula stated in this Promissory Note (“Note”).

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

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

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

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

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

- a. The difference between (1) the Fair Market Value of the Property as of the Trigger Date and (2) the Resale Affordable Purchase Price as of the Trigger Date, had such Transfer been executed in accordance with the Declaration. Fair Market Value shall be determined by an appraisal of the Property. The appraiser shall be an independent, MAI-certified appraiser who has experience in residential appraisals in San Francisco, and shall be selected by Holder; plus
- b. Any amounts disbursed by Holder under Section 5 of the Deed of Trust to protect Holder’s rights in the real property described in the Declaration and Deed of Trust; plus

- c. Commencing from the Trigger Date, interest on the amounts due at an annual rate of 10%, compounded.

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

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

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

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

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

Debtor – [Name]

Attachment B
DEED OF TRUST

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102
Attn: Harriet Starkes, Housing Division

----- Space Above This Line for Recorder's Use -----

SHORT FORM DEED OF TRUST AND ASSIGNMENT OF RENTS

THIS DEED OF TRUST, made on _____, 20____, between
_____, (**"TRUSTOR"** or **"OWNER"**),
whose address is _____, and
_____, a corporation, (**"TRUSTEE"**), and
the Redevelopment Agency of the City and County of San Francisco, a public body, corporate
and politic, whose address is 770 Golden Gate Avenue, San Francisco, California 94102,
(**"AGENCY"** or **"BENEFICIARY"**),

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

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

For the Purpose of Securing: 1. Performance of each agreement of Trustor incorporated by
reference or contained herein. 2. Payment of the indebtedness evidenced by one promissory note
of even date herewith, and any extension or renewal thereof, executed by Trustor in favor of
Beneficiary or order. 3. Payment of such further sums as the then record owner of said property
hereafter may borrow from Beneficiary, when evidenced by another note (or notes) reciting it is
so secured.

INITIALS _____

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

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

| COUNTY | BOOK | PAGE |
|---------------|------|------|
| San Francisco | A332 | 905 |

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

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

STATE OF CALIFORNIA
COUNTY OF _____
ON _____ before
me, _____

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Signature _____

DO NOT RECORD

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

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

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

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

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

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

(5) To pay immediately and without demand all sums so expended by Beneficiary or Trustee, with interest from date of expenditure at the amount allowed by law in effect at the date hereof, and to pay for any statement provided for by law in effect at the date hereof regarding the

INITIALS _____

obligation secured hereby any amount demanded by the Beneficiary not to exceed the maximum allowed by law at the time when said statement is demanded.

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

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

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

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

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

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

INITIALS _____

Deed, said note and all documents evidencing expenditures secured hereby.

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

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

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

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

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

INITIALS _____

REQUEST FOR FULL RECONVEYANCE

TO: _____, TRUSTEE:

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

Dated: _____

By: _____ By: _____

Please mail Reconveyance to:

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

STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

ON _____ before me, _____ personally appeared personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to he within instrument end acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

Attachment C

ADDENDUM TO DEED OF TRUST

Free Recording Requested Pursuant to
Government Code Section 27383

When recorded, mail to:
San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102
Attn: Harriet Starkes, Housing Division

----- Space Above This Line for Recorder's Use -----

ADDENDUM TO DEED OF TRUST

THIS ADDENDUM TO DEED OF TRUST ("Addendum") is part of the Deed of Trust and Assignment of Rents dated _____, 20__ ("Deed of Trust"), to which it is attached, made on _____, 20__, between _____ ("Tristor" or "Owner"), whose address is _____, and _____, a corporation ("Trustee"), and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, whose address is 770 Golden Gate Avenue, San Francisco, California 94102 ("Agency" or "Beneficiary"). The following provisions are made a part of the Deed of Trust:

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

Owner and Agency executed a Declaration of Resale Restrictions and Option to Purchase Agreement, dated the same date as the Deed of Trust ("Declaration"). The Declaration establishes, in part, the rights and obligations of Owner and the Agency in the event of a Transfer of the Property. "Transfer" means any voluntary or involuntary sale, assignment or transfer of any interest in the Property.

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

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

COVENANTS. Owner and the Agency covenant and agree as follows:

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

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

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

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

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

Owner – [Name]

----- Space Below This Line for Acknowledgment -----

Attachment D
FORM OF INCOME CERTIFICATION

Attachment E
PERMITTED EXCEPTIONS TO TITLE

Attachment F

LOAN DISCLOSURE INFORMATION

**SAN FRANCISCO
REDEVELOPMENT AGENCY**

**LIMITED EQUITY
HOMEOWNERSHIP PROGRAM**

Loan Disclosure Information

JULY 2003

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I M P O R T A N T

NOTE TO THE READER

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

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

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

I further understand that the Agency's calculation of the resale affordable purchase price for my home will consider, in addition to the current income for a pre-determined AMI level, current mortgage interest rates and other current housing costs, such as insurance, HOA dues, and taxes. I know that any proceeds I receive from the sale of my home will be affected by the value of these factors, since they will be used to calculate the resale affordable purchase price of my home.

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

PROPERTY ADDRESS: _____

SIGNED: _____ DATE: _____
_____ DATE: _____

PROGRAM SUMMARY

- The purpose of the San Francisco Redevelopment Agency's Limited Equity Homeownership Program ("Program") is to provide homeownership opportunities to low- and moderate-income households ("Eligible Buyers") who otherwise would not be able to purchase a home in San Francisco.
- To make homes affordable to Eligible Buyers, the Agency may sell land to developers at below-market-rate prices and/or provide construction funding. In return for this assistance, developers agree to sell the homes to Eligible Buyers. Eligible Buyers, in turn, purchase their homes at affordable prices and agree to comply with Program requirements.
- The Agency is able to offer the benefits of homeownership to many generations of Eligible Buyers through restrictions on resale prices, which limit the amount of equity that an Eligible Buyer is able to build. By limiting Eligible Buyers' equity, homes can be sold at affordable prices again and again. Market fluctuations, which often result in prices too high for low- and moderate-income households to afford, do not affect limited equity resale affordable prices.

75% and 100% of AMI. For a household of 3, this translates to incomes between \$61,765 and \$82,350.

- Household size: The Agency assumes household size of one person more than the number of bedrooms. For example, a household of two people is assumed for a one-bedroom, three people for a two-bedroom, four people for a three-bedroom, and so on.
- 33% "PITI": Principal, interest, taxes, and homeowners' insurance – total housing costs – cannot exceed 33% of a household's gross monthly income.
- First mortgage interest rate: the Agency's calculation assumes a fixed mortgage interest rate based on market conditions at the time the homes are offered for sale.
- Owner down payment: The Agency assumes that the household will make a cash down payment of 5% of the affordable purchase price.

Once a developer knows, for each unit, what the applicable AMI level is, the household size, the cost of taxes and insurance, and the interest rate, he/she can set the affordable purchase price.

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

#3: Resale Affordable Purchase Prices

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

| | |
|---|-------------|
| 80% AMI, 3-person HH income, 2008 (2003 + 10%): | \$72,490 |
| 33% of gross income: | \$23,922 |
| Per month: | \$1,994 |
| Monthly taxes & insurance, 2008 (2003 + 5%) | (\$325) |
| Monthly income available for 1 st mortgage: | \$1,669 |
| Mortgage (assuming 8% interest, 30-yr fixed) | \$227,457 |
| 5% Down payment: | \$11,972 |
| Resale Affordable Purchase Price: | \$239,429 |
| Transactional costs (6%) | (\$14,366) |
| Repayment of full value of 1 st mort + down payment: | (\$215,471) |
| Owner's proceeds: | \$9,592* |

*In this case, no repairs were required, but closing costs, which came in at 6% of the selling price, were deducted from the resale affordable purchase price. After deducting the full value of the owner's original affordable price, the seller proceeds equal \$9,592. Note that this limited

equity return *is in addition to* all principal paid down on the first mortgage and the return of the owner's original 5% down payment.

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

#4: Capital Improvements

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

To qualify, each capital improvement must meet certain criteria:

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

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

The credit for each capital improvement is amortized by a factor of 7% per year from the date of the capital improvement's completion.

#5: Minimum Resale Value

As described above, the resale affordable purchase price is subject to variable factors that fluctuate over time, such as mortgage interest rates, taxes, and insurance costs. Because of the variability of these factors, *owners assume some risk when they purchase their homes!* For example, if interest rates are low when an owner buys, but high when that owner sells, and increases in AMI over time do not compensate for the interest rate spike, a resale affordable purchase price could actually be lower than the original price an owner paid. To minimize the risk owners take when they participate in the Program, the Agency will increase the applicable AMI level on a resale, up to 120% of AMI, when the original AMI level applicable to that home does not result in a resale affordable price high enough to pay off the original value of the first mortgage.

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

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

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

- Repair costs. When an owner notifies the Agency of its intent to sell, the Agency has the right to inspect the unit, determine if damage exists, and calculate the value of repair. If the owner does not satisfactorily make the itemized repairs, owners will be held responsible for repair costs at the close of escrow.
- Payments due on junior liens and first mortgage equity refinancing. The Agency will only increase a resale affordable purchase price to the original value of the first mortgage. If the owner has refinanced the home and withdrawn equity, the owner is solely responsible for paying off the incremental value of the refinanced mortgage or new, junior liens.
- If the resale affordable purchase price produced using 120% of AMI is still insufficient to pay off the first mortgage, the owner is solely responsible for his/her mortgage debt beyond that adjusted resale affordable purchase price.

#6: Owner Refinancing

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

Owners can refinance up to the original value of their first mortgage in order to obtain a lower interest rate or withdraw principal paid down on the mortgage.

Owners may also refinance their homes to withdraw up to 50% of the difference between the resale affordable purchase price and their original affordable purchase price, for the following reasons only:

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

#7: Permissible Transfers & Agency Broker Panel

Owners may only transfer their homes to other Eligible Buyers or the Agency. In order to help owners find new Eligible Buyers when they are ready to sell, the Agency has established a broker panel. These licensed real estate brokers are familiar with the Agency's Program and requirements, and direct a portion of their marketing to low- and moderate-income clients.

Owners are not required to use the Agency's broker panel, but they are required to sell to new Eligible Buyers that only the Agency can qualify as "eligible".

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

#8: Agency Purchase Option

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

#9: Owner Default and Agency Remedies

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

- A transfer of the property in violation of the Declaration of Resale Restrictions and Option to Purchase;
- Use of the property other than as owner's principal residence (owners must certify that they occupy the home at least 10 months out of every 12 annually);
- Failure to pay required housing costs, such as taxes, homeowner dues, assessments, or insurance;
- Placement of any mortgages, liens or encumbrances on the property that the Agency has not approved;
- Any other violation of the Agency Documents; or
- A default on the first mortgage.

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

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

If an owner marries or enters a domestic partnership, the spouse or partner can become a co-owner by executing an addendum to the Agency Documents. The addendum confers the same rights and obligations of the owner upon the spouse or partner.

Upon the death of a property owner or owners, the home can be transferred to an heir, as long as the heir is an Eligible Buyer approved by the Agency. If the heir does not qualify to occupy the home, the home must be sold according to the terms of the Agency Documents, and the owner's proceeds will transfer to the owner's estate.

#12: Term

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

EXHIBIT 4

MEMORANDUM OF OPTION

FOR 15% OF VERTICAL DEVELOPER RESIDENTIAL UNITS

EXHIBIT 4

MEMORANDUM OF OPTION

FOR 15% OF VERTICAL DEVELOPER RESIDENTIAL UNITS

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Redevelopment Agency of City and
County of San Francisco
770 Golden Gate Avenue
San Francisco, California 94102

Attn: Executive Director

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

MEMORANDUM OF OPTION

THIS MEMORANDUM OF OPTION is entered into as of _____, 200__ by and between Lennar/BVHP, LLC ("Developer") and the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California ("Agency"). Developer grants to Agency the right to purchase up to fifteen percent (15%) of the Vertical Developer Residential Units to be constructed in the development of the former Hunters Point Naval Shipyard, Phase 1, in the City and County of San Francisco, on the terms and conditions set forth in the Disposition and Development Agreement for Hunters Point, Phase 1, and Attachment 22 thereto, recorded in the official records of the City and County of San Francisco on _____, 200__ as Document Number _____.

IN WITNESS WHEREOF, Agency and Developer have executed this Memorandum of Option as of the date written above.

AGENCY:

Redevelopment Agency of the City and
County of San Francisco

DEVELOPER:

Lennar/BVHP, LLC

BY: _____
Executive Director

BY: _____

ALL SIGNATURES MUST BE NOTARIZED.

----- Space Below This Line for Acknowledgment -----

EXHIBIT 5
RELEASE OF OPTION RIGHTS

RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

Redevelopment Agency of City and
County of San Francisco
770 Golden Gate Avenue
San Francisco, California 94102

Attn: Executive Director

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

RELEASE OF OPTION RIGHTS

THIS RELEASE OF OPTION RIGHTS (the "Release") is executed as of _____, 200__ (the "Effective Date") by the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the "Agency"). The Agency was granted the right to purchase up to fifteen percent (15%) of the Vertical Developer Residential Units to be constructed in the development of the former Hunters Point Naval Shipyard, Phase 1, in the City and County of San Francisco, on the terms and conditions set forth in the Disposition and Development Agreement for Hunters Point, Phase 1, and Attachment 26 thereto, recorded in the Official Records of the City and County of San Francisco on _____, 200__ as Document Number _____ (the "Option Rights"). A Memorandum of Option referencing the Agency's Option Rights was recorded in the Official Records of the City and County of San Francisco on _____, 200__ as Document Number _____. Among other properties, the Option Rights apply to that certain real property in the City and County of San Francisco more particularly described in the attached Exhibit A (the "Released Property" – which will describe only the units as to which the Agency has elected not to exercise its Option Rights) pursuant to the [describe Vertical DDA] recorded in the Official Records of the City and County of San Francisco on _____, 200__ as Document Number _____. By this Release, as of the Effective Date, the Agency hereby releases its Option Rights as they apply to the Released Property. The Agency retains its Option Rights as to all other property.

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

The Agency has executed this Release as of the Effective Date.

Authorized by Agency Resolution
No. _____, adopted _____, _____

AGENCY:
Redevelopment Agency of the City and
County of San Francisco

APPROVED AS TO FORM:

By: _____
[Executive Director]

By _____
James Morales,
Agency General Counsel

By: _____
[Secretary]

ALL SIGNATURES MUST BE NOTARIZED.

----- Space Below This Line for Acknowledgment -----

EXHIBIT A
RELEASED PROPERTY

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

EXHIBIT 6

MAJOR PHASE HOUSING DATA TABLE

EXHIBIT 6

MAJOR PHASE HOUSING DATA TABLE

Submissions for Major Phase Approvals

In order to verify and to track compliance with the Affordable Housing Program, each Vertical Developer shall submit a Major Phase Housing Data Table as part of the application package for each Major Phase including Residential Units. Such Major Phase Housing Data Table shall be in a form mutually agreed upon by the Vertical Developer and the Agency and will contain the information described in subsections (a) and (b) below. Agency shall review and approve the Major Phase Housing Data Table in accordance with the procedures set forth in the Design Review and Document Approval Procedure, and development of such Major Phase shall proceed in accordance with such approvals. Agency will cooperate with Vertical Developers in providing the information required to complete the following Tables to the extent known by Agency and not known or reasonably discoverable by the Vertical Developer.

(a) Major Phase Data. The Major Phase Housing Data Table shall identify for the entire Major Phase:

- (1) The total acreage of Vertical Developer Residential Projects;
- (2) The total number of Residential Units proposed;
- (3) The total number of Market Rate Residential Units proposed;
- (4) The total number of Inclusionary Units proposed;
- (5) The allocation of Inclusionary Units among For-Rent and For-Sale Affordable Residential Units for the Major Phase; and
- (6) The location of For-Rent and For-Sale Inclusionary Units within the Major Phase, including a description of such Inclusionary Units in terms of size, number of bedrooms and amenities.

(b) Major Phase Parcel Data. For each parcel identified within a Major Phase, the Major Phase Housing Data Table shall identify the proposed:

- (7) Use (e.g., residential, retail, commercial, office, research and development);
- (8) Parcel acreage;
- (9) Maximum building height;
- (10) Total number of Residential Units; and
- (11) Number of Inclusionary Units, if any.

(b) Major Phase Housing Data Tables for subsequent Major Phases submitted after the first Major Phase Housing Data Table shall include aggregate development data in relation to the total allowable building program, including the data described above for prior Major Phases adjusted for Residential Projects which have received Schematic Design approval.

EXHIBIT 7

PROJECT HOUSING DATA TABLE

EXHIBIT 7

PROJECT HOUSING DATA TABLE

Submissions for Project Approvals

In order to verify and to track compliance with the Affordable Housing Program, each Vertical Developer shall submit a Project Housing Data Table as part of the application package at the time each Residential Project is submitted for its Project Basic Concept Design approval, as described in the Design Review and Document Approval Procedure for Vertical Development. Such Project Housing Data Table shall be in a form mutually agreed upon by the Vertical Developer and the Agency, and will contain the information described in subsections (a) and (b) below. The Agency shall review and approve the Project Housing Data Table in accordance with the procedures set forth in the Design Review Document Approval Procedure and development of such Project shall proceed in accordance with such approvals.

(a) Major Phase Data. The Project Housing Data Table shall identify the following information with respect to the entire Major Phase in which such Residential Project is located:

- (1) The total number of allowed Residential Units for the Major Phase;
- (2) The total number of acres and the number of Market Rate Residential Units including, for Residential Projects which have received Schematic Design approval, the number of For-Sale and For-Rent Residential Units, and the number of Inclusionary Units projected for the Major Phase, adjusted for Residential Projects which have received Schematic Design approval;
- (3) The total number of Vertical Developer Residential Units which have received Schematic Design approval, including the allocation of Inclusionary Units between For-Rent and For-Sale Residential Units for each Residential Project;
- (4) The total number of Vertical Developer Residential Units for which Building Permits have been issued;
- (5) The total number of Vertical Developer Residential Units which have received Certificates of Occupancy;
- (6) The total number of Vertical Developer Residential Units for which applications for Schematic Design approval are pending;
- (7) The total number of the remaining Vertical Developer Residential Units allowed for the Major Phase;
- (8) The total number of Inclusionary Units that have been approved in a Residential Project;

(9) The total number of Inclusionary Units approved in the Major Phase;

(10) The remaining total number of Inclusionary Units to be constructed in the Major Phase; and

(11) The allocation of Inclusionary Units between For-Rent and For-Sale Residential Units;

(12) The total number of Inclusionary Units, and the allocation of For-Sale and For-Rent Inclusionary Units, that have received Certificates of Occupancy.

(b) Project and Parcel Data. For each parcel within the Major Phase, including the subject Residential Project, the Project Housing Data Table shall identify:

(1) The current Owner;

(2) The current development status, including:

(A) Whether a Residential Project within the Major Phase has received Basic Concept Design and Schematic Design approval, and

(B) Whether a Building Permit, Certificate of Occupancy, and/or Certificate of Completion has or have been issued for a Residential Project and the dates thereof;

(3) The use and, if such Vertical Developer Residential Project has received Schematic Design approval, whether it is a For-Sale or For-Rent Residential Project;

(4) The parcel acreage;

(5) The maximum (or, if a Residential Project has already been constructed in that Major Phase, its actual) building height;

(6) The number of Total Vertical Developer Residential Units (for Projects which have received a Schematic Design approval) or the Major Phase approved number of Residential Units if the Project has not received Schematic Design approval;

(7) The number of For-Sale and For-Rent Inclusionary Units for Residential Projects which have received Schematic Design approval, or the number of For-Sale and For-Rent Inclusionary Units for Residential Projects which have not received Schematic Design approval.

EXHIBIT 8

MARKETING AND OPERATIONS GUIDELINES

ATTACHMENT F

EXHIBIT 8

MARKETING AND OPERATING OBLIGATIONS

Section 1. Purpose.

A. This Exhibit I is attached to the Affordable Housing Program (the "Housing Program"), which in turn is attached as Attachment 22 to the Disposition and Development Agreement between the Redevelopment Agency of the City and County of San Francisco (the "Agency") and Lennar/BVHP, LLC ("Developer") dated _____, 2003 (the "DDA"). As provided in the DDA, this Exhibit I will in turn become part of the Vertical DDA and will be imposed on Vertical Developers, as those terms are defined in the DDA. The purpose of this Exhibit I is to set forth the Vertical Developer's marketing and operating obligations with respect to all Residential Units in Phase 1, including For-Rent Affordable Housing Units, For-Sale Affordable Housing Units, For-Rent Market Rate Residential Units and For-Sale Market Rate Residential Units.

B. This Exhibit I first sets forth the nondiscrimination requirements applicable to all Affordable and Market Rate Residential Units in Phase 1. It then sets forth the specific marketing, operating and reporting requirements applicable to each Affordable and Market Rate Residential Unit. In addition to this Exhibit I, the Vertical Developer will record against each For-Rent Affordable Housing Unit a Declaration of Restrictions in the form attached as Exhibit C to the Housing Program, and will record against each For-Sale Affordable Housing Unit a Declaration of Restrictions and Option to Purchase Agreement in the form attached as Exhibit D to the Housing Program. Each Declaration of Restrictions sets forth the income requirements and rental or sales price restrictions applicable to the Affordable Housing Units in a particular Residential Project.

C. In the event of any inconsistency between the terms of this Exhibit I and the DDA, including the Housing Program, the DDA and Housing Program shall control. In the event of any inconsistency between this Exhibit I and the Vertical DDA, including the Housing Program, the Vertical DDA and Housing Program shall control.

Section 2. Definitions.

Unless separately defined in this Exhibit I, capitalized terms have the meanings set forth in the DDA, the Vertical DDA and the Housing Program.

Affordable means, (a) with respect to a For-Rent Residential Unit, a monthly rental charge, including a utility allowance in an amount determined by the San Francisco Housing Authority, which does not exceed thirty percent (30%) of fifty percent (50%) of Area Median Income, based upon Imputed Household Size; and (b) with respect to a For-Sale Residential Unit, a purchase price based on a five percent (5%) down payment and a rate for a thirty (30)

year fixed mortgage based on the higher of 1) the ten-year rolling average interest rate, as calculated by the Agency (or its successor) based on data provided by Fannie Mae, Freddie Mac, or an equivalent, nationally recognized mortgage financing institution, or 2) the current, commercially reasonable rate available through an Agency-approved lender, with a total of annual payments for principal, interest, taxes, assessments and homeowner's association dues which does not exceed thirty-three percent (33%) of the Program Income Level.

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

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

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

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

(c) The Agency has certified such individual as a holder of a Certificate of Preference pursuant to the Agency's Certificate Program, as such program currently exists or as may be amended within ninety (90) days of the Vertical DDA], and such future amendments.

Certificate of Preference means a certificate issued by the Agency pursuant to the Agency's Certificate Program, to evidence the status of an owner or occupant of residential property as a Certificate Holder. For purposes of this Exhibit I, a Certificate of Preference may be either a "Residential A Certificate" issued to a displaced resident, or a "Residential C Certificate" issued to other members of a Residential A Certificate household.

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

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

Income Verification Information means the information required by the United States Department of Housing and Urban Development ("HUD") to determine eligibility for the rental of a For-Rent Affordable Housing Unit, or the purchaser of a For-Sale Affordable Housing Unit.

Lottery means the process the Vertical Developer uses to randomly select from all

applications submitted, and develop a Potential Tenant or Potential Purchaser List.

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

Marketing Information means the following with respect to each Residential Project:

- (a) A master Residential Unit list which indicates the following:
 - (i) The unit numbers of Residential Units to be offered for Rental or Sale;
 - (ii) The number of bedrooms and baths in each such Residential Unit;
 - (iii) The approximate net square footage of each such Residential Unit;
 - (iv) A list of amenities in each such Residential Unit (*e.g.*, disposal, washer/dryer, etc.); and
 - (v) The initial rent or estimated purchase price, as appropriate, for each such Residential Unit.

- (b) For each For-Rent Affordable Housing Unit, the following additional items will be provided:
 - (i) The estimated itemized cost of utilities to be paid by each tenant household by Residential Unit size;
 - (ii) The amount of any deposit required to reserve a Residential Unit, security deposit and all other fees related to the rental of such unit; and a policy for the deposit, use and return of any such amounts;
 - (iii) The proposed duration of rental agreement or lease; and
 - (iv) copies of rental application and all forms to be used for Income Verification Information.

- (c) For each For-Rent or For-Sale Affordable Housing Unit, the following additional items will be provided:
 - (i) A detailed description of Vertical Developer's rules for tenants (or Covenants Conditions and Restrictions, as appropriate);
 - (ii) The amount of application processing fee, if any; and
 - (iii) A description of application process, and the length of time needed by Vertical Developer to process applications.

- (d) For each For-Sale Affordable Housing Unit the following additional item shall be provided:
 - (i) estimated cost of homeowner's association dues to be paid by Residential Unit size; and
 - (ii) estimated amount of Mello-Roos assessments affecting the unit at the time of initial sale.

Market Rate or Market Rate Residential Unit means a Residential Unit that has no restrictions under the Housing Program or the DDA with respect to affordability levels or income restrictions for occupants.

Occupancy Priorities means the priorities established in this document for occupancy of For-Sale and For-Rent Residential Units.

Potential Purchaser List means those applicants selected in the Lottery by the Vertical Developer to establish the application processing order for For-Sale Residential Units.

Potential Tenant List means those applicants selected in the Lottery by the Vertical Developer to establish the application processing order for For-Rent Residential Units.

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

Rent-Up means the period of time from the date when the Residential Units in a Residential Project are first offered for lease until rental agreements have been signed for all such Residential Units in the Residential Project.

Residential Project means a development containing Residential Units.

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

San Francisco Residents means a household in which there are one or more persons eighteen (18) years or older residing in San Francisco at the time of the submittal of the housing application or purchase offer.

Second Lien Documents means the Agency Note and the Agency Deed of Trust as those documents are defined in Exhibit D to the Housing Program to be executed by the purchaser of each For-Sale Affordable Housing Unit.

Section 3. Nondiscrimination Requirements.

Vertical Developer acknowledges the goal of achieving a residential population in all Residential Projects developed in Phase 1 that reflects the racial and ethnic diversity of San Francisco. To that end, the Vertical Developer will comply with the affirmative marketing obligations described in this Exhibit I. In addition, in the marketing, operation and rental or sale of the Residential Units in Phase 1 (including the initial and subsequent rentals and sales of all Affordable Housing Units and all Market Rate Residential Units), the Vertical Developer and any subsequent owner of any such Residential Units shall not discriminate based on race, religion, color, ancestry, national origin, age, sex, sexual orientation, marital status, gender identity, disability, lawful source of income (as defined in Section 3304 of the San Francisco Police Code,

including, but not limited to Section 8 or any equivalent rent subsidy), or any other basis prohibited by law. Nothing in this Section shall prohibit the Vertical Developer from applying other lawful standards for resident selection or from exercising its rights in managing property, so long as such standards and rights are equitably applied to prospective and actual residents of both Affordable Housing Units and Market Rate Residential Units.

Section 4. Community Outreach for All Residential Units.

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

4.1 Notice.

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

4.2 Community Meetings.

During the Advance Notice Period, the Vertical Developer shall conduct at least two (2) informational meetings in the Bayview Hunters Point area to answer questions and provide information to community residents about the housing opportunities that are becoming available at the Shipyard and other related matters described in the Advance Notice required in Section 4.1.

4.3 Community Assistance and Information Services.

The Vertical Developer shall provide Bayview Hunters Point area residents with information and other assistance to enable them to qualify for the For-Rent and For-Sale Residential Units. This information and other assistance, developed in collaboration with, and approved by, the Agency, shall include, but is not limited to, referrals to government agencies, lending institutions, and other organizations that may be able to provide financial and other assistance to qualified applicants.

Section 5. For-Rent Affordable Housing Units.

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

(a) Affirmative Marketing Obligations.

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

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published prior to the Vertical Developer's conducting the lottery described in Section 5.1(c) below for the initial rental of For-Rent Affordable Housing Units in the applicable Residential Project.

(3) The Vertical Developer shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Section 5.1(a)(2) above at least sixty (60) days prior to conducting the lottery described in Section 5.1(c) below for the initial rental of For-Rent Affordable Housing Units. The Agency's approval rights are limited to determining compliance with Section 5.1(a)(4) below. The Agency will approve or disapprove the proposed advertisement within five (5) business days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

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

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

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

- (2) Western Addition Certificate Holders. The Vertical Developer shall give second-priority preference to Certificate Holders of Western Addition Residential A and C Certificates, each in the manner described in Section 5.1(c)(7) below.
 - (3) Rent Burdened or Assisted Housing Residents Who Are San Francisco Residents. The Vertical Developer shall give a third-priority preference to persons paying more than 50% of their income for housing, or persons residing in public housing or Project-Based Section 8 housing, who are San Francisco Residents, in the manner described in Section 5.1(c)(7) below.
 - (4) San Francisco Residents. The Vertical Developer shall give fourth-priority preference to San Francisco Residents in the manner described in Section 5.1(c)(7) below.
 - (5) Members of the general public.
- (c) Rental Procedures/Lottery.
- (1) The Vertical Developer shall determine priority for occupancy of For-Rent Affordable Housing Units according to the Lottery system described in this Section 5.1(c).
 - (2) The Vertical Developer shall conduct a separate Lottery for each Residential Project containing For-Rent Affordable Housing Units.
 - (3) At least ninety (90) days prior to conducting the Lottery for For-Rent Affordable Housing Units in a Residential Project the Vertical Developer shall provide to the Agency the Marketing Information applicable to such Residential Units, together with a notice stating the date on which the Vertical Developer intends to start leasing such Residential Units.
 - (4) The Agency shall assist the Vertical Developer in notifying Certificate Holders of the availability of For-Rent Affordable Housing Units by providing the Vertical Developer a list of the names and addresses of Certificate Holders to notify regarding the housing opportunity and the application and Lottery process. The Vertical Developer shall provide the Agency with a list of all responding Certificate Holders, as well as providing information on each Certificate Holder's status in the application process.
 - (5) After completing the Affirmative Marketing Obligations outlined above, but no earlier than three (3) weeks after the first day on

which the Vertical Developer will accept applications, the Vertical Developer shall combine applications from all applicants, including Certificate Holders, if any, Rent Burdened or Assisted Housing Residents, San Francisco Residents, and members of the general public into one Lottery for each Residential Project.

- (6) The Vertical Developer shall select potential tenants at random from the combined pool of applicants by selecting all applicants submitting to the Lottery. Each applicant will be assigned a number in the order selected, (the "Lottery List").
- (7) The Vertical Developer shall then identify any applicants entitled to an Occupancy Priority and rank all applicant on the Lottery List according to the preference categories in Section 54.1(b) above, and within each category in the order in which their name was selected for the Lottery List. This prioritized list shall be referred to as the "Potential Tenant List." The Vertical Developer shall provide the Agency with the Potential Tenant List within three (3) days of its creation.
- (8) Within thirty (30) days of the creation of the Potential Tenant List, unless otherwise mutually agreed by the Vertical Developer and the Agency, the Vertical Developer shall, determine the eligibility of as many households on the Potential Tenant List as there are available For-Rent Affordable Housing Units in a particular Residential Project (*i.e.*, one household per available For-Rent Affordable Housing Unit) in the order of priority on the Potential Tenant List, taking into account income and household size restrictions for the For-Rent Affordable Housing Units in each Residential Project, and applying all such other Vertical Developer tenant selection criteria consistent with this Exhibit I so as to fill all of the For-Rent Affordable Housing Units. The Vertical Developer shall then inform all eligible tenants so selected of the availability of For-Rent Affordable Housing Units in the particular Residential Project.
- (9) All applicants from the Potential Tenant List, shall have a reasonable opportunity to view either the actual Residential Unit for which the individual/household is qualified, or a model or other Residential Unit in that Residential Project which is substantially similar to the Residential Unit which the individual/household is qualified to occupy. All applicants from the Potential Tenant List shall then have at least three (3) days from and including the reasonable opportunity to view a Residential Unit above within which to notify the Vertical Developer of his/her intention to rent a

For-Rent Affordable Housing Unit and take all other steps necessary in accordance with the Marketing Information to secure such For-Rent Affordable Housing Unit.

(d) Tenant Income Eligibility. The required tenant income levels for each For-Rent Affordable Housing Unit in each applicable Residential Project shall be determined solely according to the requirements of Exhibit C to the Housing Program, which shall be recorded against each such Residential Project in accordance with the Housing Program.

(e) Rental Charge Restrictions. The rental rates for For-Rent Affordable Housing Units in each applicable Residential Project shall be determined solely according to the requirements of Exhibit C to the Housing Program, which shall be recorded against each such Residential Project in accordance with the Housing Program.

5.2 Procedures for Subsequent Rentals of Vacant For-Rent Affordable Housing Units.

(a) Affirmative Marketing Obligations. The Vertical Developer shall make good faith efforts to advertise the periodic vacancy of For-Rent Affordable Housing Units in a manner designed to reach diverse ethnic populations.

(b) Occupancy Priorities.

In the subsequent rental of vacant For-Rent Affordable Housing Units, the Vertical Developer shall give Occupancy Priorities in the order outlined in Section 5.1(b) above, first to persons in each category on the Potential Tenant List and then to persons in each category who request to be included on the waiting list following completion of Rent-Up of such Residential Units.

(c) Disqualification of Person on the Potential Tenant List.

(1) A Certificate Holder, Rent Burdened or Assisted Housing Resident, or San Francisco Resident on the Potential Tenant List or the waiting list of a Residential Project shall no longer be entitled to maintain the individual's/household's priority position on such list upon occurrence of any of the following:

(A) The individual/household is offered, but does not rent a For-Rent Affordable Housing Unit that the individual/household is eligible to occupy (based on income and Household Size);

(B) The income of the individual/household is too high for that individual/household to qualify for any For-Rent Affordable Housing Unit available in the particular Residential Project; or

(C) The individual/household fails to satisfy the Vertical

Developer's tenant selection criteria applicable to the particular Residential Project, applied in accordance with all applicable local, state and federal fair housing laws.

Section 6. For-Sale Affordable Housing Units.

6.1 Procedures for the Initial Sales of For-Sale Affordable Housing Units.

(a) Affirmative Marketing Obligations.

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

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published prior to the Vertical Developer's conducting the lottery described in Section 6.1(c)(6) below for the initial sale of For-Sale Affordable Housing Units in the applicable Residential Project.

(3) The Vertical Developer shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Section 6.1(a)(2) above at least sixty (60) days prior to accepting applications for the initial sale of For-Sale Affordable Housing Units. The Agency's approval rights are limited to determining compliance with Section 6.1(a)(4) below. The Agency will approve or disapprove the proposed advertisement within five (5) business days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

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

(b) Occupancy Priorities.

The Vertical Developer shall use the Occupancy Priorities in Section 5.1(b) in the initial sale of For-Sale Affordable Housing Units.

(c) Sales Procedures.

(1) At least one hundred eighty (180) days prior to the initial sale of a For-Sale Affordable Housing Unit, the Vertical Developer shall provide to the Agency the Marketing Information applicable to such Residential Units.

(2) The Agency shall assist the Vertical Developer in informing Certificate Holders of the availability of For-Sale Affordable Housing Units by providing the Vertical Developer a list of the names and addresses of Certificate Holders to notify regarding the housing opportunity and the application and lottery process. The Vertical Developer shall provide the Agency with a list of all responding Certificate Holders, as well as providing information on each Certificate Holder's status in the application process.

(3) The Vertical Developer, in cooperation with the Agency, shall conduct at least two (2) public informational meetings regarding the sale of For-Sale Affordable Housing Units in each Residential Project. Each meeting shall be advertised in conjunction with the advertising required under Section 6.1(a). Each meeting shall be open to persons potentially interested in the purchase of a For-Sale Affordable Housing Unit. At each meeting, the Vertical Developer and the Agency shall describe the following:

- (a) The number and type of For-Sale Affordable Housing Units to be offered;
- (b) The income and purchase price restrictions applicable to each available Residential Unit;
- (c) The resale restrictions applicable to each available Residential Unit, including the Second Lien Documents to be executed by each purchaser;
- (d) The anticipated schedule for marketing and selling such Residential Units; and
- (e) Information on covenants, conditions and restrictions; homeowner's association dues; Mello-Roos assessments; and proposed rules of the homeowners' association applicable to such Residential Units.

(4) The Vertical Developer may, at its discretion, accept pre-applications from interested purchasers and may pre-qualify purchasers of For-Sale Affordable Housing Units according to the occupancy restrictions applicable to a particular Residential Unit and the application of such other tenant selection criteria permitted under this Exhibit I.

(5) The purchase price for each unit type shall be set based on the Affordable Purchase Price for each For-Sale unit no later than three (3) days and no earlier than thirty (30) days prior to the lottery.

(6) The Vertical Developer shall conduct a lottery of all interested purchasers, including any potential purchasers that have been pre-qualified by the Vertical Developer, as follows:

- (a) The Vertical Developer shall conduct a separate lottery for each Residential Project containing For-Sale Affordable Housing Units.
- (b) The Vertical Developer shall combine all Certificate Holders, Rent Burdened or Assisted Housing Residents, San Francisco Residents and applications from members of the general public into one lottery for each Residential Project.
- (c) The Vertical Developer shall select potential purchasers at random from the combined pool of applicants, by selecting all applicants, and shall prioritize potential purchasers in the order selected into an initial list of potential purchasers (the "Lottery List").
- (d) The Vertical Developer shall then prioritize names on the Lottery List according to the Occupancy Priorities in Section 5.1(b). This newly prioritized list shall be referred to as the "Potential Purchaser List." The Vertical Developer shall provide the Agency with the Potential Purchaser List within three (3) days of its creation.
- (e) Within thirty (30) days of the creation of the Potential Purchaser List, unless otherwise mutually agreed by the Vertical Developer and the Agency, the Vertical Developer shall determine the eligibility of enough households on the Potential Purchaser List as there are available For-Sale Affordable Housing Units in a particular Residential Project (*i.e.*, one household per available For-Sale Affordable Housing Unit) in the order of priority on that list, taking into account income and household size restrictions for the For-Sale Affordable Housing Units in each Residential Project, and applying such other purchaser selection criteria consistent with this Exhibit I. The Vertical Developer shall then inform that number of eligible purchasers so selected of the availability of Residential Units in the particular Residential Project. The Vertical Developer's determination of Purchaser Eligibility is subject to a mortgage lender's approval of each potential

purchaser.

(d) Purchaser Income Eligibility and Sales Price Restriction. The income levels for purchasers of, and sales prices for, each For-Sale Affordable Housing Unit in each Residential Project shall be determined solely according to the requirements of Exhibit D to the Housing Program. Exhibit D, indicating the types of For-Sale Affordable Housing Units in each applicable Residential Project, shall be recorded against each Residential Project containing For-Sale Affordable Housing Units in accordance with the Housing Program.

6.2 Procedures for Resales of For-Sale Affordable Housing Units. All obligations of the owners of For-Sale Affordable Housing Units with respect to the resale of For-Sale Affordable Housing Units, including Occupancy Priorities and resale procedures, are contained in the Second Lien Documents. Purchaser income eligibility and sales price restrictions applicable to the resale of For-Sale Affordable Housing Units shall be determined solely according to the requirements of Exhibit D to the Housing Program.

Section 7. For-Rent Market Rate Residential Units.

7.1 Procedures for the Initial Rental of For-Rent Market Rate Residential Units.

(a) Affirmative Marketing Obligations.

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

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published at least ten (10) days prior to the Vertical Developer's ceasing to accept applications for the initial rental of For-Rent Market Rate Residential Units in the applicable Residential Project.

(3) The Vertical Developer shall prepare and provide to the Agency for its review and comment only a copy of the proposed advertisement described in Section 7.1(a)(2) above at least thirty (30) days prior to accepting applications for the initial rental of For-Rent Market Rate Residential Units. The Agency's review and comment rights are limited to those items in Section 7.1(a)(4) below.

(4) Print advertisements shall be no less than four inches (4") by six inches (6") in size. Each print advertisement shall include the U.S. Department of Housing and

Urban Development Fair Housing logo and the words “Equal Housing Opportunity.” The Vertical Developer shall include models of different races and ethnic background in all its pictorial advertising that includes models.

(b) Occupancy Priorities.

In the initial rental of For-Rent Market Rate Residential Units, the Vertical Developer shall use the occupancy priorities in Section 5.1(b).

(c) Rental Procedures.

(1) At least ninety (90) days prior to accepting applications for For-Rent Market Rate Residential Units, the Vertical Developer shall provide to the Agency the Marketing Information applicable to such Residential Units.

(2) The Agency shall assist the Vertical Developer in notifying Certificate Holders by providing the Vertical Developer a list of Certificate Holders to notify regarding the housing opportunity, giving the Certificate Holders the possibility for submitting rental applications and Income Verification Information. The Vertical Developer shall provide the Agency with a list of all responding Certificate Holders, as well as providing information on each Certificate Holder’s status in the application process.

(3) No later than thirty (30) days from the Vertical Developer’s receipt of the Agency’s provision of the list of Certificate Holders under Section 7.1(c)(2), the Vertical Developer shall inform both the Agency and Certificate Holders as to which Certificate Holders from the list provided by the Agency are eligible to occupy the applicable For-Rent Market Rate Residential Units.

7.2 Procedures for Subsequent Rentals of Vacant For-Rent Market Rate Residential Units.

(a) Affirmative Marketing Obligations. The Vertical Developer shall make good faith efforts to advertise the periodic vacancy of For-Rent Market Rate Residential Units in a manner designed to reach diverse ethnic populations.

(b) Occupancy Priorities.

(1) Certificate Holders and San Francisco Residents shall be entitled to preference on the waiting list for the subsequent rentals of vacant of For-Rent Market Rate Rental Units, as described in Section 7.2(c) below.

(c) Rental Procedures.

(1) The Vertical Developer shall maintain a waiting list for occupancy of For-Rent Affordable Housing Units in each Residential Project containing such Residential

Units. The waiting list shall provide a priority for Certificate Holders and San Francisco residents who expressed an interest in renting a For-Rent Market Rate Residential Unit prior to the Rent-Up of such Residential Units, and a second priority for Certificate Holders and San Francisco residents who express an interest in such Residential Units subsequent to the Rent-Up of such Residential Units.

(2) A Certificate Holder or San Francisco Resident on such waiting list shall no longer be entitled to maintain the individual's/household's priority position on the waiting list upon occurrence of either of the following:

(A) The individual/household is offered a For-Rent Market Rate Residential Unit which the individual/household is eligible to occupy (based on Household Size), and the individual/household does not rent such Residential Unit; or

(B) The individual/household fails to satisfy the Vertical Developer's tenant selection criteria applicable to the particular Residential Units consistent with all applicable local, state and federal fair housing laws.

Section 8. For-Sale Market Rate Residential Units.

8.1 Procedures for Initial Sales of For-Sale Market Rate Residential Units.

(a) Affirmative Marketing.

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

(2) Print ads shall be published at least twice in each publication that has a weekly circulation, and at least once in all other publications. Ads must be published prior to the Vertical Developer's acceptance of any applications for the initial rental of For-Sale Market Rate Residential Units in the applicable Residential Project.

(3) The Vertical Developer shall prepare and provide to the Agency for its review and comment only a copy of the proposed advertisement described in Section 8.1(a)(2) above at least thirty (30) days prior to accepting applications for the initial rental of For-Sale Market Rate Residential Units. The Agency's review and comment rights are limited to those items in Section 8.1(a)(4) below.

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

(b) Occupancy Priorities.

(1) Certificate Holders. In the initial sale of For-Sale Market Rate Residential Units, the Vertical Developer shall give a first-priority preference to Hunters Point Certificate Holders, Western Addition Certificate Holders, and then to San Francisco Residents as further described in Section 8.1(c)(3) below.

(c) Sales Procedures.

(1) The Vertical Developer shall notify the Agency at least one hundred and eighty (180) days prior to accepting applications for the sale of For-Sale Market Rate Residential Units in a particular Residential Project.

(2) The Agency shall assist the Vertical Developer in informing Certificate Holders of the availability of For-Sale Market Rate Residential Units by providing the Vertical Developer a list of the names and addresses of Certificate Holders to notify regarding the housing opportunity. Each Certificate Holder shall be responsible for notifying the Vertical Developer of a desire to purchase a For-Sale Market Rate Residential Unit.

8.2 Procedures for Subsequent Sales of For-Sale Market Rate Residential Units. This Exhibit I does not impose any restrictions on the subsequent sales of For-Sale Market Rate Residential Units.

Section 9. Reporting Requirements.

The Vertical Developer shall comply with the following reporting requirements, in addition to any other requirements imposed by the funding source for the development of Market Rate Residential Units or Affordable Housing Units.

9.1 For-Rent Affordable Housing Units.

(a) Within ten (10) days after the execution of a rental agreement for the last For-Rent Affordable Housing Unit in a particular Residential Project, the Vertical Developer shall provide to the Agency a report on the status of each Certificate Holder on the Potential Tenant List, and a rent roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and rent.

(b) The Vertical Developer shall provide to the Agency quarterly reports, no later than the 15th day of the month, which indicate the following information for the preceding

quarter:

(1) The number of individuals/households on the waiting list for a particular Residential Project containing For-Rent Affordable Housing Units;

(2) With respect to Certificate Holders, Rent Burdened or Assisted Housing Residents and San Francisco Residents:

(A) The names of current Certificate Holders, Rent Burdened or Assisted Housing Residents, and San Francisco Residents on the waiting list for each such Residential Project and the date on which each such name was added to the waiting list;

(B) The names of Certificate Holders, Rent Burdened or Assisted Housing Residents, and San Francisco Residents who leased Residential Units during the preceding quarter; and

(C) If applicable, the reason why any Certificate Holder, Rent Burdened or Assisted Housing Resident, or San Francisco Resident on the waiting list did not rent an available For-Rent Affordable Housing Residential Unit (*e.g.*, not income-eligible, household size not appropriate for the Residential Unit).

(3) The Residential Unit number and date of leasing of each Residential Unit rented during the preceding quarter.

(4) The number of names added to and removed from each waiting list during the preceding quarter.

(c) The Vertical Developer shall provide to the Agency, in the quarterly report, a current waiting list for each such Residential Project, together with a narrative summary of each case in which a Certificate Holder was denied occupancy of a For-Rent Affordable Housing Unit, and the grounds for such denial (*e.g.*, not income eligible, household size not appropriate for the available Residential Unit size).

9.2 For-Sale Affordable Housing Units. Within ten (10) days following the close of escrow of all For-Sale Affordable Housing Units in a particular Residential Project, the Vertical Developer shall provide to the Agency a report on the status of each Certificate Holder on the Potential Purchaser List, and a sales roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and sales price.

9.3 For-Rent Market Rate Residential Units.

(a) Within ten (10) days after the execution of a rental agreements for ninety percent (90%) of the total number For-Rent Market Rate Residential Units in a particular Residential Project, the Vertical Developer shall provide to the Agency a report on the status of each Certificate Holder who has applied to rent such Residential Units.

(b) The Vertical Developer shall provide to the Agency annual reports that indicate the following:

(1) A copy of the current waiting list for each Residential Project containing For-Rent Market Rate Residential Units, together with a narrative summary of any Certificate Holders which were denied occupancy of a For-Rent Market Rate Housing Unit, and the grounds for such denial (*e.g.*, not income eligible, household size not appropriate for the available Residential Unit size).

(2) With respect to Certificate Holders:

(A) The names of current Certificate Holders on the waiting list for each such Residential Project and the date on which each Certificate Holder's name was added to the waiting list;

(B) The names of Certificate Holders who leased Residential Units during the preceding year;

(C) If applicable, the reason why any Certificate Holder on the waiting list did not rent an available For-Rent Market Rate Residential Unit (*e.g.*, household size not appropriate for the Residential Unit).

(3) The Residential Unit number and date of leasing of each Residential Unit rented during the preceding year.

(4) The number of names added to and removed from each waiting list during the preceding year.

9.4 For-Sale Market Rate Residential Units. Within ten (10) days after execution of a purchase agreement for ninety percent (90%) of For-Sale Market Rate Residential Units in a particular Residential Project, the Vertical Developer shall provide to the Agency a report regarding the status of each Certificate Holder who applied for the purchase of any such Residential Unit.

ATTACHMENT G
INSURANCE REQUIREMENTS

[To Be Attached]

ATTACHMENT H

PREVAILING WAGE REQUIREMENTS (LABOR STANDARDS)

These Prevailing Wage Requirements (hereinafter referred to as "Labor Standards") are attached to and made a part of the Disposition and Development Agreement Hunters Point Shipyard Vertical Development Phase ____, Lot ____ (the "Vertical DDA"). The Vertical Developer is bound by this Attachment as part of the obligations it assumes, and benefits it receives, under the Vertical DDA.

Section 1. Applicability. These Labor Standards apply to any and all construction of the Vertical Improvements as defined in the Vertical DDA.

Section 2. All Contracts and Subcontracts shall contain the Labor Standards; Confirmation by Construction Lender. All specifications relating to the construction of the Vertical Improvements shall contain these Labor Standards and the Vertical Developer shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Vertical Developer shall supply the Agency with true copies of each contract relating to the construction of the Vertical Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do so shall be a violation of these Labor Standards.

Section 3. Definitions.

Terms not defined in this Attachment have the meanings given to them in the Vertical DDA.

Agency's Optional Form has the meaning set forth in Section 8.2(a).

BAT has the meaning set forth in Section 6.

Bona Fide Prepayment of Wages has the meaning set forth in Section 5.2.

Contractor is the Vertical Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier having a contract or subcontract that exceeds \$10,000.00, and who employs Laborers, Mechanics, Working Foremen, and security guards to perform the construction on all or any part of the Vertical Improvements.

DAT has the meaning set forth in Section 6.

Laborers and Mechanics are all persons providing labor to perform the construction, including Working Foremen and security guards.

Non-Complying Contractor has the meaning set forth in Section 13.2.

Non-Conforming Contract has the meaning set forth in Section 13.2.

Notice of Dispute has the meaning set forth in Section 13.3.

Notice to Employees has the meaning set forth in Section 12.

Statement of Compliance has the meaning set forth in Section 8.2(b).

Wage Determination has the meaning set forth in Section 4.1.

Working Foreman is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least twenty percent (20%) of the work week.

Section 4. Prevailing Wage.

4.1 All Laborers and Mechanics employed in the construction of the Vertical Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by Section 5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment, computed at rates not less than those contained in the General Prevailing Wage Determination ("Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, §§ 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of Close of Escrow, the Agency shall provide the Vertical Developer with a copy of the applicable Wage Determination.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

4.2 Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein, *i.e.*, the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.

4.3 If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Vertical Developer, that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner

set forth in Section 8.1. The Executive Director of the Agency may require the Vertical Developer to set aside in a separate interest-bearing account with a member of the Federal Deposit Insurance Corporation, assets to meet obligations under the plan or program referred to above in Section 4.2. The interest shall accumulate and shall be paid as determined by the Agency acting at its sole discretion.

4.4 Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

Section 5. Permissible Payroll Deductions. The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

5.1 Any withholding made in compliance with the requirements of federal, state or local income tax laws, and the federal social security tax.

5.2 Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest ("Bona Fide Prepayment of Wages"). A Bona Fide Prepayment of Wages is considered to have been made only when cash or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

5.3 Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.

5.4 Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents, provided, however, that the following standards are met:

(a) The deduction is not otherwise prohibited by law; and

(b) It is either:

(1) Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or

(2) Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and

(3) No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and

(4) The deduction shall serve the convenience and interest of the employee.

5.5 Any authorized purchase of United States Savings Bonds for the employee.

5.6 Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with federal and state credit union statutes.

5.7 Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.

5.8 Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

Section 6. Apprentices and Trainees. Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first ninety (90) days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

Section 7. Overtime. No Contractor contracting for any part of the construction of the Vertical Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight (8) hours in any workday unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half (1.5) times the regular rate of pay for all hours worked in excess of eight (8) hours in any workday and should such Laborer or Mechanic work in excess of twelve (12) hours in any workday that Laborer or Mechanic must receive compensation at a rate not less than double the regular rate of pay for all hours worked in excess of twelve (12) in that workday. If a Laborer or Mechanic works in excess of forty (40) hours in a workweek that Laborer or Mechanic must receive compensation at a rate not less than one and one-half (1.5) times the regular rate of pay for all hours worked in excess of forty (40) hours in that workweek. Should a Laborer or Mechanic work for seven consecutive workdays in the same workweek, that Laborer or Mechanic must be compensated at a rate not less than one and one-half (1.5) times the regular rate of pay for the

first eight (8) hours in that seventh consecutive workday and at a rate not less than double the regular rate of pay for all hours worked in excess of eight (8) in that seventh consecutive workday.

Section 8. Payrolls and Basic Records.

8.1 Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Vertical Improvements and preserved for a period of one (1) year thereafter for all Laborers and Mechanics it employed in the construction of the Vertical Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.

8.2 Weekly Submissions.

(a) The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Vertical Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency ("Agency's Optional Form"). The Contractor if a Prime Contractor, or the Vertical Developer acting as the Contractor, is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise, each Contractor shall timely submit such payrolls.

(b) Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form ("Statement of Compliance") and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

8.3 The Contractor shall make the records required under Section 8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request, the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

Section 9. Occupational Safety and Health. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards

promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

Section 10. Equal Opportunity Program. The utilization of apprentices, trainees, Laborers and Mechanics under this Attachment shall be in conformity with the Equal Opportunity Program set forth in Attachment M of the Vertical DDA, including Schedules A through C. Any conflicts between the language contained in these Labor Standards and Attachment M shall be resolved in favor of the language set forth in Attachment M, except that in no event shall less than the prevailing wage be paid.

Section 11. Nondiscrimination Against Employees for Complaints. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Vertical DDA are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

Section 12. Posting of Notice to Employees. A copy of the Wage Determination referred to in Section 4.1 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Vertical Developer at the Close of Escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Vertical Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

Section 13. Violation and Remedies.

13.1 Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

13.2 Stop Work -- Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Vertical Improvements to contain the Labor Standards as required by Section 2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by Section 8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Vertical Developer with a copy to the Contractor involved and failure to cure the violation within five (5) working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

13.3 Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Vertical Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five (5) working days from the date of said notice, the Vertical Developer shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Vertical Developer, upon receipt of the notice of claimed violation from the Agency, shall, with respect to any amount stated in the Agency

notice, withhold payment to the Contractor of the amount stated multiplied by forty-five (45) working days; and shall with the Notice of Dispute, also advise the Agency that the monies are being or will be withheld. If the Vertical Developer fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Vertical Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

13.4 Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Vertical Developer shall continue to withhold the monies until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in Section 14.

13.5 Withholding Certificates of Completion. The Agency may withhold any or all Certificates of Completion of the Vertical Improvements provided for in the Vertical DDA, for any violations of these Labor Standards until such violation has been cured.

13.6 General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. *Provided, however,* the stop work remedy of the Agency provided above in Sections 13.2 and 13.3 is not subject to arbitration.

Section 14. Arbitration of Disputes.

14.1 Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof.

14.2 The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.

14.3 The arbitration shall take place in the City and County of San Francisco.

14.4 Arbitration may be demanded by the Agency, the Vertical Developer or the Contractor.

14.5 With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Vertical Developer, or as appropriate to one or the other if the Vertical Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards, they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination referred to in Section 4 and copies of all notices sent or received by the Agency pursuant to Section 13. Such material shall be made part of the arbitration record.

14.6 One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within thirty (30) days from appointment.

14.7 The decision of the arbitrator shall be final and binding on all of the parties, whether a party participates in the arbitration or not. Any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before thirty (30) days from appointment. The arbitrator shall schedule hearings as necessary to meet this thirty (30) day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.

14.8 Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision. If the arbitrator's decision requires the payment of money, the Contractor shall make the required payments and the Vertical Developer shall pay the Contractor from money withheld.

14.9 **Costs and Expenses.** Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

Section 15. Non-liability of the Agency. The Vertical Developer and each Contractor acknowledge and agree that the procedures set forth herein for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the VerticalImprovements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly, the Vertical Developer and any Contractor, by proceeding with construction, expressly waive and are deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including without limitation claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

EQUAL OPPORTUNITY NON-DISCRIMI- NATION

The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

PREVAILING WAGE

You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your regular rate of pay for all hours worked over 8 a day and double your regular rate of pay for all hours worked over 12 in a day. You must also be paid one and one-half times your regular rate of pay for all hours worked over 40 in a week. If you work for seven consecutive days in the same workweek, you must be paid one and one-half times your regular rate for the first eight hours and double time for all hours over 8.

APPRENTICES

Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.

PROPER PAY

If you do not receive proper pay, write:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3120
or call 749-2427 and ask for

Mr. Sylvester McGuire
Senior Contract Compliance Specialist

ATTACHMENT I
SAN FRANCISCO REDEVELOPMENT AGENCY
FORM OF CARD CHECK AGREEMENT

Section 1. Findings and Declarations.

- (a) In the course of managing real property that it owns or in otherwise carrying out its functions in the public interest, the Redevelopment Agency of the City and County of San Francisco (hereinafter the "Agency") occasionally participates in real property development as landlord, proprietor, lender or guarantor, facing the same risks and liabilities as other business entities participating in such ventures. For example, the Agency sometimes leases its real property under a percentage lease, or otherwise invests or pledges its resources in real estate development projects as a landlord, a lender or a guarantor. When it does, the Agency has an ongoing Proprietary Interest in that development, and, thus, has a direct interest in its performance.
- (b) In such situations, the Agency must make prudent business decisions, as would any private business entity, to ensure efficient and cost-effective management of its business concerns, and to maximize benefit and minimize risk. One of those risks is the possibility of labor/management conflict arising out of labor union organizing campaigns. Such conflict can adversely affect the Agency's investment in real estate development or other circumstances in which it has a Proprietary Interest by causing delay in the completion of projects, and/or by reducing revenues or increasing costs of the project when they are completed.
- (c) Although the Agency relies primarily on tax increment financing to finance development projects, including hotel and restaurant projects, it often becomes an investor or economic participant in such projects by negotiating lease or revenue participation arrangements. In such circumstances, labor/management conflicts can be particularly debilitating, not only to the specific Hotel or Restaurant Project, but also to the Agency's ability to finance other redevelopment projects. It is extremely important for the hotel and restaurant development in which the Agency is an investor or other economic participant to be free from labor disputes that have the potential of reducing the revenue of the Hotel or Restaurant Project and thereby reducing the value of the transaction to the Agency. If the value of the transaction is affected adversely, the Agency will receive less revenue from the property, which will reduce the Agency's ability to provide financial support to the hotel or restaurant Developer as well as other redevelopment projects.
- (d) In addition, labor strife in hotel and restaurant projects in which the Agency is an investor or other economic participant can jeopardize the operation of related tourist and commercial facilities, as well as San Francisco's national reputation as a tourist and convention destination.

- (e) To minimize that risk in circumstances where costly labor/management conflict has arisen in the past, the Agency enacts this Policy which requires that certain specified Employers in the hotel and restaurant industry shall agree, as a condition of the Agency's economic involvement in a Hotel or Restaurant Project, to nonconfrontational and expeditious procedures by which their workers can register their presence regarding union representation.
- (f) A major potential source of labor/management conflict that threatens the economic interest of the Agency as a participant in development projects is the possibility of Economic Action taken by labor unions against Employers in those developments when labor unions seek to organize their workers over Employer opposition to unionization. Experience of municipal and other investors has demonstrated that organizing drives pursuant to formal and adversarial union certification processes often deteriorate into protracted and acrimonious labor/management conflict. That conflict potentially can result in construction delays, work stoppages, picketing, strikes and more recently, in consumers boycotts or other forms of "corporate campaigns" that can generate publicity and reduced revenues that threaten the interests not only of the immediate "target" of such tactics, i.e., the Employer, but of other investors in the development, and also the Agency's special interests identified herein.
- (g) These risks of potential labor/management conflict are particularly acute when labor unions seek to organize workers in hotels and restaurants, as labor relations in the hospitality industry in San Francisco have proven especially contentious, and have resulted in many protests, boycotts and other activities which have disrupted the business of the hotel or restaurant and the tourist industry and the downtown hotel area.
- (h) In view of these concerns, the Agency deems it necessary to approach with great caution any economic participation in a Hotel or Restaurant Project if the Agency retains a Proprietary Interest, either as landlord, lender or guarantor. The Agency finds that a cautionary approach to be particularly appropriate given other possible factors present in such developments, such as the Agency's sometimes special Proprietary Interest or other special concerns identified herein, and/or their complex financing schemes, the possible use of scarce land resources, as well as the dependence of such projects on public "good will" and the special vulnerability of such projects to consumer boycotts, etc.
- (i) One way to reduce the Agency's risk where it has a Proprietary Interest in a Hotel or Restaurant Project is to require, as a condition of the Agency's investment or other economic participation, that Employers operating in the Hotel or Restaurant Project agree to a lawful, nonconfrontational alternative process for resolving a union organizing campaign. That alternative process is a so-called "Card Check," wherein employee preference regarding whether or not to be represented by a labor union to act as their exclusive collective bargaining representative is determined based on signed authorization cards. Private Employers are authorized under existing federal law to agree voluntarily to use his procedure in lieu of NLRB-supervised election procedures.
- (j) The Agency Commission finds based on the City's history that compliance with these procedures will help reduce the possibility of labor/management conflict jeopardizing the

Agency's Proprietary Interest in a Hotel or Restaurant Project. To ensure that card check procedures are required only to the extent necessary to ensure the goal of minimizing labor/management conflict, an Employer who agrees to such procedures and performs its obligation under a Card Check Agreement will be relieved of further obligation to abide by those procedures if a Labor Organization engages in Economic Action such as striking, picketing or boycotting the Employer in the course of an organizing drive and at a site covered by this Policy.

- (k) The sole purpose of this Policy is to protect the Agency's Proprietary Interest in particular Hotel and Restaurant Projects covered hereby. This Policy is not enacted to favor any particular outcome in the determination of Employer preference regarding union representation, nor to skew the procedures in such a determination to favor or hinder any party such determination. Likewise, this Policy is not intended to enact or express any generally applicable policy regarding labor/management relations, or to regulate those relations in any way, but is intended only to protect the Agency's Proprietary Interest in certain narrowly prescribed circumstances where the Agency commits its economic resources and/or its related interests are put at risk by certain forms of labor/management conflict.

Section 2. Definitions.

For purposes of this Policy, the following definitions shall apply:

- (a) "Card Check Agreement" means a written agreement between an Employer and a Labor Organization providing a procedure for determining employee preference on the subject of whether to be represented by a Labor Organization for collective bargaining, and if so, by which Labor Organization to be represented, which provides, at a minimum, the following:
 - (i) Determining employee preference regarding union representation shall be by a card check procedure conducted by a neutral third party in lieu of a formal election;
 - (ii) All disputes over interpretation or application of the parties' Card Check Agreement, and over issues regarding how to carry out the card check process or specific card check procedures shall be submitted to binding arbitration;
 - (iii) Forbearance by any Labor Organization from Economic Action against the Employer at the worksite of an organizing drive covered by this Policy, and in relation to an organizing campaign only (not to the terms of a Collective Bargaining Agreement), so long as the Employer complies with the terms of the Card Check Agreement;
 - (iv) Language and procedures prohibiting the Labor Organization or the Employer from coercing or intimidating employees, explicitly or implicitly, in selecting or not selecting a bargaining representative.

- (b) “Agency Contract” means a Disposition and Development Agreement, lease, management agreement, service agreement, loan, bond, guarantee, or other similar agreement to which the Agency is a party and in which the Agency has a Proprietary Interest.
- (c) “Collective Bargaining Agreement” means an agreement between an Employer and a Labor Organization regarding wages, hours and other terms and conditions of employment of the Employer’s employees. For purposes of this Policy, a Collective Bargaining Agreement does not include a Card Check Agreement as defined herein.
- (d) “Developer” means any person, corporation, association, general or limited partnership, limited liability company, joint venture or other entity which does or which proposes to purchase, lease, develop, build, remodel or otherwise establish a Hotel or Restaurant Project.
- (e) “Economic Action” means concerted action initiated or conducted by a labor union and/or employees acting in concert therewith, to bring economic pressure to bear against an Employer, as part of a campaign to organize employees or prospective employees of that Employer, including such activities as striking, picketing, or boycotting. A lawsuit to enforce this Policy is not “Economic Action.”
- (f) “Employer” means any Developer, Manager/Operator or subcontractor who employs individuals in a hotel or restaurant in a Hotel or Restaurant Project.
- (g) “Hotel or Restaurant Project” means a development project or facility in which the Agency has a Proprietary Interest and which contains a hotel or restaurant. For purposes herein a “hotel” shall mean any use or facility falling within either definition of Section 314.1(g) or (h) of the San Francisco Planning Code. For purposes herein a “restaurant” shall mean any facility that has as its principal purpose the sale of food and beverage for primarily on-site consumption, including any such facility operating within or as part of another facility, such as a stadium, hotel or retail store. A Hotel or Restaurant Project, as defined herein, includes a mixed-use development project in which the Agency has a Proprietary Interest which contains a hotel or restaurant, regardless of whether the Agency’s Proprietary Interest is in the hotel or restaurant portion of such mixed use development or the mixed-use development project as a whole. Notwithstanding the foregoing or anything else contained herein, the requirement in this Policy that an Employer enter into a Card Check Agreement shall apply only to those Employers who employ employees in a hotel or restaurant and shall not apply to those portions of a mixed-use development project which do not contain a hotel or restaurant.
- (h) “Labor Organization” means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with Employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (i) “Manager/Operator” means any person, corporation, association, limited or general partnership, joint venture or other entity (including a Developer) that operates or manages

a hotel or restaurant in a Hotel or Restaurant Project, or provides any material portion of the services provided by such hotel or restaurant in a Hotel or Restaurant Project, whether by Subcontract or Agency Contract.

- (j) “Proprietary Interest” means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Hotel or Restaurant Project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, in the following circumstances:
- (i) The Agency receives significant ongoing revenue (such as rent payments) under a lease or real property owned by the Agency for the development of a Hotel or Restaurant Project, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (ii)); or
 - (ii) The Agency receives ongoing revenue from a Hotel or Restaurant Project to pay debt service on bonds or loans provided by the Agency to assist the development of such Hotel or Restaurant Project (including incremental tax revenues generated by the Hotel or Restaurant Project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that Hotel or Restaurant Project or the development project in which it is located);
 - (iii) The Agency has agreed to underwrite or guarantee the development or operation of a Hotel or Restaurant Project, or loans related thereto;
 - (iv) The Agency receives a continuing financial payment that is specific to that Hotel or Restaurant Project, which is not a tax or other charge of general applicability or a one-time payment for the land;
 - (v) The Agency receives a share in the profits of a hotel in negotiated economic participation agreement.
- (k) In addition to the circumstances described in (i) — (v) above, the Agency shall be deemed to have a Proprietary Interest in a Hotel or Restaurant Project if the Agency determines or an interested party demonstrates prior to the effective date of the Subcontract or Agency Contract pursuant to which a hotel or restaurant will be operated in a Hotel or Restaurant Project that there is a significant risk that the Agency’s financial or other nonregulatory interest in a Hotel or Restaurant Project could be adversely affected by labor/management conflict or consumer boycotts potentially resulting from a union organizing campaign, except that no circumstances or arrangement shall be considered “financial or non-regulatory” under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, section 16 of the California Constitution (except as provided in (ii) above), zoning or the issuance of permits and licenses.
- (l) “Subcontract” means any lease, sublease, management agreement or other similar agreement between a Developer or a Manager/Operator and a subcontractor which

contemplates or permits the subcontractor to operate or manage all or a portion of a hotel or restaurant in a Hotel or Restaurant Project.

- (m) “Subcontractor” means any person, corporation, association, limited or general partnership, limited liabilities company, joint venture or other entity that enters into a Subcontract with a Developer or Manager/Operator.
- (n) “Substantial Amendment” to a pre-existing agreement, for purposes of the exemption for Employers operating before the effective date of Section 4(b)(ii) of this Policy, means an amendment to or renewal or extension of a pre-existing agreement that provides for or permits any of the following:
 - (i) a change in use with the scope of this Policy (i.e., which provides for the operation of a hotel or restaurant);
 - (ii) an increase in square footage, seating or rooms of more than 25%; except neither of the following, by themselves, shall constitute a “Substantial Amendment”:
 - (I) addition of outside seating or patio dining which increases the total seating or square footage devoted to seating by less than 25%;
 - (II) an increase in space for purpose of parking or storage; or
 - (iii) a new lease period of greater duration than the period provided in the pre-existing agreement.

Section 3. Policy, Requirements and Procedures to Minimize Labor/Management Conflict when the Agency has a Proprietary Interest.

- (a) General Policy. The Agency Commissioners declare as a matter of general policy that when the Agency retains or acquires a Proprietary Interest in a Hotel or Restaurant Project, it is essential for the protection of the Agency’s investment and/or business interests to require that Employers operating a hotel or restaurant in such Hotel or Restaurant Project agree to abide by card check procedures for determining employee preference on the subject of labor union representation, as specified in this Policy.
- (b) Primary Obligations. Pursuant to the policy stated in Subsection (a), the following requirements are imposed, except no Employer, Developer or Manager/Operator shall be responsible for obligations under this Policy if that person or entity is otherwise exempt from those obligations pursuant to Section 4(b), or if the Agency does not have a Proprietary Interest in the subject Hotel or Restaurant Project:
 - (i) Employers. An Employer of employees working in a hotel or restaurant in a Hotel or Restaurant Project, shall:
 - (I) Enter into a Card Check Agreement, as specified in this Policy, with a Labor Organization which requests such an agreement for the purpose of seeking to represent those employees before executing the Subcontract or

Agency Contract pursuant to which it operate a hotel or restaurant in a Hotel or Restaurant Project.

- (II) If the parties are unable to agree to the terms of a Card Check Agreement within 60 days of the commencement of such negotiations, they must enter into expedited binding arbitration in which the terms of a Card Check Agreement will be imposed by an arbitrator. In such proceeding, to be conducted by an experienced labor arbitrator selected as provided by the rules of the American Arbitration Association or equivalent organization, the arbitrator shall consider any model Card Check Agreement provided by the Agency and/or to prevailing practices and the terms of Card Check Agreement(s) in the same or similar industries, except that such Card Check Agreement must include the mandatory terms identified in Section 2(a);
- (III) Comply with the terms of that Card Check Agreement and this Policy; and
- (IV) Include in any Subcontract which contemplates or permits a Subcontractor to operate or manage a hotel or restaurant in a Hotel or Restaurant Project, as defined herein, or to provide a service essential to the operation of such a hotel or restaurant, a provision requiring that Subcontractor to comply with the requirements provided in this Policy. This provision shall be a material and mandatory term of such Subcontract, binding on all successors and assigns, and shall state (modified as necessary to accommodate particular circumstances):

“The Redevelopment Agency of the City and County of San Francisco has enacted the Card Check Neutrality Policy, which may apply to [Subcontractor]. Its terms are expressly incorporated by reference hereto. To the extent [Subcontractor] or its successors or assigns employs employees in a hotel or restaurant in [this facility] within the scope of that Policy, [Subcontractor] hereby agrees as a material condition of this [Subcontractor] to enter into and abide by a Card Check Agreement with a Labor Organization or Organizations seeking to represent [Subcontractor’s] employees, if and as required by that Policy, and to otherwise fully comply with the requirements of that Policy. [Subcontractor] recognizes that, as required by that Policy, it must enter into a Card Check Agreement with a Labor Organization or Organizations as specified by that Policy before executing this [Subcontractor], and that being party to such a Card Check Agreement(s) is a condition precedent of rights or obligations under this [Subcontractor].”

- 1) Notwithstanding the requirements provided in (I) — (IV), any Employer who has in good faith fully complied with those requirements will be excused from further compliance as to a Labor Organization which has taken Economic Action against that Employer at that site in furtherance of a campaign to organize that

Employer's employee at that site for collective bargaining. This clause shall not be interpreted, however, to apply to Economic Action against an Employer at other locations where that Employer does business, or at any location for purposes other than organizing the Employer's employees; nor shall Economic Action by one Labor Organization excuse an Employer from the obligations of this Policy or a Card Check Agreement as to a different Labor Organizations.

- (ii) Developers and Manager/Operators. Any Developer or Manager/Operator of a Hotel or Restaurant Project must:
- (I) To the extent it employs employees in a hotel or restaurant in a Hotel or Restaurant Project, abide by the requirements stated in Subsection (i);
 - (II) Include the provision specified in (i)(IV) in any Subcontract, modified as necessary to accommodate the circumstances of that particular Subcontract;
 - (III) Refrain from executing a Subcontract by which an Employer subject to (i) is authorized or permitted to operate a hotel or restaurant in a Hotel or Restaurant Project until that Employer has entered into a Card Check with Labor Organization, as required in (i);
 - (IV) Notify local labor council(s) and/or federation(s) of any hotel(s) or restaurant(s) and/or any Employer(s) that will operate a hotel or restaurant in a Hotel or Restaurant Project which may be subject to the requirements of (i), as soon as the Developer or Manager/Operator identifies such hotel(s) or restaurant(s) or Employer(s), but in no event later than 21 days before requiring an Employer to sign Subcontract. This notification requirement applies only to hotels or restaurants or Employers that will operate in a Hotel or Restaurant Project, as defined herein and only where the Agency's Proprietary Interest is based on a lease, a loan or a guarantee, as specified in Section 2(j)(i)-(v);
 - (V) Inform any prospective Subcontractor, that if the Subcontractor acts as an Employer subject to the requirements of (i), it must enter into a Card Check Agreement pursuant to this Policy before it may execute the Subcontract, and as a condition precedent to any rights or obligations under such document;
 - (VI) Take reasonable steps to enforce the terms of any Subcontract requiring compliance with this Policy. To the extent a Developer or Manager/Operator is found to have intentionally aided, abetted or encouraged a Subcontractor's failure to comply with such a provision or the terms of this Policy, either by action or inaction, that Developer or

Manager/Operator shall be jointly and severally liable for all damages award pursuant to Section 5.

(iii) The Agency.

(I) Agency Contracts. Any Agency Contract which contemplates the use or operation of a hotel or restaurant in a Hotel or Restaurant Project must include provision requiring that any Developer or operator/manager of a Hotel or Restaurant Project pursuant to that Agency Contract, and any Employer(s) operating in such Hotel or Restaurant Project, agree to comply with the requirements imposed in Subsections (i) and (ii), as essential consideration for the Agency entering into the Agency Contract.

(II) Model Card Check Agreement. To facilitate the requirements imposed by this Section, the Agency or Agency's designee may provide a model recommended Card Check Agreement that includes the mandatory terms identified in Section 2(a0 and which provides the maximum protection against labor/management conflict arising out of an organizing drive, and make such model recommended agreement available to parties required to enter into such agreement. The Agency may also prepare guidelines establishing standards and procedures related to this Policy. Notwithstanding this provision regarding the preparation of a model Card Check Agreement or related guidelines, this Policy shall be self-executing, and shall apply in all circumstances and to the extent provided in this Policy, in the absence of or regardless of such Model Card Check Agreement guidelines.

(III) Requests for Proposals ("RFPs"). Any request for proposals or invitation to bid or similar document regarding development of Agency property which could result in a proposal contemplating operation of a Hotel or Restaurant Project after the effective date of this Policy, must include in such document a summary description of and reference to the policy and requirements of this Policy. Failure to include description or reference to this Policy in an RFP or similar document shall not exempt any Developer, or Manager/Operator or Employer otherwise subject to the requirements of this Policy.

(c) Applicability of This Policy. The Policy and obligations established above shall apply to particular Developers, Manager/Operators and Employers whenever the Agency has a Proprietary Interest in a Hotel or Restaurant Project, except as otherwise provided hereunder. The determination whether or not the Agency has a Proprietary Interest in a Hotel or Restaurant Project, and if so, whether an exemption applies under Section 4(b), shall be made on a case-by-case basis by the Executive Director by applying the standards and principles described herein and any further standards and principles provided in guidelines distributed pursuant to Section 3(b)(iii)(II) hereof. Any party otherwise subject to the terms of this Policy because the Agency has Proprietary Interest in a Hotel or Restaurant Project defined in Section 2(j)(i)— (v) above that claims an

exemption from the terms of this Policy under Section 4 below shall have the burden of demonstrating that the basis for such exemption is clearly present.

Section 4. Scope and Exemptions.

- (a) **Scope.** The requirements of this Policy apply only to the procedures for determining employee preference regarding whether to be represented by a Labor Organization for purposes of collective bargaining and/or by which Labor Organization to be represented. Accordingly, this Policy does not apply to the process of collective bargaining in the event a Labor Organization has been recognized as the bargaining representative for employees of Employers subject to this Policy. Moreover, nothing in this Policy requires an Employer or other entity subject to this Policy to recognize a particular Labor Organization; nor does any provision of this Policy require that a Collective Bargaining Agreement be entered into with any Labor Organization, or that an Employer submit to arbitration regarding the terms of a Collective Bargaining Agreement.
- (b) **Exemptions.** The requirements of this Policy shall not apply to:
- (i) Employers employing fewer than the equivalent of 50 full-time or part-time employees, provided that when a restaurant is located on the same premises as a hotel and routinely provides food or beverage services to the hotel's guests, employees of the restaurant and hotel shall be aggregated for purposes of determining the applicability of this Policy.
 - (ii) Employers commencing operation in a hotel or restaurant in a Hotel or Restaurant Project before the effective date of this Policy, or a Hotel or Restaurant Project under any Subcontract or Agency Contract entered into before the effective date of this Policy ("pre-existing agreement"). This exemption applies to an Employer and to his or her family for the duration of such pre-existing agreement, unless it is amended during its term resulting in a Substantial Amendment, as defined in Section 2(n). This exemption shall apply beyond the expiration of the pre-existing agreement if it is renewed or extended without a change in ownership of the Employer, and without changes resulting in Substantial Amendment, as defined in Section 2(n). For purposes of this exemption, "change in ownership" shall mean a change in ownership, from the effective date hereof, of 25% or more, unless such change is among members of the same family; or
 - (iii) Any Employer which is signatory to a valid and binding Collective Bargaining Agreement covering the terms and conditions of employment for its employees at the Hotel or Restaurant Project, or which has entered into a Card Check Agreement with a Labor Organization regarding such employees which agreement provides at least equal protection from labor/management conflict as provided by the minimum terms provided in Section 2(a); or
 - (iv) Any Hotel or Restaurant Project where the Executive Director determines that the risk to the Agency's financial or other nonregulatory interest resulting from

labor/management conflict is so minimal or speculative as not to warrant concern for the Agency's investment or other nonregulatory interest; or

- (v) Any Hotel or Restaurant Project where the Developer, Manager/Operator or Employer, is an agency of the federal government or a statewide agency or entity ("Public Agency") and that Public Agency would prohibit application of this Policy; or
- (vi) Any Hotel or Restaurant Project where the requirements of this Policy would violate or be inconsistent with the terms or conditions of a grant, subvention or agreement with the Public Agency related to such Hotel or Restaurant Project, or any related rules or regulations.

Section 5. Enforcement.

- (a) The requirement that Employers enter into and comply with Card Check Agreement with Labor Organizations in the circumstances provided in this Policy, and the requirement that Developers or Manager/Operators contractually obligate their successors, assigns or Subcontractors to be bound by that former requirement are essential consideration for the Agency's agreement to any Agency Contract containing that requirement.
- (b) The Agency shall investigate complaints that this Policy has been violated or that a card check provision included in an Agency Contract or Subcontract pursuant to this Policy has been breached, and may take any action necessary to enforce compliance, including but not limited to instituting a civil action for an injunction and/or specific performance.
- (c) In the event the Agency brings a civil enforcement action for violation of this Policy, any taxpayer or any person or association by or with a direct interest in compliance with this Policy may join in that enforcement action as a real party in interest. In the event the Agency declines to institute a civil enforcement action for violation of this Policy, a taxpayer or directly interested person or association may bring a civil proceeding on its own behalf and on behalf of the Agency against that Employer and seek all remedies available for violation of this Policy and/or breach of a Card Check Agreement required by this Policy available under state law, including but not limited to monetary, injunctive and declaratory relief. In view of the difficulty of determining actual damages incurred by such a violation, liquidated damages may be awarded at the rate of \$1,000 per day of violation, to be distributed equally between a private plaintiff, if any, and the Agency Fund, unless such liquidation damages award is found to be so excessive in relation to the violator's resources as to constitute a penalty.
- (d) Any action challenging the applicability of this Policy to a particular Employer may be brought only after first seeking an exemption pursuant to Section 4, and must be commenced within 60 days after notification that such exemption has been denied by the Agency.
- (e) Notwithstanding anything else contained herein, in no event shall the remedy for a breach of the terms of this Policy include termination of any such Subcontract or Agency Contract, nor shall any such breach defeat or render invalid or affect in any manner

whatsoever the status priority of the lien of any mortgage, deed of trust or other security interest made for value and encumbering any property affected by such Subcontract or Agency Contract, including, without limitation, any leasehold estate or other interest in such property or improvements on such property.

Section 6. Effective Date and Application.

- (a) This Policy shall become effective immediately after it is enacted, is intended to have prospective effect only, and shall not be interpreted to impair the obligations of any pre-existing agreement to which the Agency is a party, unless such pre-existing agreement has been Substantially Amended after the effective date of this Policy.

Section 7. Severability.

- (a) If any part or provision of this Policy, or the application thereof to any person or circumstance, is held invalid, the remainder of this Policy, including the application of such part or provisions to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end, the provisions of this Policy are severable.

RESOLUTION No. 204-99
(Adopted December 7, 1999)

**AUTHORIZING THE ADOPTION OF THE "CARD CHECK NEUTRALITY"
POLICY REQUIRING EMPLOYERS OF A HOTEL AND RESTAURANT
DEVELOPMENT TO ABIDE BY CARD CHECK PROCEDURES FOR
DETERMINING EMPLOYEES' PREFERENCE REGARDING UNION
REPRESENTATION WHEN THE AGENCY RETAINS A PROPRIETARY
INTEREST IN A HOTEL OR RESTAURANT DEVELOPMENT;
ALL REDEVELOPMENT PROJECT AREAS**

BASIS FOR RESOLUTION

1. The Redevelopment Agency of the City and County of San Francisco (the Agency) has an ongoing proprietary interest in real property development as landlord, proprietor, lender or guarantor, facing the same risks and liabilities as other business entities participating in such ventures.
2. The Agency wishes to require that employers operating hotel or restaurant projects agree, as a condition of the Agency's investment or economic participation in such a project, to a process called "Card Check," a non-confrontational and expeditious procedure by which workers can register their preference regarding union representation on a signed authorization card.
3. The goal of the Card Check process is to minimize the risk of the possibility of labor/management conflict arising out of labor union organizing campaigns that might adversely affect the Agency's investment in real estate developments by causing delays in the completion of projections and/or reducing revenue or increasing costs of projects when they are completed.
4. Labor/management organizing campaigns are a potential source of conflict that threaten the economic interest of the Agency as a participant in hotel development projects because of the possibility of economic action taken by labor unions against employers in those developments when labor unions seek to organize their workers over employer opposition to unionization.
5. The Card Check process is not intended to regulate labor/management relations in any way, but is intended only to protect the Agency's proprietary interest in prescribed circumstances where the Agency's economic resources and/or its related interests are put at risk by certain forms of labor/management conflict.

RESOLUTIONS

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that the attached Card Check Neutrality Policy is hereby adopted.

APPROVED AS TO FORM:

ROBERT A. FIREHOCK
Acting Agency General Counsel

ATTACHMENT J

MINIMUM COMPENSATION POLICY

This Minimum Compensation Policy (the "Policy") is attached to and made a part of the Disposition and Development Agreement Hunters Point Shipyard Vertical Development Phase ___, Lot ___ (the "Vertical DDA"). Vertical Developer is bound by this Attachment as part of the obligations it assumes and benefits it receives under the Vertical DDA.

Section 1. Findings and Declarations.

1.1 The Redevelopment Agency of the City and County of San Francisco (the "Agency") enters into many contracts, including, but not limited to, service contracts, loan and grant agreements, and property agreements, in furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code §§ 33000 *et seq.*) in the interest of the health, safety and general welfare of the City of San Francisco's (the "City") residents.

1.2 These contracts and agreements have at times involved compensation to the contracting parties' or their subcontractors' employees that is at or only slightly above the minimum wage levels required by federal and state laws. The compensation paid by some Agency contractors and their subcontractors fails to provide employees with sufficient resources to afford life in the City. Requiring these contracting parties and their subcontractors to provide a minimum level of compensation to their employees will improve the health, safety and general welfare of San Francisco's residents, by, among other things, decreasing poverty and invigorating neighborhood businesses through increased consumer income.

Section 2. Definitions.

Terms not defined in this Attachment have the meanings given to them in the Vertical DDA.

Agency means the Redevelopment Agency of the City and County of San Francisco.

Agency Property means real property that is owned by the Agency or over which the Agency has exclusive use. "Exclusive use" means the right to use or occupy real property to the exclusion of all others, subject to the rights reserved by the party granting such exclusive use.

Business Day means a day other than Saturday, Sunday or a state or federal holiday.

City means the City and County of San Francisco, California, a municipal corporation.

Contract means an agreement or portion of an agreement that provides for services to be purchased at the expense of the Agency or out of funds established by ordinance, Memorandum of Understanding (MOU) or otherwise controlled by the Agency. The term Contract includes, without limitation, Property Agreements, Included Subcontracts and agreements such as grant agreements, pursuant to which agreements the Agency grants funds to a Contractor for services (including, without limitation, cultural activities, performances or exhibitions) to be rendered to all or any portion of the public rather than to Agency. Notwithstanding the foregoing, the term Contract excludes:

(a) Excluded Subcontracts;

(b) any agreement with a Contractor that, together with the Employees of any Included Subcontractor and of any entity that is owned or controlled by the Contractor or which owns or controls the Contractor, would have twenty (20) or fewer Employees;

(c) agreements for the purchase or lease of goods or for guarantees, warranties, shipping, delivery or initial installation of such goods;

(d) agreements entered into pursuant to settlement of legal proceedings;

(e) agreements for urgent or specialized litigation requirements where the Agency General Counsel finds that it would be in the best interests of the Agency not to include the requirements of this Policy;

(f) agreements with any person or entity in which the cumulative amount of compensation payable to such person or entity under all agreements with the Agency is less than twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations, in any fiscal year, provided that the agreement in question shall be deemed a Contract on and after the effective date of any instrument which causes such cumulative compensation under all agreements with the Agency to exceed twenty-five thousand dollars (\$25,000.00), or fifty thousand dollars (\$50,000.00) in the case of Nonprofit Corporations;

(g) agreements for the investment, management or use of trust assets where compliance with this Policy would violate the fiduciary duties of the trustee;

(h) agreements entered into prior to the Effective Date (unless and until a Contract Amendment is entered into);

(i) agreements entered into after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid packages or requests for proposals advertised and made available to the public prior to the Effective Date, which bid packages or requests for proposals were not amended on or after the

Effective Date;

(j) agreements involving the expenditure by the Agency of grant or special funds to the extent the application of this Policy would violate or be inconsistent with the terms or conditions of the applicable grant agreement, or with the rules, regulations or instructions of the public agency administering such grant agreement, which terms or conditions or rules, regulations or instructions provide for compensation lower than the Minimum Compensation and/or to the extent that application of this Policy would require the Agency to use Agency monies to supplement the grants, special funds or other non-General Fund revenues to maintain the current level of services;

(k) agreements with a Contractor that is a public entity;

(l) agreements for employee benefits to be provided to Agency employees, where the Executive Director finds that no entity is willing to comply with this Policy and is capable of providing the required employee benefits;

(m) agreements that require the Contractor to pay no less than the "prevailing rate of wage" in accordance with state or federal law or Agency policy, but only to the extent (A) each Covered Employee is covered by such requirement, and (B) such prevailing rate of wage is not less than the gross hourly compensation required under Section 3 of this Policy;

(n) agreements for the investment of Agency monies where the Executive Director finds that requiring compliance with this Policy will violate the Agency's fiduciary duties and for the investment of retirement, health or other funds held in trust pursuant to federal, state or local law, or MOU where the official or officials responsible for investing or managing such funds finds that requiring compliance with this Policy will violate their fiduciary duties;

(o) agreements made in connection with loans or grants under which the Agency, as creditor or grantor, is providing funds to be used by the debtor or grantee to: (A) acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed; (B) construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low- or moderate-income households; or (C) rehabilitate improvements owned or leased by the debtor or grantee;

(p) disposition and development or ground lease agreements of Agency Property on which residential improvements for low-or-moderate income households will be constructed or existing improvements will be operated for low-or-moderate income households; provided, however, that any leases for commercial space in such properties shall be considered Included Leases and shall be subject to the requirements of this Policy;

(q) agreements with an owner (such as an owner participation agreements) where

such agreement is granted from the exercise of the Agency's regulatory or police powers not requiring any discretionary approvals by the Agency.

Contract Amendment means an agreement entered into on or after the Effective Date, pursuant to which a Contract entered into prior to the Effective Date is modified or supplemented in order to: (a) extend the term; (b) modify the total amount of payments due from the Agency under a Contract; or (c) modify the scope of services to be performed by a Contractor. The term does not include construction change orders.

Contractor means either: (a) the person or entity that enters into a Contract with the Agency; (b) in the case of an Included Subcontract, the subcontractor who enters into the Included Subcontract with the Contractor; or (c) in the case of an Included Tenant, the Tenant who enters into the Included Lease with the Contractor.

Covered Employee means:

(a) An Employee of a Contractor who, during the applicable Pay Period, performs at least four (4) hours per week during the Pay Period work funded (in whole or in part) under the applicable Contract or to the project funded under the applicable Contract:

(i) within the geographic boundaries of the City;

(ii) on real property owned or controlled by the Agency, but outside the geographic boundaries of the Agency; or

(iii) elsewhere in the United States, but only if such related work performed elsewhere within the United States consists of at least ten (10) hours per each work week during the Pay Period in question.

(b) Notwithstanding the foregoing, the term Covered Employee excludes the following Employees of a Contractor that is a Nonprofit Corporation:

(i) Any Employee who is:

(A) under the age of eighteen (18) and is claimed as a dependent for federal income tax purposes and is employed as an after-school or summer Employee; or

(B) employed as a trainee in a bona fide training program consistent with federal law, which training program enables the Employee to advance into a permanent position; provided, however, these exemptions only apply when the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; and

(ii) Any disabled Employee of a Contractor, which disabled Employee:

(A) is covered by a current sub-minimum wage certificate issued to the Contractor by the U.S. Department of Labor; or

(B) would be covered by such a certificate but for the fact that the Contractor is paying a wage equal to or higher than the minimum wage.

Effective Date means the date the Agency Commission approves this Policy.

Employee means any person who is employed by a Contractor, including part-time and temporary employees.

Excluded Subcontract means any agreement or portion of an agreement between a Contractor and a person or entity that is not an Employee of such Contractor, which agreement or portion of an agreement relates to a Contract but is not an Included Subcontract. The term Excluded Contract includes, without limitation, an agreement pursuant to which a Contractor obtains from such a person or entity goods to be used in the fulfillment of the Contractor's duties under the applicable Contract. The term also includes agreements (including, without limitation, any permit to enter or license for a term of less than one hundred and twenty (120) days or any easement agreement) for the exclusive use of real property owned by the Agency or of which the Agency has exclusive use, other than Property Agreements.

Included Lease means a lease, sublease or other agreement with any person or entity for the exclusive right to occupy or use all or any portion of real property owned, leased or otherwise controlled by the Agency or real property in which the Agency has a Proprietary Interest.

Included Subcontract means an Included Lease or an agreement or portion of an agreement between a Contractor and a person or entity who is not an Employee of such Contractor, pursuant to which such person or entity:

(a) agrees to assist a Contractor in performing a Contract; or

(b) agrees to assist a Contractor with a project funded by grant monies conveyed to the Contractor under the applicable Contract. An agreement to assist a Contractor means an agreement to perform all or a portion of a component of the services covered by the Contract with the Agency.

Included Subcontractor means a Subcontractor who enters into an Included Subcontract.

Lease means a written agreement (including, without limitation, any lease, concession or license) in which:

(a) the Agency gives to another party the exclusive use of Agency Property for a

term exceeding one hundred and twenty (120) consecutive days in any calendar year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one hundred and twenty (120) consecutive days. The term Lease includes Lease Amendment.

(b) the Contractor gives to another party the exclusive use of property in which the Agency has a Proprietary Interest for a term exceeding one hundred and twenty (120) consecutive days in any calendar year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one hundred and twenty (120) consecutive days, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one hundred and twenty (120) consecutive days.

Lease Amendment means a modification to a Lease that extends the term or materially changes any other provision of the Lease. Notwithstanding the foregoing, "Lease Amendment" does not include a one-time extension of the term of a Lease for up to six (6) months, or relocation of the leased premises at the request of the Agency for its benefit or convenience (as determined by the Agency Executive Director).

Minimum Compensation means each of the components required under Section 3 of this Policy.

Nonprofit Corporation means a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

Policy has the meaning set forth in the Preamble.

Property Agreements means Disposition and Development Agreements (DDAs), ground leases, and any other agreements with the Agency (other than Excluded Subcontracts) in which the Agency has a Proprietary Interest.

Proprietary Interest means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Contract could be adversely affected, in the following circumstances:

(a) The Agency receives significant ongoing revenue (such as rent payments) under a lease or ground lease of real property owned by the Agency for the development of a project pursuant to a Contract, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (b) below); or

(b) The Agency receives ongoing revenue from a project pursuant to a Contract to pay debt service on bonds or loans provided by the Agency to assist the development of such project (including incremental tax revenues generated by the project or the development project in which it is located and used, directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that project or the development project in which it is located;

(c) The Agency has agreed in a Contract to underwrite or guarantee the development or operation of a development project, or loans related thereto;

(d) The Agency pursuant to a Contract receives a continuing financial payment that is specific to that project, which is not a tax or other charge of general applicability or a one-time payment for the land;

(e) The Agency receives a share in the profits of a project in a negotiated economic participation agreement pursuant to a Contract;

(f) In addition to the circumstances described above, the Agency shall be deemed to have a Proprietary Interest in a Contract for a project if the Agency determines, or an interested party demonstrates, prior to the effective date of the Contract pursuant to which a project will be operated that there is a significant risk that the Agency's financial or other nonregulatory interest in the project could be adversely affected, except that no circumstance or arrangement shall be considered "financial or nonregulatory" under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, Section 16 of the California Constitution (except as provided in (b) above), zoning or the issuance of regulatory permits.

Pay Period means the applicable Contractor's regular pay period.

Sublease means any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease. Notwithstanding the foregoing, the term Sublease does not include each of the circumstances that constitute an exclusion from the definition of "Lease."

Subtenant means a person or entity that enters into a Sublease.

Tenant means the person or entity that enters into a Lease with the City.

Vertical DDA has the meaning set forth in the Preamble.

Section 3. Minimum Compensation Components. Minimum Compensation shall consist of each of the following:

(a)(i) Hourly gross compensation in the amount of nine dollars (\$9.00) per hour.

(ii) On January 1, 2002, the Agency shall increase the hourly gross compensation to ten dollars (\$10.00) per hour; provided, however, that in the case that an increase in the gross compensation under the City's Minimum Compensation Ordinance does not take effect on January 1, 2002, the Agency's increase shall become effective on the later date imposed by the City ordinance; provided, further, however, that in the case of Nonprofit Corporations, the Agency may approve this adjustment only upon the Executive Director's review of the Joint Report issued by the Controller, Mayor's Budget Office, and Budget Analyst, pursuant to the City's ordinance and finds that the Agency has sufficient funds to pay the anticipated costs of the adjustment. A finding of "sufficient funds" shall mean that the Agency will not be required to reduce services in order to pay the anticipated costs of the adjustment.

(iii) For each of the next three (3) years after the adjustment provided in Section 3.1(a)(ii) is made, at annual intervals, the Agency shall make an additional adjustment of two and one-half percent (2.5%).

(b) Compensated time off (at the compensation rates specified in Section 3.1(a)) in an hourly amount that, on an annualized basis for a full-time employee, equals twelve (12) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, for sick leave, vacation or personal necessity. Notwithstanding the foregoing, if a Contractor reasonably determines, in good faith, that the Contractor cannot comply with this requirement for compensated time off, the Contractor shall provide the Covered Employee with a cash equivalent of such compensated time off.

(c) Uncompensated time off in an hourly amount that, on an annualized basis for a full-time employee, equals ten (10) days per year. Such time off shall vest with the Covered Employee at the end of the applicable Pay Period and may be used, at the option of the Covered Employee, for sick leave for the illness of the Covered Employee or such Covered Employee's spouse, domestic partner, child, parent, sibling, grandparent or grandchild. This uncompensated time off is in addition to any an employee is eligible for under the Family and Medical Leave Act. Nothing in this section should be construed as conflicting with the Family and Medical Leave Act

Section 4. Contract Requirements. Every Contract or Contract Amendment entered into on or after the Effective Date shall provide as follows:

4.1 For each hour worked by a Covered Employee during each Pay Period during the term of the Contract (as such term may be extended from time to time), Contractor shall provide to such Covered Employee no less than the Minimum Compensation as required in this Policy.

4.2 Failure to comply with the foregoing requirement shall constitute a material breach by Contractor of the terms of the Contract. Such failure shall be determined by the Agency in its sole discretion.

4.3 If, within thirty (30) days after the Contractor receives written notice of

such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the Agency shall have the right to pursue any rights or remedies available under the terms of the Contract or under applicable law.

4.4 The Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for complaining to the Agency with regard to the employer's compliance or anticipated compliance with this Policy, for opposing any practice proscribed by this Policy, for participating in proceedings related to this Policy, or for seeking to assert or enforce any rights under this Policy by any lawful means.

4.5 The Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Policy.

4.6 The Contractor shall keep itself informed of the current Minimum Compensation, and shall provide prompt written notice to all Covered Employees of annual adjustments to the Minimum Compensation, as well as any written communications received by the Contractor from the Agency, which communications are marked to indicate that they are to be distributed to Covered Employees.

4.7 The Contractor shall provide reports to the Agency in accordance with any reporting standards promulgated by the Agency's Contract Compliance Division.

4.8 The Contractor shall provide the Agency with access to pertinent records after receiving a written request to do so and being provided at least five (5) Business Days to respond.

4.9 The Contract Compliance Division may conduct random audits of Contractors. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by this Policy; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) Business Days of the written notice; and (iv) limited to one (1) audit per Contractor every two (2) years for the duration of the Contract. Nothing in this Section shall be deemed to interfere with the authority of the Contract Compliance Division to investigate any report of an alleged breach of contract as provided in Section 6.2.

4.10 Any Contractor subject to the provisions of this Policy shall promptly notify the Contract Compliance Division of any subcontractors performing services covered by this Policy and shall certify to the Contract Compliance Division that it has notified the subcontractors of their obligations under this Policy.

Section 5. Administration and Enforcement.

5.1 The Contract Compliance Division shall adopt the guidelines or rules adopted by the City and County of San Francisco for implementation of the City's Minimum Compensation Ordinance. At the option of the Contract Compliance Division,

additional or revised guidelines or rules for the administration of this Policy may be adopted to facilitate the Agency's implementation of this Policy. Such guidelines and rules shall not be adopted finally until the Contract Compliance Division has held at least one (1) public community meeting and a workshop at a regularly scheduled Agency Commission meeting on the proposed guidelines. The guidelines and rules shall establish procedures for providing administrative hearings requested by Covered Employees to determine whether a Contractor has breached a Contract based on the Minimum Compensation requirements of this Policy. The guidelines and rules shall also establish procedures permitting Contractors to provide payroll information in confidence to the Agency for purposes of monitoring compliance under this Policy and authorizing disclosure of the information by the Agency only when necessary for enforcement purposes. The Contract Compliance Division shall also issue a determination as to whether a particular instrument constitutes a Contract or agreement subject to the requirements of this Policy. The Contract Compliance Division shall report annually on compliance with this Policy to the Agency Commission. Such report shall include cumulative information regarding the number of waivers granted by the Executive Director or Agency Commission pursuant to Sections 6, 7, 8 and 9 of this Policy and statistical data regarding such waivers.

5.2 A Covered Employee may report to the Contract Compliance Division in writing any alleged breach by a Contractor of the terms required to be contained in the applicable Contract under this Policy. The Contract Compliance Division shall investigate any such report. If the Contract Compliance Division determines that a Contractor is in breach of any such term, the Contract Compliance Division shall notify the Executive Director of its findings and of any action that the Contract Compliance Division requests that the Executive Director take with respect to such breach. In order to ensure compliance with this Policy and to enhance the monitoring activities of the Contract Compliance Division, the Agency desires to encourage reporting by Covered Employees pursuant to this subsection. The Contract Compliance Division shall keep confidential, to the maximum extent permitted by applicable laws, the Covered Employee's name and other identifying information.

5.3 In addition to any other rights or remedies available to the Agency under the terms of the Contract or under applicable law, the Agency shall have the following rights, in the event of such failure by the Contractor:

(a) the right to charge the Contractor an amount equal to the difference between the Minimum Compensation levels required by this Policy and any compensation actually provided to each Covered Employee who was not paid in accordance with the terms of this Policy, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(b) the right to set off all or any portion of the amount described in Section 5.3(a) against amounts due to Contractor under the Contract;

(c) the right to terminate the Contract in whole or in part;

(d) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement of the affected Covered Employee or to obtain other appropriate equitable relief; and

(e) the right to bar a Contractor from entering into future contracts with the Agency for three (3) years. Each of these rights shall be exercisable individually or in combination with any other rights or remedies available to the Agency. Any amounts realized by the Agency pursuant to this subsection shall be paid to each applicable Covered Employee.

5.4 Each Covered Employee shall be a third-party beneficiary under the Contract as set forth in this Section 5.4 and in Section 5.5, and may pursue the following remedies in the event of a breach by the Contractor of any contractual covenant described in Section 3 or Section 4, but only after the Covered Employee has provided the notice and participated in the administrative review hearing provided in this Section 5.4. The Covered Employee shall give written notice of a breach to the Contractor and to the Contract Compliance Division. If the Contract Compliance Division determines that no breach has occurred, or if the Agency fails to obtain the cure of a breach by the Contractor within sixty (60) days after receipt of notice by the Covered Employee, the Covered Employee may request an administrative review hearing. The Covered Employee must request such a hearing within ninety (90) days after giving written notice of the breach. Unless the Covered Employee withdraws the request for a hearing, the Contract Compliance Division shall conduct, or arrange to have conducted, a hearing. The Employee shall have the right to attend the hearing personally or through a designated representative. The Contract Compliance Division shall notify the Contractor of the hearing so that the Contractor may attend and present evidence. After the hearing is completed, the person conducting the hearing shall determine whether the Contractor has breached the Contract. Upon the issuance of a written decision finding a breach, and after a waiting period of twenty-one (21) days, the Covered Employee may bring an action against the Contractor for such breach in the Superior Court of the State of California, as appropriate, unless the Agency has commenced an action against the Contractor based on the breach, or obtained compliance, within the twenty-one (21)-day waiting period and provided notice to the Covered Employee of that action. If the Covered Employee prevails in such action, the Covered Employee may be awarded: (A) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; and (B) in the event of a breach by Contractor of the covenant referred to in Section 4.4, the right to seek reinstatement or to obtain other appropriate equitable relief.

5.5 In the event of any legal action or proceeding between Contractor and a Covered Employee arising from this Attachment 15, the unsuccessful party to such action or proceeding shall pay to the prevailing party all costs and expenses, including reasonable attorney's fees and disbursements, incurred by such prevailing party in such action or proceeding and in any appeal in connection with such action or proceeding; provided, however, that a Contractor shall be entitled to such costs and expenses only if the court determines that the Covered Employee's action or proceeding was frivolous,

vexatious or otherwise an act of bad faith. If such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and attorneys' fees and disbursements shall be included in and as a part of such judgment. This Attachment 15 does not authorize any award of costs, expenses, or attorney's fees in favor of or against the Agency.

5.6 The Agency shall maintain the confidentiality of payroll information obtained in the course of monitoring compliance with this Policy and shall disclose such information only as necessary for enforcement purposes.

5.7 The Contract Compliance Division shall develop a procedure for obtaining an assurance from Contractors when they sign an agreement subject to this Policy that they comply with the requirements of this Policy, such as the signing of an affidavit of compliance.

Section 6. Waivers. The Executive Director shall waive the requirements of this Policy under the following circumstances:

6.1 The Executive Director has determined that (a) either (1) there is only one prospective Contractor willing to enter into the applicable Contract on the terms and conditions established by the Agency (other than the requirements of this Policy); or (2) the needed services under the applicable Services Contract are available only from a sole source; and (b) the prospective Contractor is not currently disqualified from doing business with the Agency or any other governmental agency.

6.2 The Executive Director has determined in writing that the Contract is necessary to respond to an emergency which endangers the public health or safety and no entity that complies with the requirements of this Policy and is capable of responding to the emergency is immediately available to perform the required services.

6.3 The Executive Director has determined in writing that (a) there are no qualified responsive bidders or prospective vendors that comply with the requirements of this Policy; and (b) the Contract is for a service, project, or property that is essential to the Agency or the public.

6.4 the Executive Director has determined in writing that (a) the Services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity; (b) purchase under such arrangement will substantially reduce the Agency's cost of purchasing such Services; and (c) purchase under such an arrangement is in the best interest of the Agency or the public.

Section 7. Additional Waivers by the Executive Director – Nonprofit Corporations. A Nonprofit Corporation may seek a waiver from the requirements of the adjustments provided in Section 3.1(b) and Section 3.1(c) if the highest paid managerial position in the organization earns a salary which, when calculated on an hourly basis, is not more than six (6) times the lowest wage paid by the organization to a Covered Employee. The Nonprofit Corporation shall provide to the Contracting Department a written statement, prepared and signed by the Nonprofit Corporation, setting forth an

explanation of the economic hardship to the Nonprofit Corporation or the negative impact on services that would result from compliance with this Policy. The Executive Director may grant the requested waiver. Each waiver shall be effective for a period of up to one (1) year, and subsequent waivers may be requested and granted.

Section 8. Special Waiver By the Agency Commission. A special waiver may be granted if, upon receipt of an application from the Contractor, stating fully the grounds of the request and the facts pertaining thereto, the Agency finds following its own further investigation that the application of the Policy would result in an adverse impact on services or an unreasonable financial impact on the Contract. In order to permit any such waiver, the Agency must determine that:

(a) The application of the Policy would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the applicable Redevelopment Plan;

(b) There are exceptional circumstances or conditions applicable to the property, the intended development of the property, or the services proposed through a contract, which do not apply generally to other properties or contracts having the same standards, restrictions and controls;

(c) Permitting a waiver, for a specified period of time, will not be materially detrimental to the public welfare or injurious to property or improvement in the area; and,

(d) Permitting a waiver, for a specified period of time, will not be contrary to the objectives of the applicable redevelopment plan.

Waivers shall only be granted for a limited time period as determined to be needed to promote the general purpose and intent of the applicable redevelopment plan. Subsequent waivers may be requested and either granted or denied. The Agency anticipates that all covered Projects and Contracts will eventually transition to achieving a viability that will allow for covered Contractors to comply with the Policy.

Section 9. Waiver Through Collective Bargaining. All or any portion of the applicable requirements of this Policy may be waived in a bona fide collective bargaining agreement, provided that such waiver is explicitly set forth in such agreement in clear and unambiguous terms.

Section 10. Relationship to Other Requirements. This Policy provides a minimum level of compensation and shall not be construed to preempt or otherwise affect any other law, regulation or requirement providing a higher level of compensation.

Section 11. Preemption. Nothing in this Policy shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

Section 12. Effective Date. This Policy shall become effective the date of the Agency approval.

ATTACHMENT K

HEALTH CARE ACCOUNTABILITY POLICY

This Health Care Accountability Policy (the “Policy”) is attached to and made a part of the Disposition and Development Agreement Hunters Point Shipyard Vertical Development, Phase ___, Lot___ (the “Vertical DDA”). Terms not defined in this Attachment have the meanings given to them in the Vertical DDA. Developer is bound by this Attachment as part of the obligations it assumes and benefits it receives under the Vertical DDA.

Section 1. Findings and Declarations.

1.1 The San Francisco Redevelopment Agency of the City and County of San Francisco (the “Agency”) enters into many contracts, including, without limitation, service contracts, loan and grant agreements and property agreements, in furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code §§ 33000 *et seq.*) in the interest of the health, safety and general welfare of the City of San Francisco’s (the “City”) residents.

1.2 These contracts and agreements have at times involved compensation to the contracting parties’ or their subcontractors’ employees that does not include health benefits or does not provide a high enough level of compensation that would allow an employee to acquire their own health insurance. Uninsured persons seeking medical assistance place an immediate burden on the City’s limited public health resources and place the uninsured at a far greater level of health risk. Requiring these contracting parties and their subcontractors to offer health benefits to their employees, or to make payments to the City’s Department of Public Health to provide for the care of such persons, or to participate in a health benefits program developed by the City’s Director of Health, will improve the health, safety and general welfare of San Francisco’s residents by ensuring health benefits for many more of the City’s residents who are now uninsured.

Section 2. Definitions.

Agency means the Redevelopment Agency of the City and County of San Francisco.

Agency Property means real property that is owned by the Agency or over which the Agency has exclusive use. “Exclusive use” means the right to use or occupy real property to the exclusion of all others, subject to the rights reserved by the party granting such exclusive use.

Business Day means a day other than Saturday, Sunday or a bank, City, or Agency holiday.

City means the City and County of San Francisco.

Contract means an agreement or portion of an agreement that provides for services to be purchased at the expense of the Agency or out of funds established by ordinance or Memorandum of Understanding (MOU), or otherwise controlled by the Agency. The term Contract includes, without limitation, Property Agreements, Subcontracts and agreements such as grant agreements, pursuant to which agreements the Agency grants funds to a Contractor for services (including, without limitation, cultural activities, performances or exhibitions) to be rendered to all or any portion of the public rather than to Agency. Notwithstanding the foregoing, the term Contract excludes:

- (a) Agreements for a duration of less than one (1) year. Contractors are prohibited from entering into multiple contracts of short duration in order to evade the requirements of this Policy;
- (b) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. Where an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a Contract if a preponderance of the contract amount is for goods;
- (c) Agreements entered into pursuant to settlement of legal proceedings;
- (d) Agreements for urgent or specialized advice, consultation or litigation services for the Agency where the General Counsel finds that it would be in the best interests of the Agency not to include the requirements of this Policy;
- (e) Agreements with any person or entity if the amount of the agreement is less than twenty-five thousand dollars (\$25,000.00) (in the case of a for-profit entity or person) or less than fifty thousand dollars (\$50,000.00) (in the case of a Nonprofit Corporation). However, if the Contracting Party has multiple agreements with the Agency in a given fiscal year (which agreements would be considered Contracts under this Policy except that the individual dollar amounts are below the thresholds set forth in the preceding sentence) and the cumulative amount of such agreements is seventy-five thousand dollars (\$75,000.00) or more, the provisions of this Policy shall apply to each such agreement from the date on which the triggering Contract is executed;
- (f) Agreements for the investment, management or use of trust assets where compliance would violate the fiduciary duties of the trustee;
- (g) Agreements executed prior to the Effective Date (unless and until a Contract Amendment is executed);
- (h) Agreements executed after the Effective Date (unless and until a Contract Amendment is entered into) pursuant to, and within the scope of, bid

packages or requests for proposals advertised and made available to the public prior to the Effective Date, unless the bid packages or requests for proposals are materially amended on or after the Effective Date;

- (i) Agreements that require the expenditure of grant funds awarded to the Agency by another entity. If a Contract is funded both by grant funds and non-grant funds, the entire Contract is exempt; provided that, if the use of the grant funds is severable from the non-grant funds, the Contract is exempt only with respect to the use of the grant funds;
- (j) Agreements pursuant to which the Agency awards a grant to a Nonprofit Corporation;
- (k) Agreements with a public entity;
- (l) Agreements for employee benefits to be provided to Agency employees, where the Agency Executive Director finds that no person or entity is willing to comply with this Policy and is capable of providing the required employee benefits;
- (m) Agreements for the investment, management or use of Agency monies where the Agency Executive Director finds that requiring compliance with this Policy will violate the Agency's fiduciary duties and agreements for the investment of retirement, health or other funds held in trust pursuant to Charter, statute, ordinance or MOU where the official or officials responsible for investing or managing such funds find that requiring compliance with this Policy will violate their fiduciary duties;
- (n) Loan agreements and agreements made in connection with loans or grants under which the Agency, as creditor or grantor, is providing funds to be used by the debtor or grantee to:
 - (1) Acquire an interest in real property on which residential improvements for low- or moderate-income households will be constructed;
 - (2) Construct improvements owned or leased by the debtor or grantee, on condition that residents of the improvements qualify as low-or-moderate-income households; or
 - (3) Rehabilitate improvements owned or leased by the debtor or grantee;
- (o) Disposition and development or ground lease agreements of Agency Property on which residential improvements for low-or-moderate income households will be constructed or existing improvements will be operated for low-or-moderate income households; provided, however, that any

leases for commercial space in such properties shall be considered Included Leases and shall be subject to the requirements of this Policy;

- (p) Agreements between a Tenant or Subtenant and a Contractor to perform services on property covered by a Lease if the Contractor does not provide such services on a regular and on-going basis. For purposes of this exemption, if employees of the Contractor and any Subcontractors cumulatively work on the Lease property less than one hundred and thirty (130) days within a twelve (12) month period, the agreement shall not be considered regular and on-going.
- (q) Agreements with an owner (such as owner participation agreements) where such agreement is granted in the exercise of the Agency's regulatory or police powers.

Contract Amendment means a modification to an agreement which extends the term, increases the total amount of payments due from the Agency (except where such increase is due solely to cost of living adjustments), or modifies the scope of services to be performed by the Contractor; provided that the resulting agreement falls within the definition of Contract.

Notwithstanding the foregoing, the term Contract Amendment does not include a one-time extension of the term of a Contract for up to six (6) months, or a construction change order, modification or amendment to a Contract executed by the Agency for its benefit (as determined by the Agency Executive Director).

Contracting Party means a Contractor who enters into a Contract.

Contractor means the person or entity that enters into a Contract with the Agency. The term Contractor also means any person or entity that enters into a Contract with a Tenant or Subtenant to perform services on property covered by a Lease.

Covered Employee means:

- (a) An Employee of a Contractor or Subcontractor who works on an Agency Contract or Subcontract for fifteen (15) hours or more per Week, (1) Within the geographic boundaries of the City of San Francisco; or (2) Elsewhere in the United States.
- (b) An Employee of a Tenant or Subtenant who works fifteen (15) hours or more per Week on property that is covered by a Lease or Sublease; and
- (c) An Employee of a Contractor or Subcontractor that has a Contract or Subcontract to perform services on property covered by a Lease or Sublease if the Employee works fifteen (15) hours or more per Week on the property.

Notwithstanding the foregoing, the term Covered Employee does not include the following:

- (1) Any Employee under the age of eighteen (18) who is a student, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or
- (2) Any Employee employed as a trainee in a bona fide training program consistent with federal law, which training program enables the Employee to advance into a permanent position, provided that the Employee does not replace, displace or lower the wage or benefits of any existing position or Employee; or
- (3) Any Employee that the Contracting Party is required to pay no less than the “prevailing rate of wage” in accordance with the Agency’s Prevailing Wage Policy; or
- (4) Any disabled Employee who:
 - (A) Is covered by a current sub-minimum wage certificate issued to the employer by the U.S. Department of Labor; or
 - (B) Would be covered by such a certificate but for the fact that the employer is paying a wage equal to or higher than the minimum wage.

Effective Date means the date the Agency Commission approves this Policy.

Employee means any person who is employed by a Contractor, including part-time and temporary employees.

Included Lease means a lease, sublease or other agreement with any person or entity for the exclusive right to occupy or use all or any portion of real property owned, leased or otherwise controlled by the Agency in which the Agency has a Proprietary Interest.

Lease means a written agreement (including, without limitation, any lease, concession or license) in which:

- (a) the Agency gives to another party the exclusive use of Agency Property for a term exceeding one (1) year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one (1) year, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one (1) year. The term Lease includes Lease Amendment.
- (b) the Contractor gives to another party the exclusive use of property in which the Agency has a Proprietary Interest for a term exceeding one (1)

year, whether by single or cumulative instruments. If cumulative instruments cause the term of the agreement to exceed one (1) year, the agreement shall be subject to this Policy only on or after the effective date of the instrument which causes the term to exceed one (1) year.

Lease Amendment means a modification to a Lease that extends the term or materially changes any other provision of the Lease. Notwithstanding the foregoing, the term Lease Amendment does not include a one-time extension of the term of a Lease for up to six (6) months, or relocation of the leased premises at the request of the Agency for its benefit or convenience (as determined by the Agency Executive Director).

Nonprofit Corporation means a nonprofit corporation, duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation and (if a foreign corporation) in good standing under the laws of the State of California, which corporation has established and maintains valid nonprofit status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended, and all rules and regulations promulgated under such Section.

Policy has the meaning set forth in the Preamble.

Property Agreements means Disposition and Development Agreements (DDAs), ground leases, and any other agreements with the Agency (other than Excluded Subcontracts) in which the Agency has a Proprietary Interest.

Proprietary Interest means any nonregulatory arrangement or circumstance in which the financial or other nonregulatory interests of the Agency in a Contract could be adversely affected, in the following circumstances:

- (a) The Agency receives significant ongoing revenue (such as rent payments) under a lease or ground lease of real property owned by the Agency for the development of a project pursuant to a Contract, excluding government fees or tax or assessment revenues, or the like (except for tax revenues under the circumstances specified in (b) below); or
- (b) The Agency receives ongoing revenue from a project pursuant to a Contract to pay debt service on bonds or loans provided by the Agency to assist the development of such project (including incremental tax revenues generated by the project or the development project in which it is located and used), directly or indirectly, to pay debt service on bonds or to repay a loan by the Agency where the proceeds are used for development of that project or the development project in which it is located;
- (c) The Agency has agreed in a Contract to underwrite or guarantee the development or operation of a development project, or loans related thereto;

- (d) The Agency pursuant to a Contract receives a continuing financial payment that is specific to that project, which is not a tax or other charge of general applicability or a one-time payment for the land;
- (e) The Agency receives a share in the profits of a project in a negotiated economic participation agreement pursuant to a Contract;
- (f) In addition to the circumstances described above, the Agency shall be deemed to have a Proprietary Interest in a Contract for a project if the Agency determines or an interested party demonstrates, prior to the effective date of the Contract pursuant to which a project will be operated, that there is a significant risk that the Agency' financial or other nonregulatory interest in the project could be adversely affected, except that no circumstance or arrangement shall be considered "financial or non-regulatory" under this definition if it arises from the exercise of regulatory or police powers such as taxation or the receipt of tax increment funds as provided in Article 16, section 16 of the California Constitution (except as provided in (b) above), zoning or the issuance of regulatory permits.

Subcontract means an agreement between a Contractor and a person or entity pursuant to which the person or entity agrees to perform all or a portion of the services covered by a Contract. Notwithstanding the foregoing, the term Subcontract does not include:

- (a) Agreements for the purchase or lease of goods, or for guarantees, warranties, shipping, delivery, installation or maintenance of such goods. When an agreement is for the purchase or lease of both goods and other services, the agreement shall not be deemed a Subcontract if a preponderance of the Contract amount is for goods; or
- (b) Agreements with a public entity.

Subcontractor means a person or entity that enters into a Subcontract.

Sublease means any agreement with any person or entity for the exclusive right to occupy or use all or any portion of City Property covered by a Lease or Property Agreement. Notwithstanding the foregoing, the term Sublease does not include each of the circumstances that constitutes an exclusion from the definition of Lease or Property Agreement.

Subtenant means a person or entity that enters into a Sublease.

Tenant means the person or entity that enters into a Lease or Property Agreement with the City.

Vertical DDA has the meaning set forth in the Preamble.

Week shall mean a consecutive seven (7)-day period. If the Contractor's regular pay period is other than a seven (7)-day period, the number of hours worked by an employee during a seven (7)-day Week, for purposes of this Policy, shall be calculated by adjusting the number of hours actually worked during the Contractor's regular pay period to determine the average over a seven (7)-day Week. However, such period of averaging shall not exceed a duration of one (1) month.

Section 3. Health Care Accountability Components.

3.1 With respect to each Covered Employee who either resides in San Francisco (regardless of where the Covered Employee provides services) or provides services covered by this Policy in San Francisco, each Contractor shall do one of the following, at the Contractor's option:

(a) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the City's Health Director and approved by the City's Health Commission. The minimum standards shall provide for a maximum period for each Covered Employee's health benefits to become effective, not to exceed thirty (30) days from the start of employment on a covered Contract, Subcontract, Lease or Sublease. The Health Commission shall review such standards every two (2) years to ensure that the standards stay current with State and Federal regulations and existing health benefits practices; or

(b) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in the definition of Covered Employee), pay to the City one dollar and fifty cents (\$1.50) [**check current rate**] per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed sixty dollars (\$60.00) [**check current rate**] in any Week. The City shall appropriate money received pursuant to this Section 3.1(b) for the use of the Department of Public Health. The Department of Public Health shall use the monies appropriated for staffing and other resources to provide medical care for the uninsured. The Health Commission may increase this hourly rate and Weekly maximum in accordance with the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or such other factors as the Health Commission finds appropriate; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the Board of Supervisors by resolution; or

(c) Participate in a health benefits program developed by the Health Director in consultation with the City's Purchasing Department. The Health Director shall obtain Health Commission approval of the program before implementing it. The Health Director shall seek such approval within twelve (12) months after this Policy is finally approved. Prior to implementation of the health benefits program provided in this Section 3.1(c), each Contractor shall comply with Section 3.1(a) or 3.1(b). After the Health Director implements the program, in addition to the options provided in Sections 3.1(a) and 3.1(b), Contractors may satisfy their obligations under this Policy by complying with the requirements of the health benefits program. In developing the

program, the Health Director shall (i) attempt to make health coverage available for uninsured Covered Employees and, if feasible, other uninsured City residents; (ii) use public health facilities to the maximum extent practicable; (iii) make the program economically viable; and (iv) provide a mechanism for funding which relies, as much as possible, on contributions by participating employers and employees.

3.2 With respect to each Covered Employee who does not reside in San Francisco, but who provides services covered by this Policy, each Contractor shall do one of the options set forth in Section 3.1, at the Contractor's option.

3.3 With respect to each Covered Employee who does not reside in San Francisco, and does not provide services covered by this Policy in San Francisco, each Contractor shall do one of the following, at the Contractor's option:

(a) Offer to the Covered Employee health plan benefits that meet minimum standards prepared by the Health Director and approved by the Health Commission pursuant to Section 3.1(a) above; or

(b) For each Week in which the Covered Employee works the applicable minimum number of hours set forth in the definition of Covered Employee), pay to the Covered Employee an additional one dollar and fifty cents (\$1.50) [**check current rate**] per hour for each hour the Covered Employee is employed by the Contracting Party on the Contract or Subcontract or on property covered by a Lease, but not to exceed sixty dollars (\$60.00) [**check current rate**] in any Week, to enable the employee to obtain health insurance coverage. This represents the City's current estimate of the average cost of obtaining individual health insurance benefits. The Health Commission may increase this hourly rate and Weekly maximum in accordance with the Bureau of Labor Statistics Consumer Price Index for Medical Care in the San Francisco Bay Area or such other factors as the Health Commission finds appropriate in order to track the cost of obtaining individual health insurance; provided, however, the Health Commission shall take this action no more than once a year and any adjustments in such hourly rate or Weekly maximum must be approved by the City's Board of Supervisors by resolution.

3.4 Notwithstanding the above, if, at the time a Contract, Subcontract, Lease, or Sublease is executed, the Contractor has twenty (20) or fewer employees (or, in the case of a Nonprofit Corporation, fifty (50) or fewer employees), including any employees the Contractor plans to hire to implement the Contract, Subcontract, Lease or Sublease, the Contractor shall not be obligated to provide the Health Care Accountability Components set forth in this Section 3 to its Covered Employees. In determining the number of employees a Contractor has, all employees of all entities that own or control the Contractor and that the Contractor owns or controls, shall be included.

Section 4. Contractual Obligations.

4.1 Each Contractor that enters into a Contract, Subcontract, Lease, or Sublease shall agree:

(a) To comply with the requirements of this Policy, including the requirement to choose and perform one of the Health Care Accountability Components set forth in Section 3;

(b) To comply with regulations adopted by the Agency pursuant to this Policy;

(c) To provide information and reports to the Agency in accordance with any reporting standards promulgated by the Agency in consultation with the City's Director of Health;

(d) To provide the Agency with access to pertinent records relating to the number of employees employed and terms of medical coverage as allowed by law after receiving a written request to do so and being provided at least five (5) Business Days to respond;

(e) To cooperate with the Agency when it conducts audits;

(f) To include in every Contract, Subcontract, Lease, or Sublease subject to this Policy provisions requiring compliance with this Policy, consistent with any directives or standards adopted by the Agency;

(g) To notify the Agency promptly of any Subcontractors performing services covered by this Policy and certify to the Agency that it has notified the Subcontractors of their obligations under this Policy; and

(h) To represent and warrant that it is not an entity that was set up, or is being used, for the purpose of evading the intent of this Policy.

4.2 A Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any Employee for notifying the City regarding the Contractor's noncompliance or anticipated noncompliance with this Policy, for opposing any practice proscribed by this Policy, for participating in proceedings related to this Policy, or for seeking to assert or enforce any rights under this Policy by any lawful means.

Section 5. Administration and Enforcement.

5.1 The Agency shall implement the City's Department of Public Health regulations for the interpretation and administration of this Policy, to the extent such regulations are consistent with adopted Agency Policy.

5.2 The Agency's General Counsel shall develop contractual provisions for use by Agency staff designed to enable the Agency to pursue the remedies set forth in this Section against every person or entity required to comply with this Policy.

5.3 The Agency, or at its request, the City's Department of Public Health, may conduct audits of Contractors, although such audits shall be conducted only with at least ten (10) Business Days' advance written notice to the Contractor and after making good faith efforts for a mutually agreed upon time and location.

5.4 The Agency's Contract Compliance Division shall provide an annual joint report to the Agency Commission on compliance with this Policy. Such report shall include cumulative information regarding the number of waivers granted pursuant to this Policy.

5.5 A Covered Employee may report in writing to the Agency's Contract Compliance Division any alleged violation of this Policy by a Contractor or other person or entity subject to this Policy. The Agency shall investigate any such report. If the Agency determines that any person or entity has violated this Policy, the Agency shall notify the Contractor of its findings. In order to ensure compliance with this Policy and to enhance the monitoring activities of the Agency, the Agency encourages reporting by Covered Employees pursuant to this Section 5.5. The Agency shall keep confidential the Covered Employee's name and other identifying information, to the maximum extent permitted by applicable law.

5.6 The Agency has the right to assign the enforcement provisions of this section, including Sections 5.3, 5.7, 5.8(a), 5.8(b), 5.8(c) and 5.9 to the appropriate City department to act on behalf of the Agency;

5.7 In addition to any other rights or remedies available to the Agency under the terms of any agreement of a Contractor or under applicable law, the Agency, or the City acting on behalf of the Agency, shall have the following rights:

(a) The right to charge the Contractor for any amounts that the Contractor should have paid to the City for hours worked by Covered Employees pursuant to Sections 3.1(b) and 3.2, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

(b) The right to assess liquidated damages of fifty dollars (\$50.00) [**check current rate**] a day for each Covered Employee each day that the Contractor fails to pay to the City the amounts required by Sections 3.1(b) and 3.2;

(c) The right to set off all or any portion of the amount that a Contractor is required to pay to the City pursuant to preceding Sections 5.7(a) and (b) against amounts due to a Contractor;

(d) The right to terminate the Contract or Lease in whole or in part;

(e) The right to bar a Contractor from entering into future Contracts or Leases with the Agency for three (3) years.

5.8 Each Contractor shall be responsible for its Subcontractors with respect to compliance with this Policy. If a Subcontractor fails to comply, the Agency, or the City acting on behalf of the Agency, may pursue the remedies set forth in this Section 5 against the Contractor based on the Subcontractor's failure to comply, provided that the Agency has first provided the Contractor with notice and an opportunity to obtain a cure of the violation.

5.9 Each Tenant shall be responsible for each Subtenant, Contractor and Subcontractor performing services on property covered by the Tenant's Lease, with respect to compliance with this Policy. If any Subtenant, Contractor or Subcontractor fails to comply, the Agency, or the City acting on behalf of the Agency, may pursue the remedies set forth in this Section 5 against the Tenant based on the Subtenant's, Contractor's or Subcontractor's failure to comply, provided that the Agency has first provided the Tenant with notice and an opportunity to obtain a cure of the violation.

5.10 Each of the rights set forth in this Section 5 shall be exercisable individually or in combination with any other rights or remedies available to the Agency. Any amounts realized by the Agency pursuant to this Section 5 shall be used first to cover the costs of enforcing this Policy and thereafter appropriated for the use of the Department of Public Health.

Section 6. Waivers by the Agency Executive Director.

6.1 The Agency Executive Director or designee shall waive the requirements of this Policy when the relevant Agency staff has provided justification to the Agency Executive Director, and the Agency Executive Director has found that one of the following circumstances exists:

(a) There is only one prospective Contractor or Tenant willing to enter into the applicable Contract or Lease on the terms and conditions established by the Agency (other than the requirements of this Policy);

(b) The needed service, project or property arrangement under the Contract or Lease is available only from a sole source;

(c) The Contract or Lease is necessary to respond to an emergency that endangers the public health or safety;

(d) There are no qualified responsive bidders or prospective vendors or tenants that comply with the requirements of this Policy and the agreement is for a service, lease or project that is essential to the Agency, City or the public;

(e) The public interest warrants the granting of a waiver because application of this Policy would constitute an adverse impact on services or an unreasonable adverse financial impact on the Agency or City; or

(f) The services to be purchased are available under a bulk purchasing arrangement with a federal, state or local governmental entity;

(g) Purchase under such arrangement will substantially reduce the Agency's cost of purchasing such services; and

(h) Purchase under such an arrangement is in the best interest of the Agency or the public.

6.2 Each waiver shall be effective for the duration of the Contract or Lease. Subsequent waivers may be requested and either granted or denied.

Section 7. Special Waiver by the Agency Commission.

A special waiver is available if, upon receipt of an application from the Contractor, stating fully the grounds of the request and the facts pertaining thereto, the Agency finds following its own further investigation that the application of the Policy would result in an adverse impact on services or an unreasonable financial impact on the Contract. In order to permit any such waiver, the Agency must determine that:

7.1 The application of the Policy would result in practical difficulties or unnecessary hardships inconsistent with the general purpose and intent of the applicable Redevelopment Plan;

7.2 There are exceptional circumstances or conditions applicable to the property, the intended development of the property, or the services proposed through a contract, which do not apply generally to other properties or contracts having the same standards, restrictions and controls;

7.3 Permitting a waiver, for a specified period of time, will not be materially detrimental to the public welfare or injurious to property or improvement in the area; and,

7.4 Permitting a waiver, for a specified period of time, will not be contrary to the objectives of the applicable redevelopment plan.

Waivers shall only be granted for a limited time period as determined to be needed to promote the general purpose and intent of the applicable redevelopment plan. Subsequent waivers may be requested and either granted or denied. The Agency

anticipates the all covered Projects and Contracts will eventually transition to achieving a viability that will allow for covered Contractors to comply with the Policy.

Section 8. Preemption.

Nothing in this Policy shall be interpreted or applied so as to create any power or duty in conflict with any federal or state law.

Section 9. Effective Date.

This Policy shall become effective on the date of Agency Commission approval.

Section 10. Period of Suspension.

Contractors shall not be required to provide any of the Health Care Accountability Components provided in Section 3 to their Covered Employees until such time as the City's Health Director has prepared, and the Health Commission has approved, minimum standards for health plan benefits pursuant to Section 3.1(a). The Health Director and Health Commission shall proceed promptly to take these actions. From the date upon which the Health Commission approves such minimum standards forward, Contractors shall provide the Health Care Accountability Components set forth in Section 3 to their Covered Employees.

Section 11. Severability.

If any part or provision of this Policy, or the application of this Policy to any person, location or circumstance, is enjoined or held invalid by a court of law, the remainder of this Policy, including the application of such part or provisions to other persons, locations or circumstances, shall not be affected by such action and shall continue in full force and effect. To this end, the provisions of this Policy are severable. Further, to the extent Section 3.1(b)(a)(2) may be enjoined or held invalid by a court of law, the Contracting Party may alternatively comply in accordance with Section 3.3(b).

ATTACHMENT L

EQUAL BENEFITS POLICY

Vertical Developer will comply with the Agency's Nondiscrimination in Contracts Policy, a copy of which is attached as Exhibit A.

EXHIBIT A

San Francisco Redevelopment Agency

Nondiscrimination in Contracts Policy

Section 1. Requirements in all Contracts.

(a) Nondiscrimination Provisions. The San Francisco Redevelopment Agency (“Agency”) shall include in all Contracts and Property Contracts, hereinafter executed or amended, in any manner or as to any portion thereof, provisions obligating the Contractor or other party of said agreement not to discriminate on the basis of the fact or perception of a person’s race, color, creed, religion, ancestry, national origin, age, sex, sexual orientation, Gender Identity, Domestic Partner status, marital status, disability or AIDS/HIV status, against any employee of, any Agency employee working with, any member of the public having contact with, or applicant for employment with, such Contractor, and shall require such Contractor to include a similar provision in all Subcontracts executed or amended thereunder. Contractor shall also comply with the Agency’s Equal Opportunity Program.

(b) Nondiscrimination in Benefits. The Agency shall not execute or amend any Contracts or Property Contracts on or after the effective date of this Policy with any Contractor that discriminates in the provision of Benefits between employees with Domestic Partners and employees with spouses, and/or between the Domestic Partners and spouses of such employees, where the Domestic Partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the following conditions: In the event that the Contractor’s actual cost of providing a certain benefit for the Domestic Partner of an employee exceeds that of providing it for the spouse of an employee, or the Contractor’s actual cost of providing a certain benefit for the spouse of an employees exceeds that of providing it for the Domestic Partner of an employee, the Contractor shall not be deemed to discriminate in the provision of Benefits if the Contractor conditions providing such benefit upon the employee agreeing to pay the excess costs. In addition, in the event a Contractor is unable to provide a certain benefit, despite taking reasonable measures to do so, the Contractor shall not be deemed to discriminate in the provision of Benefits if the Contractor provides the employee with a Cash Equivalent. In adopting this Section 1(b), the intent of the Agency is to equalize to the maximum extent legally permitted the total compensation between similarly situated employees with spouses and employees with domestic partners.

Section 2. Definitions.

As used in this Policy the term:

(a) “Benefits” means any plan, program or Policy provided by an Agency Contractor to its employees as part of the employer’s total compensation package. This includes, but is not limited to, the following types of Benefits: retirement plans; medical, dental and vision plans;

bereavement, family medical, parental and other leave policies; disability and life insurance plans; employee assistance programs; discounts; access to facilities, services and events; travel and relocation expenses; incentive, stock option, and profit sharing plans and other compensation programs.

(b) “Cash Equivalent” means the amount of money paid to an employee by an Agency Contractor who, despite taking all reasonable measures, is unable to end discrimination in Benefits. The Cash Equivalent shall be the amount of money paid by the Agency Contractor for the benefit given to a similarly situated employee.¹ To the extent that an Agency Contractor limits the availability of any benefit to the spouses of employees, or vice versa, the availability of a Cash Equivalent may be similarly limited.² The Cash Equivalent payment shall be made either on the same schedule as the Agency Contractor uses for the benefit given to employees with spouses, or, if no such schedule exists, on another schedule so long as such payment is made no less than once per month. No Cash Equivalent payment will be required where making such a payment would violate federal or state law.

(c) “Contract” shall mean an agreement for public works or improvements to be performed, or for goods or services to be purchased or grants to be provided at the expense of the Agency or to be paid out of moneys deposited in the treasury or out of trust moneys under the control or collected by the Agency, and does not include Property Contracts, agreements entered into pursuant to settlement of legal proceedings, contracts for urgent litigation expenses, or contracts for a cumulative amount of \$5,000 or less per vendor in each fiscal year.

(d) “Contractor” means any person or persons, firm, partnership, corporation, or combination thereof, who submits a bid and/or enters into a Contract or Property Contract with the Agency.

(e) “Domestic Partner” shall mean any person who has a currently registered Domestic Partnership with a governmental body pursuant to state or local law authorizing such registration. An Agency Contractor may also institute an internal Domestic Partnership registry to allow for the provision of equal Benefits to employees with Domestic Partnerships who do not register their partnerships pursuant to a governmental body authorizing such registration, or who are located in a jurisdiction where no such governmental Domestic Partnership registry exists.³

¹ The following scenario is provided as an example of similarly situated employees: An Agency Contractor with locations in Dallas, TX and Bridgeport, CT, offers spousal health insurance to its employees. After taking all reasonable measures, the Agency Contractor is still unable to provide health insurance for the Domestic Partners of its employees. The Cash Equivalent it would pay to its Bridgeport employees would be the amount of money paid by the Agency Contractor for Benefits given to employees with spouses in Bridgeport; the Cash Equivalent the Agency Contractor would pay to its Dallas employees would be the amount of money paid by the Agency Contractor or Benefits given to employees with spouses in Dallas.

² The following scenario is provided as an example of limiting the availability of a Cash Equivalent: An Agency Contractor limits the availability of spousal health insurance coverage to only those spouses who are not already covered by their own employer’s health insurance plan. This Agency Contractor is unable to provide health insurance to the Domestic Partners of its employees and instead offers a Cash Equivalent. The Agency Contractor may limit the availability of a Cash Equivalent payment to only those employees whose Domestic Partners are not already covered by their own employer’s health insurance plan.

(f) "Gender Identity" shall mean a person's various individual attributes as they are understood to be masculine and/or feminine.

(g) "Nondiscrimination in Benefits" means the equality of Benefits between employees with spouses and employees with Domestic Partners, between spouses of employees and Domestic Partners of employees, and between dependents and family members of spouses and dependents and family members of Domestic Partners.

(h) "Policy" shall mean this Nondiscrimination in Contracts Policy.

(i) "Property Contract" shall mean a written agreement for the exclusive use or occupancy of real property for a term exceeding 29 days in any calendar year, whether by singular or cumulative instrument, (i) for the operation or use by others of real property owned or controlled by the Agency for the operation of a business, social, or other establishment or organization, including leases, concessions, franchises and easements, or (ii) for the Agency's use or occupancy of real property owned by others, including leases, concessions, franchises and easements. For the purposes of this Policy, "exclusive use" means the right to use or occupy real property to the exclusion of others, other than the rights reserved by the fee owner. "Property Contract" shall not include a revocable at will use or encroachment permit for the use of or encroachment on Agency property regardless of the ultimate duration of such permit, except that "Property Contract" shall include such permits granted to a private entity for the use of Agency property for the purpose of a for-profit activity. "Property Contract" shall also not include contracts for the purchase or sale of land, Disposition and Development Agreements, Owner Participation Agreements, street excavation, street construction or street use permits, agreements for the use of Agency right of way where a contracting utility has the power of eminent domain, or agreements governing the use of Agency property which constitutes a public forum for activities that are primarily for the purpose of espousing or advocating causes or ideas and that are generally recognized as protected by the First Amendment to the U.S. Constitution, or which are primarily recreational in nature.

(j) "Sexual Orientation" shall mean the status of being lesbian, gay, bisexual or heterosexual.

(k) "Subcontract" shall mean an agreement to (i) provide goods and/or services, including construction labor, materials or equipment, to a Contractor, if such goods or services are procured or used in the fulfillment of the Contractor's obligations arising from a contract or agreement with the Agency, or (ii) to transfer the right to occupy or use all or a portion of a real property interest subject to a Property Contract to a Subcontractor and pursuant to which the Contractor remains obligated under the Property Contract.

(l) "Subcontractor" means any person or persons, firm, partnership, corporation or any combination thereof, who enters into a contract or agreement with a Contractor to perform 10 percent or more of the Contract or Property Contract.

³ Sample language for an internal Domestic Partnership registry is available through the Agency.

Section 3. Procedures for Implementation.

(a) Evidence of Compliance. Prior to executing a Contract or Property Contract, Contractors shall demonstrate that they are in compliance with the Nondiscrimination in Benefits requirements and, to the extent they are not in compliance with them, that the Contractor complies with one or more of the provisions in Section 3 (b) through (d) below, by providing either:

- (i) evidence that the Contractor has been certified by the Human Rights Commission of the City as being in compliance with Section 12 B 1 (b) of the San Francisco Administrative Code; or
- (ii) such forms and documentary evidence as may be requested by the Agency.

(b) Phase-In Periods. An Agency Contractor will not be deemed to be discriminating in the provision of Benefits where the implementation of policies ending discrimination in Benefits is delayed following the first award of an Agency contract to an Agency Contractor after July 1, 1998 if:

- (i) until the first effective date after the first open enrollment process following the date the contract with the Agency begins, provided that the Agency Contractor submits to the Agency evidence that reasonable efforts are being undertaken to end discrimination in Benefits. This delay may not exceed two years from the date the contract with the Agency is entered into, and only applies to Benefits for which an open enrollment process is applicable;⁴ or
- (ii) until administrative steps can be taken to incorporate Nondiscrimination in Benefits into the Agency Contractor's benefit package. The time allotted for these administrative steps shall apply only to those Benefits for which administrative steps are necessary and may not exceed three (3) months after the Contract award. An extension of this time may be granted at the discretion of the Executive Director of the Agency upon the written request of the Agency Contractor; or
- (iii) until the expiration of an Agency Contractor's current collective bargaining agreement(s) where all of the following conditions have been met:

⁴ For purposes of this provision, the term "effective date" refers to the date upon which the next Benefit plan year begins; the term "open enrollment period" refers to the time when employees are eligible to enroll themselves or others in the Agency Contractor's Benefit plan; the term "open enrollment process" begins when the Agency Contractor starts planning for, and negotiating with its insurance provider(s) regarding, the Benefits to be offered during the next Benefits plan year, and ends at the next effective date.

- I. the provision of Benefits is governed by one or more collective bargaining agreement(s);
- II. the Agency Contractor has taken all reasonable measures to end discrimination in Benefits by either requesting that the Union(s) involved agree to reopen the agreement(s) in order for the Agency Contractor to take whatever steps necessary to end discrimination in Benefits or by ending discrimination in Benefits without reopening the collective bargaining agreement(s);
- III. the Agency Contractor cannot end discrimination in Benefits despite taking all reasonable measures to do so; and
- IV. the Agency Contractor provides a Cash Equivalent to eligible employees for whom Benefits are not available.

(c) Reasonable Measures. An Agency Contractor will not be deemed to be discriminating in the provision of Benefits where, after taking all reasonable measures, the Agency Contractor is unable to end discrimination in Benefits and instead provides the closest approximation of equal Benefits available. If the cost of providing the closest approximation of equal Benefits is at least 33 percent less expensive than the cost of providing equal Benefits, the Agency Contractor must also make a Cash Equivalent payment.⁵ The Agency will determine whether an Agency Contractor has taken all reasonable measures upon the review of information and attached compelling documentation provided by the Agency Contractor that demonstrates that it is not possible for the Agency Contractor to end discrimination in Benefits. A determination that it is not possible for the Agency Contractor to end discrimination in Benefits shall be based upon a consideration of such factors as:

- (i) Benefits providers identified and contacted, in writing, by the Agency Contractor, and written documentation from these providers that they will not provide equal Benefits;
- (ii) the existence of Benefits providers willing to offer equal Benefits to the Agency Contractor; and
- (iii) the existence of federal or state laws which preclude the Agency Contractor from ending discrimination in Benefits.

(d) Alternate Methods of Structuring Benefits. So long as an Agency Contractor does not discriminate in the provision of Benefits between employees with spouses and employees with Domestic Partners, an Agency Contractor may elect to provide Benefits:

⁵ The following scenario is provided as an example of this provision: An Agency Contractor provides health insurance coverage for the spouses of its employees under Plan A. Plan A is unwilling to cover the Domestic Partners of employees. Plan B will provide coverage to Domestic Partners of employees, but is not as good as Plan A because there is a higher deductible and no prescription coverage. The Agency Contractor pays \$100 toward the premium for spousal coverage under Plan A. Because Plan B is less expensive, the Agency Contractor pays \$67 toward the premium for Domestic Partner coverage under Plan B, which is 33% less than the amount paid under Plan A. In order to not discriminate in the provision of Benefits, the Agency Contractor must provide a Cash Equivalent of \$33 to those employees who elect coverage for their Domestic Partners under Plan B.

- (i) to individuals in addition to employees' spouses and employees' Domestic Partners;
- (ii) on a basis unrelated to both marital status and Domestic Partner status; or
- (iii) neither to employees' spouses nor to employees' Domestic Partners.

Section 4. Waivers and Exceptions.

(a) Waivers - Executive Director. The Executive Director will waive the requirements of this Policy upon making written findings that the circumstances in (i) or (ii) below exist:

- (i) Sole Source Contract occurs when:
 - I. the goods or services to be purchased by the Agency are needed; and
 - II. there is only a sole source available to provide the Agency with the needed goods or services; and
 - III. the prospective Contractor is not currently disqualified from doing business with the Agency, or from doing business with any governmental agency based on any contract compliance requirements; and
 - IV. the contracting department or commission has explained to the prospective Contractor the Nondiscrimination in Benefits requirements of the Policy and the prospective Contractor has refused to stop discriminating in the provision of Benefits; and
 - V. the Agency (A) constructs the Contract for the shortest reasonable duration and (B) attempts to award any future Contracts for the needed goods or services to a Contractor that does not discriminate in the provision of Benefits by developing contacts with other providers who do comply with the Nondiscrimination in Benefits requirements of the Policy and/or by assisting the sole source provider with full compliance with the Nondiscrimination in Benefits requirements of the Policy.
- (ii) Emergency Contract occurs when: the Contract is necessary to respond to an emergency which endangers the public health or safety and no entity which complies with the requirements of this Policy capable of performing the emergency work is immediately available.

(b) Waivers - Commission. The Agency Commission may waive by resolution any or all of the requirements of this Chapter in any instance in which:

- (i) the Executive Director finds that there are no qualified responsive bidders or prospective Contractors who comply with the requirements of this Policy and that the Contract is for an essential Agency service or project; or
- (ii) the Executive Director finds that transactions entered into pursuant to bulk purchasing arrangements through federal, state or regional entities which actually reduce the Agency's purchasing costs would be in the best interests of the Agency.

(c) Exceptions - Public Entities as Contractors. This Policy shall not apply where the prospective Contractor is a public entity and the Executive Director finds that goods, services, construction services for a public work or improvement or interest in or right to use real property of comparable quality or accessibility as are available under the proposed Contract or Property Contract are not available from another source, or that the proposed Contract or Property Contract is necessary to serve a substantial public interest.

(d) Exceptions - Grants or Agreements with Public Entities. This Policy shall not apply where the Executive Director finds that its requirements will violate or are inconsistent with the terms or conditions of a grant, subvention or agreement with a public agency or the instructions of an authorized representative of any such agency with respect to any such grant, subvention or agreement, provided that the Executive Director has made a good faith attempt to change the terms or conditions of any such grant, subvention or agreement to authorize application of this Policy.

(e) Exceptions - Financial or Investment Services and Litigation Expenses. This Policy shall not apply to:

- (i) the investment of trust moneys or agreements relating to the management of trust assets; or
- (ii) Agency moneys invested in U.S. government securities or under pre-existing investment agreements; or
- (iii) the investment of Agency moneys where the Executive Director finds that:
 - I. no person, entity or financial institution doing business in San Francisco which is in compliance with this Policy is capable of performing the desired transaction(s); or
 - II. the Agency will incur a financial loss which in the opinion of the Executive Director would violate the Agency's fiduciary duties. This subparagraph (e) shall be subject to the requirement that Agency moneys shall be withdrawn or divested at the earliest possible maturity date if deposited or invested with a person, entity or financial institution other than the U.S. government which does not comply with this Policy; or
- (iv) Contracts for urgent litigation expenses, where the Agency General Counsel certifies in writing to the Executive Director that the Contract involves specialized litigation

requirements such that it would be in the best interests of the Agency to waive the requirements of this Policy.

Section 5. Jurisdiction.

(a) Subcontractors. The Nondiscrimination provisions in Section 1 (a) do apply to Subcontractors. However the Nondiscrimination in Benefits requirements in Section 1 (b) do not apply to Subcontractors.

(b) Location. The Nondiscrimination in Benefits requirements apply to all locations throughout the United States where a Contractor is doing business.

(c) Covered Entity. The entity which enters into a contract with the Agency is the entity which must comply with the Policy.

(d) Subsidiaries and Joint Ventures. Separate corporate entities, including parents and subsidiaries of the entity which contracts with the Agency, are not required to comply with the ordinance. In the case of a joint venture, all joint venture partners will be required to comply. The Agency will examine the corporate structure of the entity to determine whether it has been created for separate, independent and legitimate business reasons, and not for the purpose of avoiding the ordinance. The factor to be included in this determination shall include:

- (i) the legal status of the entity;
- (ii) the way in which and location where Benefits are administered;
- (iii) the authority of the person signing the contract; and
- (iv) any other factors deemed relevant by the Executive Director.

Section 6. Effective Date.

The Nondiscrimination in Benefits provisions shall not apply to any Contracts or Property Contracts executed or amended prior to July 1, 1998, or to bid packages advertised and made available to the public, or any competitive or sealed bids received by the Agency, prior to July 1, 1998.

Section 7. Miscellaneous.

(a) Verification of Domestic Partnership or Marriage. An Agency Contractor may verify the existence of a Domestic Partnership or marriage to the extent such verification is undertaken equally for employees with Domestic Partners and employees with spouses.

(b) Excess Costs. In the event that the actual cost of providing a certain benefit to an employee with a Domestic Partner or an employee's Domestic Partner exceeds that of providing the benefit to an employee with a spouse or to an employee's spouse, or vice versa, the Agency Contractor

may condition Nondiscrimination in Benefits upon the employees agreeing to pay the excess costs. The excess costs the Agency Contractor may pass on to the employee may include only the actual costs of the benefit for that employee and may not include implementation or administrative costs, any tax consequence to the employer, or additional costs to other employees.

(c) Taxation. For the purposes of this Policy:

- (i) the withholding of income tax from an employee for income associated with the provision of Benefits is permissible to the extent the taxation is required by state or federal law; and
- (ii) nothing in these rules is intended to require an Agency Contractor to take any action that would jeopardize the tax-qualified status of a retirement plan.

(d) Notification. Notification by an Agency Contractor to its employees regarding the provision of Benefits to employees with spouses and employees with Domestic Partners must be conducted so that all employees are given equal notice of all available Benefits.

(e) Continuation Coverage. The continuation of Benefits, including health Benefits, should be provided equally to the spouses of employees and the Domestic Partners of employees, except where otherwise prohibited by law.

Section 8. Authority.

The Executive Director, or his or her designee, is hereby granted the power to do all acts and exercise all powers referred to in this Policy, provided however, that all Contracts or Property Contracts for an amount exceeding \$20,000 must be approved by the Agency Commission in accordance with the Agency's Purchasing Policy.

Section 9. Severability.

This Policy shall be construed so as not to conflict with applicable federal or state laws, rules or regulations. Nothing in this Policy shall authorize the Agency to impose any duties or obligations in conflict with limitations on local authority established by federal law at the time such Agency action is taken. In the event that a court or agency of competent jurisdiction holds that state or federal law, rule or regulation invalidates any clause, sentence, paragraph or section of this Chapter or the application thereof to any person or circumstances, it is the intent of the Agency that the court or agency serve such clause, sentence, paragraph or section so that the remainder of this Policy shall remain in effect.

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SAN FRANCISCO REDEVELOPMENT AGENCY
INSTRUCTIONS FOR DECLARATION FORM
Nondiscrimination in Contracts and Benefits

A. What is the Nondiscrimination in Contracts Policy?

The San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.ci.sf.ca.us/sfra.

If you do not comply with the Policy, the Agency cannot do business with you, except under certain very limited circumstances.

B. What Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Agency exceeds a cumulative amount of \$5,000 in a 12-month period.
- Leases of property owned by the Agency for a term of 30 days or more. In these cases, the Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- race
- creed
- ancestry
- age
- sexual orientation
- marital status
- disability
- color
- religion
- national origin
- sex
- gender identity
- domestic partner status
- AIDS/HIV status

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not

include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the Agency division administering your contract with the Agency. "Subcontract" also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

INSTRUCTIONS FOR DECLARATION FORM

Nondiscrimination in Contracts and Benefits

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM**, unless such documentation does not exist. See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Agency is no longer accurate, you must advise the Agency promptly by submitting a new Declaration.



SAN FRANCISCO REDEVELOPMENT AGENCY

DECLARATION FORM

Nondiscrimination in Contracts and Benefits

1. Nondiscrimination—Protected Classes

a. Is it your company/organization’s policy that you will not discriminate against your employees, applicants for employment, employees of the San Francisco Redevelopment Agency (Agency) or City and County of San Francisco (City), or members of the public for the following reasons:

- race Yes No
- color Yes No
- creed Yes No
- religion Yes No
- ancestry Yes No
- national origin Yes No
- age Yes No
- sex Yes No
- sexual orientation Yes No
- gender identity Yes No
- marital status Yes No
- domestic partner status Yes No
- disability Yes No
- AIDS or HIV status Yes No

b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?

- Yes No

If you answered “no” to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?

- Yes No

b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?

- Yes No

If you answered “no” to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered “yes” to Question 2a or 2b, continue to 2c.

c. If “yes,” please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

| Benefit | Yes, for Spouses | Yes, for Partners | No |
|---------|---------------------|----------------------|----|
| | | | |

- Medical (health, dental, vision)
- Pension
- Bereavement
- Family leave
- Parental leave
- Employee assistance programs
- Relocation and travel
- Company discounts, facilities, events
- Credit union
- Child care
- Other _____
- Other _____

DECLARATION FORM
Nondiscrimination in Contracts and Benefits

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? Yes No
(2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 200____, at _____, _____
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

(For General Correspondence) _____

Remittance Address: _____

(If different from above address) _____

Name of Signatory: _____ Title: _____
(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

- Check here if your address has changed.
- Check here if your organization is a non-profit.
- Check here if your organization is a governmental entity.

ATTACHMENT M
EQUAL OPPORTUNITY PROGRAM

Vertical Developer will comply with the Agency's Equal Opportunity Program which is attached as Exhibit _____.

ATTACHMENT N

FORM OF [ARCHITECT'S] [ENGINEER'S] CERTIFICATE RE COMPLIANCE OF DESIGN WITH LAWS RE ACCESS

TO: San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102

Development: Hunters Point Shipyard

Property: _____

DATE: _____

FROM: [Architect] [Engineer] of Record

This Certificate is being provided pursuant to Section 6.4 of that certain Disposition and Development Agreement Hunters Point Shipyard Vertical Development Phase ___, Lot ___, by and among the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the "Agency") ,Lennar/BVHP LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer") and _____, a _____ ("Vertical Developer"), dated _____, 200__, and recorded in the City's Official Records on _____, 200__, as Document No. _____ (the "Vertical DDA"). Terms not defined in this Certificate have the meanings given to them in the Vertical DDA.

As [Architect] [Engineer] of Record for the construction of the Vertical Improvements, I examined schematic drawings dated _____, 20__ [identify by document set or other information] (the "Schematic Drawings") for conformity to local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

I hereby declare it is my professional opinion that design of the Vertical Improvements has been performed in accordance with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

[Architect/Engineer of Record]

By: _____

Its: _____

ATTACHMENT -O

FORM OF [ARCHITECT'S] [ENGINEER'S] INSPECTION CERTIFICATE

TO: San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102

Development: Hunters Point Shipyard

Property: _____

DATE: _____

FROM: [Architect] [Engineer] of Record

This Certificate is being provided pursuant to Section 6.5 of that certain Disposition and Development Agreement Hunters Point Shipyard Vertical Development, Phase ____, Lot ____, by and among the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the "Agency"), Lennar/BVHP LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer") and _____, a _____ ("Vertical Developer"), dated _____, 200__, and recorded in the City's Official Records on _____, 200__, as Document No. _____ (the "Vertical DDA"). Terms not defined in this Certificate have the meanings given to them in the Agreement.

As [Architect] [Engineer] of Record for the design and construction of the Vertical Improvements, I observed the Vertical Improvements on _____, 20__, and all the statements made below are made as of the date(s) of my observation(s). I hereby declare it is my professional opinion that:

1. Based on my observation, the construction of the Vertical Improvements has been and is being performed in accordance with those elements of the Construction Documents for the Vertical Improvements approved by the Agency pursuant to Section 6 of the Vertical DDA, except as may be noted on Exhibit 1 attached hereto.

2. Based on my observation, the construction of the Vertical Improvements has been done in a good and workerlike manner, and all of the work, materials and fixtures are acceptable, except as may be noted on Exhibit A attached hereto.

3. The construction heretofore completed on the Vertical Improvements complies with all applicable local, state and federal building laws, regulations and ordinances, except as may be noted on Exhibit 1 attached hereto.

4. The required certificates, approvals and permits of all governmental authorities having jurisdiction covering the work to date on the Vertical Improvements have been issued and are in force, and there is not an undischarged violation of applicable laws, regulations or orders of any governmental authority having jurisdiction of which I have notice as of the date hereof, except as may be noted on Exhibit 1 attached hereto.

5. Construction of the Vertical Improvements is progressing satisfactorily so that it can be completed in accordance with those elements of the Construction Documents for the Vertical Improvements approved by the Agency pursuant to Section 6 of the Vertical DDA by the completion date set forth in the Schedule of Performance for Vertical Improvements, as such date may have been extended in accordance with the provisions of the Vertical DDA.

[Architect/Engineer of Record]

By: _____
Its: _____

EXHIBIT 1

EXCEPTIONS TO [ARCHITECT'S] [ENGINEER'S] INSPECTION CERTIFICATE

DATE: _____

The statements made on the [Architect's] [Engineer's] Inspection Certificate to which this Exhibit is attached are subject to the following exceptions:

ATTACHMENT P

FORM OF [ARCHITECT'S] [ENGINEER'S] CERTIFICATE RE COMPLIANCE OF CONSTRUCTION WITH LAWS RE ACCESS

TO: San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, California 94102

Development: Hunters Point Shipyard

Property: _____

DATE: _____

FROM: [Architect] [Engineer] of Record

This Certificate is being provided pursuant to Section 6.5 of that certain Disposition and Development Agreement Hunters Point Shipyard Vertical Development Phase ____, Lot ____, by and among the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the "Agency"), Lennar/BVHP LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer") and _____, a _____ ("Vertical Developer"), dated _____, 200__, and recorded in the City's Official Records on _____, 200__, as Document No. _____ (the "Vertical DDA"). Terms not defined in this Certificate have the meanings given to them in the Vertical DDA.

As [Architect] [Engineer] of Record for the construction of the Vertical Improvements, I observed the Vertical Improvements regarding Accessibility for Persons with Disabilities on _____ (date), and all the statements made below are made as of the date of my observation. I hereby declare it is my professional opinion that:

1. Based on my observation, the construction of the Vertical Improvements with respect to Accessibility for Persons with Disabilities has been and is being performed in accordance and complies with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

2. Based on my observation, the construction of the Vertical Improvements with respect to Accessibility for Persons with Disabilities has been done in a good and workerlike manner, and all of the work, materials and fixtures are acceptable, except as may be noted on Exhibit 1 attached hereto.

3. In my opinion, construction of the Vertical Improvements has been completed satisfactorily in accordance with all applicable local, state, and federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

[Architect/Engineer of Record]

By: _____
Its: _____

EXHIBIT 1

**EXCEPTIONS TO [ARCHITECT'S] [ENGINEER'S] CERTIFICATE RE
COMPLIANCE OF CONSTRUCTION WITH LAWS RE ACCESS**

DATE: _____

The statements made on the [Architect's] [Engineer's] Certificate Re Compliance of Construction with Laws Re Access to which this Exhibit is attached are subject to the following exceptions:

ATTACHMENT Q

FORM OF CERTIFICATE OF COMPLETION

Free Recording Requested Pursuant to
Government Code Section 27383

Recorded at the Request of the
San Francisco Redevelopment Agency

When Recorded, Please Mail to:

Lennar/BVHP, LLC

----- Space Above This Line for Recorder's Use -----

CERTIFICATE OF COMPLETION

WHEREAS, the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic, of the State of California (the "Agency"), Lennar/BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Developer") and _____, a _____ ("Vertical Developer") have entered into the Disposition and Development Agreement Hunters Point Shipyard Phase __, Lot __, dated _____, 200__, and recorded in the City's Official Records on _____, 200__, as Document No. _____ (the "Vertical DDA"). The Vertical DDA is on file with the Agency as a public record and is incorporated herein by reference. This Declaration is executed and recorded in accordance with the Vertical DDA and partially satisfies the requirements therein. Terms not defined in this Certificate have the meanings given to them in the Vertical DDA;

WHEREAS, by Quitclaim Deed dated _____, 200__, and recorded in the City's Official Records on _____, 20__, as Document No. _____ (the "Deed"), Developer did convey to Vertical Developer certain real property situated in the City and County of San Francisco, State of California ("City"), more particularly described in Exhibit 1 attached hereto and made a part hereof (the "Property");

WHEREAS, with respect to the Property, the Agency has determined that the Vertical Developer's construction obligations for Vertical Improvements, as specified in the Deed and in the Vertical DDA, have been fully performed and the Vertical Improvements completed in accordance therewith;

WHEREAS, as stated in the Vertical DDA, the Agency's determination regarding said construction obligations is not directed to, and thus the Agency assumes no responsibility for, latent defects; and

WHEREAS, Section __ of the Deed contains conditions subsequent providing for forfeiture and reversion of title in event of violation of its provisions;

NOW, THEREFORE, as provided in the Agreement and the Deed, with respect to the above described Property, and subject to the foregoing provisions hereof, the Agency does hereby certify that said obligations and improvements for Vertical Improvements have been performed fully and completed as aforesaid and that the conditions subsequent have been fully satisfied and are of no further force or effect by reason thereof.

Nothing contained in this instrument shall modify in any other way any other provision of the Vertical DDA, the Deed, or any other provisions of those documents incorporated in the Deed.

IN WITNESS WHEREOF, the Agency has executed this instrument this _____ day of _____, 20__.

Authorized by Agency Resolution
No. _____ adopted March 27, 1962.

REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN
FRANCISCO, a public body, corporate and
politic

FORM APPROVED:

By: _____
Agency General Counsel

By: _____
Senior Deputy Executive Director

APPROVED:

By: _____
Assistant Secretary

By: _____
Development Services Manager

By: _____
Chief of Architecture and Engineering

EXHIBIT 1

LEGAL DESCRIPTION OF THE PROPERTY

ATTACHMENT R
FORM OF LICENSE TO ENTER

[To Be Attached]

ATTACHMENT S

SCHEDULE OF PERFORMANCE

[To Be Mutually Agreed Upon and Attached]

ATTACHMENT T

Hunters Point EIR Mitigation

MITIGATION MEASURES

1.

TRANSPORTATION, TRAFFIC AND CIRCULATION

1.A Transportation Demand Management

Adopt a Transportation Demand Management (TDM) approach by forming a Transportation management Association and preparing and adopting a Transportation System Management Plan which contains the elements specified in Measure 1.B.

1.A.1. Transportation Management Association

Form an HPS Transportation Management Association (TMA) composed of Agency staff; City agency staff from the Public Transportation Commission, Parking and Traffic Commission and the Department of Public Works; Hunters Point Shipyard owners, lessees and residents; and Bayview-Hunters Point community members to implement a Transportation System Management Plan (TSMP). The initial TMA group will be appointed by the Mayor for an 18-month term and will report to the Redevelopment Agency Commission ("Agency Commission"). As part of the development of the TSMP, the initial TMA will recommend procedures to the Agency Commission for future appointments to the TMA. The TMA will have no funding authority, but will develop a proposed TSMP for adoption by the Agency. The TSMP will identify funding needs, recommend potential funding sources and develop a phasing schedule consistent with the redevelopment phasing plan for implementation of identified measures. The TMA will monitor the effectiveness of the mitigation measures and the TSMP for the Agency. The TMA will provide an annual report to the Agency on the status of the TSMP implementation.

1.B Transportation System Management Plan

Have the TMA prepare and the Redevelopment Agency and affected City agencies adopt a TSMP. The TSMP shall identify program goals and implementing mechanisms for each of the following elements:

1.B.1. Transit Pass Sales

Establish a convenient location or locations within the boundaries of HPS for selling transit passes.

1.B.2. Transit, Pedestrian, and Bicycle Information

Provide maps of local pedestrian and bicycle routes, transit stops and routes, and other information, including bicycle commuter information, on signs and kiosks in occupied areas of HPS. Provide rideshare information and services through RIDES or an equivalent program.

1.B.3. Employee Transit Subsidies

Require major employers to use a transit subsidy system (e.g., through the Commuter Check Program) for their employees by incorporating transit subsidy requirements in the agreements between the Agency and developers. The TMA will identify major employers, recommend transit subsidy programs and identify transit subsidy systems that will provide employers with incentives to hire local employees as a way of reducing vehicle miles traveled.

1.B.4. Expand Transit Services and Monitor Transit Demand

Monitor transit demand at HPS on an annual basis and implement planned services as identified in the HPS Transportation Plan to stimulate transit ridership or respond to transit demand. The TMA will develop a phasing plan for implementation of transit improvements designed to meet or exceed demand. At a minimum, when HPS utilization includes 1,500 new employees or residents, implement those transit improvements contained in the Proposed Reuse Plan that are necessary to meet demand, including proposed MUNI extensions, if applicable. Continue to reevaluate transit demand and implement required improvements on an annual basis thereafter, and curtail commercial and residential development until required services are funded and implemented, if necessary, to prevent an imbalance between transit demand and services.

Identify incentives and disincentives to stimulate demand for transit and other alternative modes of transportation in place of the single occupancy automobile.

1.B.5. Secure Bicycle Parking

Require provisions for secured Class I bicycle parking spaces in parking lots and parking garages of residential buildings and research and development facilities. This secured bicycle parking is to be in amounts required by the San Francisco Planning Code, Article 1.5, Section 155. Require major employers and large employment sites occupied by many employees to provide clothing lockers and showers for bicyclists. Develop a program to make bicycles available to the public for travel within HPS.

1.B.6. Parking Management Guidelines

Establish mandatory parking management policies for the private operators of parking facilities in HPS to discourage long-term parking. Set aside desirable parking areas for rideshare vehicles and alternative fuel vehicles.

1.B.7. Flexible Work Time/Telecommuting

Where feasible, offer HPS employees the opportunity to work on flexible schedules and/or telecommute so they can avoid peak hour traffic conditions.

1.B.8. Shuttle Service

Require shuttle service to serve all redeveloped portions of HPS either through the provision of shuttle service by developers, large employers or another entity or entities. The shuttle service will operate between HPS and regional transit stops in San Francisco (e.g., MUNI, Third Street LRT, Bay Area

Rapid Transit (BART), CalTrain. Transbay transit terminal, and ferry terminal). Consider use of alternative fuel vehicles for the shuttle service.

1.B.9. Monitor Physical Transportation Improvements

Monitor physical transportation improvements, such as street repaving and resurfacing and installation of street lighting, and ensure that planned improvements are implemented when necessary to meet the needs of new residents and employees.

1.B.10. Ferry Service

Assist the Port of San Francisco and others in ongoing studies of the feasibility of expanding regional ferry service. Assist in implementing feasible study recommendations (if any) related to HPS service.

1.B.11. Local Hiring Practices

Require the TMA to set a goal to reduce traffic and air quality impacts by hiring workers who reside in the Bayview-Hunters Point neighborhood to fill new jobs at HPS. Qualified workers who reside in the Bayview-Hunters Point neighborhood should be given priority for new employment opportunities. Require compliance with existing Agency local hiring requirements and the City's "First Source" hiring program. Monitor local hiring on an annual basis to determine if the goal is being met and adjust the program as necessary.

1.B.12. Clean Air Program

Assist City's Clean Air Program in establishing natural gas fueling stations and electric charging bays in HPS and in implementing other means identified by the Clean Air Program for owners, tenants and users of HPS to use alternative fuel vehicles.

1.C Phelps/Evans

Eliminate the southbound left-turn lane and re-route turns via Phelps Street to Evans Street. Signalize the Phelps/Evans intersection and remove parking along Phelps and Evans Street. In addition, adopt a transportation system management approach as described under Mitigation Measure 1.B.

1.D Evans/Cesar Chavez

To improve operations and reduce delays at this intersection, restripe the existing northbound shared left/right-turn lane on Evans Avenue to create an exclusive left-turn lane and an exclusive right-turn lane. Widen the Evans Avenue northbound approach at Cesar Chavez Street. The southeast corner curb return will require structural modifications to the existing viaduct. Change the existing signal timing plan to include the exclusive left-turn and right-turn lanes.

1.E Adequate Transit Service

Monitor transit demand at HPS on an annual basis and ensure that adequate transit service is provided to meet or exceed demand, as required by the Transportation System Management approach described under Mitigation Measure 1.B.4.

1.F Pedestrian and Bicycle Facilities

Require completion of planned pedestrian and bicycle facilities as part of adjacent development. Monitor and ensure completion of these facilities as part of the TSMP described under Mitigation Measure 1.B.2.

2. AIR QUALITY

2.A TSMP Measures

Form a Hunters Point TMA and prepare a TSMP as described in Mitigation Measures 1.A and 1.B.

2.B Construction PM₁₀

BAAQMD officials consider PM₁₀ emissions from construction sites to be potentially significant. As conditions of construction contracts, contractors will be required to implement BAAQMD guidelines for controlling particulate emissions at construction sites. BAAQMD guidelines are summarized below:

- Seed and water all unpaved, inactive portions of the lot or lots under construction to maintain grass cover if they are to remain inactive for long periods during building construction.
- Halt all clearing, grading, earthmoving, and excavating activities during periods of sustained strong winds (hourly average wind speeds of 25 mph [40 km per hour] or greater).
- Water or treat all unpaved active portions of the construction site with dust control solutions, twice daily, to minimize windblown dust and dust generated by vehicle traffic. (City Ordinance 175-95 requires that nonpotable water be used for this purpose.)
- Sweep paved portions of the construction site daily or as necessary to control windblown dust and dust generated by vehicle traffic. Sweep streets adjacent to the construction site as necessary to remove accumulated dust and soil.
- Cover trucks carrying loose soil or sand before they leave the construction site, and limit on-site vehicle speeds to 15 mph (24 km per hour) or lower in unpaved construction areas.
- Limit the area subject to excavation, grading or other construction activity at any one time. Cover on-site storage piles of loose soil or sand.

2.C Toxic Air Contaminants

SFRA will evaluate and permit all potential stationary sources of toxic air contaminants allowed at HPS as one facility and allow new potential stationary sources only if the estimated incremental toxic air contaminant health risk from all stationary sources at HPS is consistent with BAAQMD significance criteria for an industrial facility.

3.
NOISE

3.A Residential Construction

To reduce noise impacts to proposed residential properties east of Donahue Street, orient and design new or renovated buildings such that future noise intrusion will be minimized to within acceptable levels. In addition, comply with the San Francisco Building Code's noise insulation standards for new residential construction. Physical barriers also could be constructed to reduce noise transmission to these residential areas.

7.
HAZARDOUS MATERIALS AND WASTE

7.A Reuse Prior to Complete Remediation

Implement basewide restrictions on and notifications for leased areas prior to remediation (related to IR sites and areas of concern), as described below.

- Prohibit users from disturbing soil or conducting intrusive activities without prior Navy approval and coordination with Federal and state regulatory agencies. Prohibitions could include, but are not limited to, shoveling, digging, trenching, installing wells, and conducting subsurface excavations.
- Prohibit users from entering fenced-off areas, areas where environmental investigations are in progress, or areas where access is not authorized, as indicated by appropriate signs.
- Restrict access to fenced areas of Parcel E until remediation activities have been completed.
- Maintain intact the current condition of all flooring and interior and exterior pavement and concrete in lease area.
- Prohibit the use of groundwater at HPS for any purpose.
- Notify users that petroleum hydrocarbons and hazardous substances have been detected in the soil and groundwater at HPS.
- Notify users that investigations and remediation are ongoing at IR sites at HPS. Lessee must not interfere with ongoing environmental investigation and remediation efforts. Areas where sampling and remediation crews are working must be avoided.
- Prohibit access to waterfront areas for fishing until it is determined by EPA through the CERCLA process that Parcel F is remediated to a condition protective of human health and ecological resources.

7.B Construction Prior to Remediation

The following precautionary measures will be implemented by the project proponent during necessary construction activities prior to remediation. These measures are general and will be refined based on site-specific information and consultation with regulatory agencies.

- Obtain site-specific information about soil or groundwater that would be disturbed through new testing or existing information from the Navy and consultation with regulatory agencies.
- Before disturbing soil or groundwater, or conducting intrusive activities such as shoveling, digging, trenching, installing wells, subsurface excavations, or building renovation, obtain Navy approval and coordinate with Federal and state regulatory agencies. This coordination would result in an identification of precautionary measures to be implemented during construction activities. The precautionary measures would be incorporated into a site-specific Health and Safety Plan (HASP) (see Section 3.7.5) that is consistent with the contaminants present.
- Implement dust suppression measures to limit airborne contaminants in accordance with BAAQMD requirements.
- Handle and dispose of soil in a manner consistent with the contamination present, as required by Federal, state, and local laws and regulations.

7.C Reuse After Complete Remediation

Implement and monitor compliance with institutional controls designed to be protective of public health, as determined by law and in consultation with the regulatory agencies. These institutional controls would likely include a prohibition on the use of groundwater and on residential uses in non-residential areas, notification regarding residual contamination, and encapsulation methods.

7.D Construction After Remediation

Perform construction activities in a manner consistent with institutional controls designed to be protective of public health, as determined in consultation with the regulatory agencies; and in accordance with CAL OSHA regulations. Take the following additional steps, where warranted by site-specific information:

- Obtain information on soil and groundwater contamination by sampling, reviewing existing Navy data, and/or consulting with regulatory agencies. When no sampling results are available, develop and implement a sampling program similar to that required under Article 22A of the San Francisco Public Works Code.
- If contamination is identified in the areas proposed for disturbance, prepare a site mitigation plan, similar to that required under Article 22A of the Health Code. If applicable, implement the requirements of Cal. Code Reg. Tit. 8 § 5192 (Hazardous Waste Operations and Emergency Response).
- Dispose of groundwater in accordance with applicable permits.

7.E Construction Contingency Plan for Unanticipated Hazardous Materials

Inform contractors that unknown hazardous materials could be encountered during demolition or excavation, and instruct them regarding steps to be taken if this occurs. These steps include the following:

- The contractor shall immediately stop work in the area and notify the San Francisco Department of Public Health (DPH) verbally and in writing.
- The contractor shall immediately secure the area to prevent accidental access by construction workers or the public.
- The identified material shall be sampled as directed by DPH.
- Handling and disposal of identified materials shall be in accordance with DPH direction and in compliance with applicable laws and regulations.
- Work on site may resume only where and when permitted by DPH.

7.F Controls on Ecological Exposure to Hazardous Materials During Construction

For surface water impacts, follow all conditions of the state of California storm water construction permit, including implementing BMPs to reduce storm water runoff from the site.

For groundwater discharge impacts, follow all permit requirements for discharge into the storm water system or sanitary sewer system. Treat water as appropriate to comply with discharge levels as required by the permit.

Assess potential effects on groundwater gradients within construction areas if dewatering is proposed or if new utility lines are proposed that could act as conduits for contaminants in groundwater. Conduct dewatering activities and design utility installations such that contamination does not spread to the Bay or other ecologically sensitive areas. New storm drains shall have watertight joints, such as rubber gaskets. Methods to be considered could include installing sheet piling; groundwater pumping/recharge, and installing utility lines in impermeable bedding material.

For boring and pile driving activities along the Bay, drive the piles directly into the sediments without boring where possible, to minimize and localize sediment disruption. Where pile driving without drilling is not possible due to shallow bedrock, drive a casing to the solid material, preventing collapse of the material and allowing drilling to occur within the casing without excessive sediment disruption. Then place the pile in the casing and backfill with concrete.

Perform dredging activities in a manner consistent with institutional controls established via the CERCLA process. Require consultation with agencies represented in the Army Corps of Engineers Interagency Dredged Material Management Office regarding appropriate methods for limiting disturbance of sediment, containing suspended sediment to the immediate area being dredged, and additional measures to be protective of human health and the environment as described in Section 3.7.5 (under Dredging).

7.G Controls on Cross Contamination of Aquifers During Construction

Place piles in a manner so that there is no conduit for groundwater migration along pile edges. Where possible, drive piles directly into sediments without drilling. If drilling is required, drive casing into bedrock, drill within casing, and backfill with cement grout.

8.

GEOLOGY AND SOILS

8.A Handling Naturally Occurring Asbestos During Construction

Follow BAAQMD, U.S. EPA, and federal and CAL OSHA regulations for construction and demolition activities. Continuously wet serpentinite involved in excavation or drilling operations. Wet and cover stockpiled serpentinite. Do not use serpentinite as road, surfacing, or paving material. Cap serpentinite used as fill material with at least one foot (0.3 m) of clean non-serpentinite fill material, and implement institutional controls to prevent future exposure from excavation activities. Treat excavated waste materials containing greater than one percent asbestos by weight as hazardous waste, and transport and dispose of this material in accordance with applicable Federal and state regulations.

8.B Existing Building Survey for Seismic Hazards

Before increasing the occupancy of existing buildings, survey buildings that may be unsafe in the event of an earthquake, and take appropriate steps to prevent injury. Those steps could include interior modifications, bracing, retrofits, and/or access restrictions.

9.

WATER RESOURCES

9.A Storm Water Improvement Design to Control CSO Volumes

Eliminate projected increases in combined sewer overflow (CSO) volumes caused by storm water discharges to the City's combined system by upgrading or replacing the separated system at HPS (Option 1 or 2). Also consider ways to offset non-significant increases attributable to sanitary flows. Arrange for the SFPUC to condition permits issued for groundwater discharge to the City's combined sewer system, so that discharges do not occur in wet weather when overflows are anticipated to occur.

9.B Storm Water Discharge Quality

To ensure that the quality of storm water discharges improves as anticipated, implement the following measures:

- Develop and implement a SWPPP for HPS that is applicable to new development under the Redevelopment Plan to control the quality of direct discharges of stormwater to near-shore waters. The SWPPP will include provisions for controlling soil migration off site (e.g., silt fences, settling units) during periods of runoff and for monitoring possible sources of industrial contaminants. Develop the program in coordination with the San Francisco Public Utility Commission staff and according to guidelines contained in the California Municipal Storm Water Best Management Practice Handbook, the California Industrial/Commercial Storm Water Best Management Practice Handbook and U.S. EPA's proposed Phase II stormwater regulations.
- As part of the SWPPP, implement BMPs such as public education and outreach, pollution prevention, and good housekeeping.

- Construct stormwater retention and treatment areas on site to improve the quality of discharges to the Bay. Specify in the SWPPP the locations of appropriate areas for stormwater infiltration that avoid toxic hot spot areas and capped areas and identify drainage patterns to direct stormwater to appropriate infiltration locations.

10. **UTILITIES**

10.A Drinking Water Distribution System

Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the water distribution system and address them through planned infrastructure improvements or other actions.

As proposed under the draft utility infrastructure plan, replace the potable water distribution system with a new system built to meet demands of proposed development. This will ensure the supply of safe potable water and adequate water pressure. As an alternative to wholesale system replacement, the City also could implement incremental improvements.

- In the upper housing area, cap the water distribution system and drain and abandon the 410,000-gallon (1.5-million liter) tank.
- Locate, excavate, and repair valves and lines. Replace PVC lines.
- Sample water at the point of consumption for chlorine, lead, and copper levels to ensure that it complies with the Safe Drinking Water Act.
- Install backflow preventors at the two San Francisco service points.
- Inspect service points for cross connections and for exposure to contamination so problems can be remediated, if needed.
- Install water meters to measure quantities delivered.

10.B Fire Fighting Water Distribution System

Prior to authorization of reuse activities within a given area of HPS, assess fire fighting deficiencies in the water systems and address them through planned infrastructure improvements or other actions.

Construct a new auxiliary water supply system to augment the water supply for fire fighting purposes. As an alternative to constructing a new system, the City may, in the interim, upgrade the existing potable water distribution system and fire hydrants to meet fire-fighting needs.

10.C Storm Water Collection System

Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the storm water collection system and address them through planned infrastructure improvements or other actions.

To mitigate impacts, implement the following measures:

- Upgrade or replace the storm water collection system as planned in each section of HPS prior to reuse.
- Restrict the amount of paved surfaces at HPS for no net increase
- Design the storm water collection system to incorporate appropriate infiltration locations and drainage patterns contained in the SWIPPP as provided in Measure 9.B.
- Install valves, gates, or duckbills at storm line discharge points to prevent tidal surges and movement of contaminated Bay Mud into the storm lines.

10.D Sanitary Collection System

Prior to authorizing reuse activities within a given area of HPS, assess deficiencies in the sanitary collection system and address them through planned infrastructure improvements or other actions. Construct a sanitary collection system at HPS to meet the Proposed Reuse Plan's sanitary collection needs.

10.E Natural Gas System

Prior to authorization of reuse activities within a given area of HPS, assess deficiencies in the natural gas system and address them through planned infrastructure improvements or other actions. Construct a natural gas system according to Federal, state, and local codes to meet the Proposed Reuse Plan's needs.

12 **CULTURAL RESOURCES**

12. A Protection of Historical Resources

Implement applicable measures to be contained in an MOA between the Navy and SHPO, with City/Agency concurrence. Measures to include:

- Agreement by the City/Agency to designate NRHP-eligible buildings and structures as landmarks under San Francisco's own historic preservation ordinance or to prohibit demolishing these resources.
- Agreement by the City/Agency to require the use of the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* for all alterations proposed to historic resources identified as eligible for listing in the NRHP.
- Agreement by the City/Agency to inform future project developers of the potential for encountering archeological resources and the required procedures to be followed (see Mitigation 12.D below).

12. B Alteration of Historical Resources

Comply with the Proposed Reuse Plan, *Hunters Point Shipyard Redevelopment Plan*, and associated *Design for Development*, including requirements for retaining and identifying the historical resources described in Section 3.12. These documents also require that alterations that affect the historic resources be implemented according to the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings* (Proposed Reuse Plan Objective 12, Policy 6).

12. C Construction Within Historic District

Any construction within the Hunters Point Commercial Drydock Historic District will require compliance with the policies set forth in the Proposed Reuse Plan, which calls for creating an attractive and distinctive visual character for HPS that respects and enhances the natural features, the history, and the vision for mixed-use development oriented toward arts and industrial uses (Objective 11). It further states that the structures around Drydocks 2 and 3 will be the focus of the arts/cultural and mixed-use district (Objective 12, Policy 2). Construction must also comply with applicable provisions of the Secretary of the Interior's *Standards for Rehabilitation and Guidelines for Rehabilitating Historic Buildings*.

12. D Archeological Resources

Require contractors to be made aware of the potentials for discovery of archaeological resources. If development in the four subsurface zones identified as having the potential for containing significant archeological deposits involves construction or installation below the level of fill, retain a professional archeologist to develop a project-specific treatment or monitoring program. If archaeological resources are discovered during construction, suspend all work in the immediate vicinity. Avoid altering the materials and their context pending site investigation by a qualified professional archeologist. If the qualified professional archeologist determines that the discovery is significant, notify the SHPO and ensure that an appropriate treatment plan is developed and implemented.

13

BIOLOGICAL RESOURCES

13.A Wetlands Habitat Protection

Place barriers along the Bay side of trails to reduce human and domestic animal disturbances to sensitive wetland habitats. Design barriers so that wildlife cannot hear or see people from foraging areas and so that people cannot easily leave the trail to enter sensitive wildlife areas. Develop and implement a public access program to include fencing sensitive areas, posting signs, and imposing leash requirements to further reduce disturbance to wetland areas.

13. B Litter Control

Provide adequate trash receptacles along public access areas. Ensure pick-up and trash receptacle maintenance on a regular basis.

ATTACHMENT U
VERTICAL DESIGN REVIEW AND DOCUMENT APPROVAL PROCEDURE

HUNTERS POINT SHIPYARD

PHASE 1

VERTICAL DESIGN REVIEW AND DOCUMENT APPROVAL PROCEDURE

I. INTRODUCTION This Vertical Design Review and Document Approval Procedure, ("VDRDAP") sets forth the procedure for design submittals of the plans and specifications for the vertical developments of Phase 1 and their review. The vertical developments will include residential, streetscape, private open spaces, and other permanent and interim uses. The developments will include those developed by Lennar-BVHP, LLC ("Developer"), Developer's affiliates and other entities (each, a "Vertical Developer"). The San Francisco Redevelopment Agency ("Agency") shall review plans and specifications to assure that they conform to the Disposition And Development Agreement Phase 1 Hunters Point Shipyard ("Phase I DDA") by and between Developer and the Agency and the Vertical Disposition and Development Agreement by and among Developer, the Vertical Developer and the Agency. City Agencies will review plans and specifications for compliance with applicable City Regulations.

A. DEFINITIONS

Capitalized terms unless separately defined in this VDRDAP shall have the meanings set forth in the Phase I DDA. For vertical development purposes of this VDRDAP, when the term "Agency" is used herein, the use of such term shall mean the San Francisco Redevelopment Agency, acting in its official capacity either through the Agency Commission or the Agency's Executive Director, as authorized by law and/or as set forth in the Phase I DDA or this VDRDAP. For purposes of this VDRDAP, when the term "Director" is used, such term shall mean the Executive Director of the San Francisco Redevelopment Agency, or staff of the San Francisco Redevelopment Agency as designated by the Director. The term "Agency Commission" is used in this VDRDAP whenever any determination is required to be made by the Commission for the San Francisco Redevelopment Agency.

B. REVIEW

1. Subdivision Map Review.

The review and approval of Design and Construction Documents by the Agency pursuant to this VDRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act and in the Hunters Point Shipyard Subdivision Code and Hunters Point Shipyard Subdivision Regulations. The processing of a subdivision map may occur concurrently with or independently of a project approval.

2. Temporary and Interim Uses.

The Agency architectural staff shall review applications for temporary and interim uses.

II. PROJECT APPROVALS

Project Approval submissions shall consist of four components or stages:

- Basic Concept Design,
- Schematic Design,
- Design Development Documents, and
- Final Construction Documents.

A. SCOPE OF REVIEW

The Agency shall review and approve Basic Concept Design plans, Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Hunters Point Shipyard Redevelopment Plan and Plan Documents, including but not limited to the Design for Development. The Agency's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the final Environmental Impact Report. The mitigation measures are intended to reduce the major impacts of this development on the environment. The Agency shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program. The Agency shall not disapprove, require changes from or impose conditions inconsistent with the Hunters Point Shipyard Redevelopment Plan, Plan Documents or matters it has previously approved, provided that the project submittals are consistent with any matter the Agency has previously approved.

B. AGENCY PROCESS

1. Review by Agency.

The redevelopment of the Hunters Point Shipyard contemplated by the Hunters Point Shipyard Redevelopment Plan and Plan Documents is a priority project for the City and the Agency. The Agency shall review all applications for project approvals as expeditiously as possible. The Agency architectural staff shall keep the applicant informed of the Agency's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by the Agency, and shall provide applicant opportunities to meet and confer with Agency staff prior to the Agency Commission hearing, if any, to review the specific application for project approval.

2. Pre-Submission Conference.

Prior to filing an application for any project approval, the applicant or applicant may submit to the Agency architectural staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, the Agency architectural staff shall hold a conference with the applicant to discuss the proposed application.

3. Cooperation by Applicant.

In addition to the required information set forth in Exhibit 1 attached hereto, the applicant shall submit materials and information as the Agency architectural staff may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this VDRDAP. Additionally, the applicant shall cooperate with, and participate in, design review presentations to the Agency Commission and to the public through the Hunters Point Shipyard Citizens Advisory Committee.

C. REVIEW OF BASIC CONCEPT DESIGN

Basic Concept Design documents shall be submitted to the Agency for review and approval. Basic Concept Design documents shall demonstrate a concept level of detail consistent with the Hunters Point Shipyard Redevelopment Plan and Plan Documents.

1. Timing of Agency's Review.

The Agency architectural staff shall review the Basic Concept Design for completeness and advise the applicant in writing of any deficiencies within fifteen (15) working days following receipt of the applicant's Basic Concept Design submittal. In the event the Agency architectural staff does not so advise the applicant, the application for Basic Concept

Design shall be deemed complete. The time limit for the Agency staff's review shall be within sixty (60) days from the date the Basic Concept Design has been determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

The Agency Commission shall review and approve, conditionally approve or disapprove the application for Basic Concept Design within the sixty (60) day period set forth above. If the Agency Commission disapproves the Basic Concept Design in whole or in part, the Agency Commission shall set forth the reasons for such disapproval in the resolution adopted by the Agency Commission. If the Agency Commission conditionally approves the Basic Concept Design, such approval shall set forth the concerns and/or conditions on which the Agency Commission is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of such resubmitted or corrected documents to the Agency architectural staff.

The applicant and the Agency may agree to any extension of time necessary to allow revisions of submittals. The Agency shall review all revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency and the applicant. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

2. Document Submittals.

The applicant shall submit Basic Concept Design plans, which plans shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

D. REVIEW OF SCHEMATIC DESIGN

Except as provided below, Schematic Design documents shall be submitted to the Agency Commission for review and consideration. Schematic Design documents shall relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency's design concerns and comments.

1. Timing of Agency's Review.

The Agency architectural staff shall review the application for Schematic Design for completeness and advise the applicant in writing of any deficiencies within fifteen (15) working days after the receipt of the applicant's Schematic Design documents. In the event the Agency architectural staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for the Agency staff's review shall be forty nine (49) days from the date the application for Schematic Design was determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

The Agency Commission may elect, in its sole discretion, to delegate approval of the Schematic Design to the Agency architectural staff at the time the Agency Commission reviews the Basic Concept Design. If the Agency disapproves the Schematic Design in whole or in part, the Agency shall state the reasons for such disapproval. If the Agency approves the Schematic Design subject to conditions, such approval shall set forth the concerns and/or conditions on which the Agency is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of the resubmitted or corrected documents to the Agency architectural staff.

The applicant and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency. The Agency shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and the applicant. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

The applicant may request to submit Basic Concept Design and Schematic Design documents simultaneously. The Agency architectural staff shall approve or disapprove such request within a reasonable time. In the event that Agency architectural staff permits the applicant to submit complete sets of Basic Concept Design and Schematic Design documents simultaneously, the Agency Commission shall approve, conditionally approve or disapprove the Schematic Design documents at the same time it approves the Basic Concept Design, and no later than twenty-one (21) days following the time period for approval of the Basic Concept Design. The Schematic Design submittal shall govern if there is any discrepancy between the two design submittals.

2. Document Submittals.

The applicant shall submit Schematic Design Documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

E. REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by the Agency architectural staff, following approval of the Schematic Design.

1. Scope of Review.

The Agency architectural staff shall review the Design Development Documents for consistency with earlier approved documents, the Hunters Point Shipyard Redevelopment Plan and Plan Documents, including the Scope of Development and the Design for Development. Design Development Documents will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

2. Timing of Agency's Review.

The Agency architectural staff shall review the Design Development Documents for completeness and advise the applicant in writing of any deficiencies within ten (10) working days after the receipt of the Design Development Documents. In the event the Agency architectural staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for the Agency architectural staff's review shall be forty-nine (49) days from the date the Design Development Documents were determined to be complete. The Agency architectural staff shall take such reasonable measures necessary to comply with the time periods set forth herein.

The applicant and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency architectural staff. The Agency architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and the applicant.

3. Document Submittals.

The applicant shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

F. REVIEW OF FINAL CONSTRUCTION DOCUMENTS

1. Agency Review.

Final Construction Documents will relate to the construction documents' level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City's Department of Building Inspection and the Agency architectural staff. Provided the applicant's Final Construction Documents are delivered to the Agency architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by the Agency architectural staff within twenty-one (21) days following the Agency architectural staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant's Final Construction Documents are not delivered concurrently to the Agency architectural staff, the Agency architectural staff shall review the Final Construction Documents as expeditiously as possible.

2. Document Submittals.

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. The Final Construction Documents submittal shall include the information specified for the Design Development Documents in Exhibit 1 attached hereto.

III. OTHER CITY PERMITS

A. COMPLIANCE WITH OTHER LAWS

No Agency review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

B. AGENCY REVIEW OF CITY PERMITS

No building permit, or any other City permit, including but not limited to any permits required by the Department of Public Works shall be issued unless the Agency has reviewed and approved the permit application.

C. SITE PERMITS

The applicant may apply for and obtain a Site Permit and addenda from the Department of Building Inspection upon the Agency architectural staff's approval of the Design Development documents. This application can be submitted before the Final Construction Documents the project have been completed and submitted for approval to the Agency architectural staff and the Department of Building Inspection. Notwithstanding the foregoing, the applicant may apply for City permits related to grading and excavation activities prior to the Agency architectural staff's approval of the Design Development Documents, provided that the Agency architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by the Agency architectural staff and Department of Building Inspection. Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

IV. MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

The Agency may, by written decision, approve project applications which amend or modify the previously approved project, provided that the Agency makes the following determinations: (1) the project approval requested involves a deviation that does not constitute a material change; (2) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and (3) the grant of the project approval will be consistent with the general purposes and intent of the Hunters Point Shipyard Redevelopment Plan and Plan Documents. In the event that the Agency determines that the project application deviates materially from the project already approved by the Agency, the Agency may require submittal of an amended project application, as appropriate, for review by the Agency in accordance with the provisions herein.

Amendments and modifications will be processed in accordance with this VDRDAP.

V. GOVERNMENT REQUIRED PROVISIONS, CHANGES

The Agency and the Applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Concept Plans, Basic Concept Design, Schematic Design, Design Development Documents or Final Construction Documents which are required by any City Agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or the Agency's architect, as the case may be, and (ii) the applicant or the Agency shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and the Agency each agrees to use its diligent, good faith efforts to obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.

EXHIBIT 1**DOCUMENTS TO BE SUBMITTED FOR PROJECT APPROVALS**

During each stage of the project design review process, the Agency architectural staff and the applicant shall agree upon the scale of the drawings for project submissions. The Agency architectural staff and the applicant shall also discuss and agree upon the scope of the subsequent project submissions recognizing that each project is unique and that all documents outlined herein may not be required for each project.

Design Development Documents and other Construction Documents to be submitted shall be prepared by an architect licensed to practice in and by the State of California. The applicant shall submit a report outlining compliance with the adopted Mitigation and Monitoring Program.

A. BASIC CONCEPT DESIGN DOCUMENTS

Three (3) sets of Basic Concept Design documents shall be submitted to the Agency. The program of uses, the height of buildings or other factors in the proposed project may trigger some variation in the submittal requirements in order to illustrate consistency with standards and guidelines in the Hunters Point Shipyard Redevelopment Plan and Plan Documents. Basic Concept Design documents will illustrate building height, building bulk, block development, street frontage, conceptual building elevations, and streetwall length, height and character. Project Basic Concept Design submittals will include the following documents.

1. Data Charts

Data charts submitted should provide information appropriate to a Basic Concept Design submittal consistent with the project being proposed, including:

- a. Program of uses
- b. Maximum development density
- c. Approximate number of parking and loading spaces
- d. Building coverage and streetwall calculations

2. Vicinity Plan

In addition to the site plan for the immediate area of the project under review, a diagrammatic vicinity plan should be submitted showing this project in the context of planned and existing:

- a. Utilities, including interim facilities
- b. Vehicular, bicycle and pedestrian circulation
- c. View corridors
- d. Public and private open space

3. Site Plan (at a scale of 1"=40' unless otherwise agreed upon)

The Site Plan will pertain to the total area of development and improvement included in this project which may include required streets, open space and other existing infrastructure improvements. A Site Plan should indicate the location of uses; the general location, scale, relationship, and orientation of buildings; the general site circulation and relationship of ground floor uses, and:

- a. Site boundaries
- b. Building footprints
- c. Existing public open space areas
- d. Private open space areas
- e. Setbacks
- f. Existing roads, sidewalks, mid-block connections
- g. Parking and loading facilities (including interim facilities)
- h. Circulation diagram including entry locations for pedestrians, autos and service vehicles
- i. Existing and proposed streetscape improvements

4. Building Plans, Elevations and Sections sufficient to describe the development proposal

Written Statement of Program, including: size and use of the facilities proposed, structural system and principal building materials.

5. Model

A Basic Concept Design level block model shall illustrate the location, scale and massing of proposed building(s) and its relationship to existing public open space, streets and surrounding development areas.

6. Illustrative Materials

Sketches or perspective renderings (and other appropriate illustrative materials acceptable to the Agency) shall be submitted to illustrate the character of the proposed development.

7. Phasing Plan

Within the project, any anticipated phasing of construction or temporary Improvements, including temporary or interim parking facilities and infrastructure, to ease the transition among projects and between phases, if any, shall be indicated.

B. SCHEMATIC DESIGN

Documents submitted at this stage in the design review will relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency's design concerns and comments. The Schematic Design submission for a specific project should generally be consistent with the Basic Concept Design approval. A Schematic Design submittal will include the following documents.

1. Written Statement

A written statement of proposal shall cover items similar to those on the Basic Concept Design data charts including number of parking and loading spaces, size and use of the facilities provided, with the addition of the structural system, principal building materials and area calculations.

2. Schematic design drawings

The Schematic Drawings shall generally include, but not be limited to:

- a. Isometric or perspective drawings sufficient to illustrate overall project.
- b. Site plan at appropriate scale showing relationships of buildings with their respective uses designating open spaces, terraces,

landscaped areas, walkways, loading areas, streets, water elements, and adjacent uses. Adjacent existing and proposed street and structures should also be shown. Scale: minimum 1/16"=1 '0

- c. Site sections showing height relationships of those areas noted above. Scale: minimum 1/16"=1 '0
- d. Building plans, elevations and sections sufficient to describe the development proposal, the general architectural character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/8"=1 '0
- e. Written Statement of program, including: size and use of the facilities proposed, structural system and principal building materials.

3. Model

A model shall be submitted to the Agency which shall be prepared at an appropriate scale indicating the exterior building design.

4. Perspectives, Sketches and Renderings

Perspectives, sketches, and renderings, as necessary to indicate the architectural character of the project and its relationship to the pedestrian level shall be submitted to the Agency.

5. Samples

Samples of proposed materials and exterior colors shall be submitted to the Agency.

- 6. Perspective drawings sufficient to depict the design characteristics of the project.

C. DESIGN DEVELOPMENT DOCUMENTS

Documents submitted at the design development stage in design review will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

The Design Development Document submission for a specific project should generally be consistent with the Schematic Design approval.

- 1. Site plans showing where applicable:**
 - a. Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.
 - b. All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.
 - c. Grading plans depicting proposed finish site elevations
 - d. Site drainage and roof drainage.
 - e. Required connections to existing and proposed utilities.
 - f. All existing structures adjacent the site.
- 2. Building floor plans and elevations including structural system, at an appropriate scale (1/8" to 1' minimum).**
- 3. Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of ground floor uses to pedestrian outdoor areas, and including mechanical equipment**
- 4. Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City's right of way shall be shown.**

5. **Drawings showing structural, mechanical and electrical systems.**
6. **Materials and colors samples as they may vary from those submitted for Schematic Design approval**
7. **Sign locations and design**
8. **Outline specifications for materials and methods of construction**
9. **Roof plan showing location of and screen design for all rooftop equipment; and roof drainage**

D. FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Department of Building Inspection, including Site Plans and Construction Drawings and Specifications ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. The Agency architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.

Exhibit H

**Environmental Ordinances
(Including Article 31)**

1 [Hunters Point Shipyard – Health Code]

2
3 **Ordinance adding Article 31 to the Health Code and amending sections 659, 1120.1 and**
4 **1227 of the Health Code to establish special restrictions for activities on the Hunters**
5 **Point Shipyard to address potential residual contamination and to authorize the**
6 **Department of Public Health to implement these restrictions, and impose penalties, and**
7 **charge fees to defray the costs of implementation; and making environmental findings.**

8 Note: Additions are *single-underline italics Times New Roman*;
9 deletions are *strikethrough italics Times New Roman*.
10 Board amendment additions are double underlined.
Board amendment deletions are ~~strikethrough normal~~.

11 Be it ordained by the People of the City and County of San Francisco:

12 Section 1. Findings.

13 A. In conjunction with Ordinances *300-04* , *302-07* , and *304-04* on file
14 with the Clerk of the Board of Supervisors in File Nos. *041538* , *041540* , and *041544* ,
15 this ordinance enacts a new program to protect human health and safety and the environment
16 at the former Hunters Point Shipyard during and after development and to facilitate
17 redevelopment as envisioned in the Hunters Point Shipyard Redevelopment Plan through
18 enacting additional prerequisites to obtaining certain City permits.

19 B. In accordance with the actions contemplated herein, this Board adopted
20 Resolution No. *751-04* , concerning findings pursuant to the California Environmental
21 Quality Act (California Public Resources Code sections 21000 et seq.). Said Resolution is on
22 file with the Clerk of the Board of Supervisors in File No. 041533 and is incorporated
23 herein by reference.

24 Section 2. The San Francisco Health Code is hereby amended by adding Article 31, to
25 read as follows:

1 Sec. 3100. Hunters Point Shipyard.

2 Findings. The Board of Supervisors of the City and County of San Francisco hereby finds and
3 declares as follows:

4 A. This ordinance is designed to protect human health and safety and the environment at
5 the former Hunters Point Shipyard during and after development and to facilitate redevelopment as
6 envisioned in the Hunters Point Shipyard Redevelopment Plan, which the Board of Supervisors adopted
7 in 1997, and its Environmental Impact Report.

8 B. The United States designated Hunters Point Shipyard as a U.S. Naval Shipyard in 1945.
9 The United States Environmental Protection Agency (EPA) placed the Hunters Point Shipyard on the
10 National Priorities List pursuant to the Comprehensive Environmental Response, Compensation and
11 Liability Act (CERCLA) in 1989. The U.S. Navy divided the site into six parcels designated Parcels A-
12 F for purposes of remediation.

13 C. The U.S. Navy issued a CERCLA Record of Decision (ROD) for Parcel A which was
14 approved by the EPA, the California Department of Toxic Substances Control (DTSC), and the San
15 Francisco Bay Region Regional Water Quality Control Board (RWOCB) in November 1995. The ROD
16 concluded that "no action" was needed to cleanup Parcel A. Effective April 5, 1999, EPA removed
17 Parcel A from the National Priorities List after EPA and the State of California found that all
18 appropriate responses under CERCLA had been implemented, that no further cleanup is appropriate
19 for Parcel A and that the remedial actions conducted on Parcel A remain protective of public health,
20 welfare, and the environment.

21 D. On September 1, 2004, the Navy issued a draft final Finding of Suitability to Transfer
22 (FOST) for Parcel A. On September 30th and October 6th and 7th 2004, respectively, the EPA, DTSC
23 and the RWOCB concurred with the Navy's FOST. The Navy signed the FOST on October 14, 2004.
24 The FOST for Parcel A contains requirements for certain notices, restrictions and covenants to be
25

1 included in the deed for Parcel A. These notices, restrictions and covenants are also referred to as
2 "institutional controls" and are binding on all successive owners of any portion of Parcel A.

3 E. On December 3, 2004, the Navy transferred portions of Parcel A to the San Francisco
4 Redevelopment Agency.

5 Sec. 3101. Definitions.

6 In addition to the general definitions applicable to this Code, whenever used in this Article, the
7 following terms shall have the meanings set forth below:

8 (a) "Applicant" means a person applying for any of the following authorizations for
9 subsurface activities on portions of the Hunters Point Shipyard subject to this Ordinance: (i) any
10 building or grading permit that involves the disturbance of at least 50 cubic yards (38.23m³) of soil; (ii)
11 any permit pursuant to the Public Works Code that involves the disturbance of at least 50 cubic yards
12 (38.23m³) of soil; (iii) any improvement plan pursuant to Division 3 of the Subdivision Code that
13 involves the disturbance of at least 50 cubic yards (38.23m³) of soil; (iv) any permit to operate or
14 approval to close an underground tank pursuant to Sections 1120 and 1120.1 of the Health Code that
15 involves the disturbance of at least 50 cubic yards (38.23m³) of soil; or (v) any well construction or
16 destruction permit pursuant to section 659 of the Health Code. An Applicant does not include a person
17 applying for a permit for the sole purpose of conducting environmental characterization.

18 (b) "Director" means the Director of the San Francisco Department of Public Health or the
19 Director's designee.

20 (c) "GIS" is a geographic information system for the Hunters Point Shipyard. The GIS is a
21 computer-based system containing site-specific environmental information.

22 (d) "Improvement Plan" means an improvement plan as required under the Subdivision
23 Map Act, California Government Code Sections 66410 et seq.

24 (e) "Parcel A" means that parcel or parcels of land of the Hunters Point Shipyard as
25 indicated on the Map filed with the Recorder of the City and County of San Francisco on December 3,

1 2004 situated in the City and County of San Francisco, that was transferred to the San Francisco
2 Redevelopment Agency by the U.S. Navy.

3 (f) "Prescribed Subsurface Activity Area" means the specific location and horizontal and
4 vertical extent of the proposed disturbance, excavation, grading or other subsurface activity defined
5 using coordinates compatible with the GIS to the extent feasible.

6 Sec. 3102. Applicability of Article.

7 (a) Applicants must comply with this Article. The Department of Public Works (for any permit
8 or improvement plan subject to this Article), the Department of Building Inspections (for building and
9 grading permits) and the Department of Health (for underground tanks permits and approvals and
10 water well permits) shall inform the Director whenever a permit or improvement plan application is
11 submitted for Hunters Point Shipyard and shall refer Applicants to the Director. The Director shall
12 determine the applicability of this Article to the permit application or improvement plan and shall
13 implement and enforce the provisions of this Article. If the Director determines that a permit or
14 improvement plan is subject to the provisions of this Article, the permit or improvement application
15 shall not be deemed complete until the Applicant has complied with the requirements of this Article or
16 shall be conditioned upon compliance with this Article as specified herein.

17 (b) Any person that obtains environmental sampling data shall submit that data to the
18 Director in a form acceptable to the Director.

19 (c) The following sections of this Article apply:

20 All Parcels Section 3100 et seq.

21 Parcel A Section 3120 et seq.

22 Parcel B Section 3130 et seq.

23 Parcel C Section 3140 et seq.

24 Parcel D Section 3150 et seq.

25 Parcel E Section 3160 et seq.

1 Parcel F Section 3170 et seq.

2 (d) Prior to applying for a permit or improvement plan any person that desires to comply
3 with this ordinance may enter into a voluntary agreement with the Director. The voluntary agreement
4 shall be signed as to form by the City Attorney and shall require the person to comply with the
5 substantive requirements of this Article and any regulations adopted by the Director; require payment
6 of fees as provided in Section 3108; and provide for Director notification to the relevant department
7 that the person has complied with this Article.

8 (e) Compliance with this Article does not relieve any person of compliance with any
9 applicable federal, state, regional or local law, and does not take the place of compliance with any
10 requirement of any regulatory agency that has jurisdiction to enforce any legal requirement that this
11 Article is intended to address.

12 Sec. 3103. Reports by Director. The Director shall monitor compliance with this Article and
13 provide an annual summary of compliance with this Article to the Board of Supervisors.

14 Sec. 3104. General Welfare; NonAssumption of Liability. The degree of protection required
15 by this Article is considered to be reasonable for regulatory purposes. This Article shall not create
16 liability on the part of the City, or any of its officers or employees for any damages that result from
17 reliance on this Article or any administrative decision lawfully made in accordance with this Article.
18 All persons handling hazardous materials within the City should be and are advised to determine to
19 their own satisfaction the level of protection desirable to ensure no unauthorized release of hazardous
20 materials.

21 In undertaking to require Applicants to comply with this Article, the City and County of San
22 Francisco is assuming an undertaking only to promote the general welfare. It is not assuming, nor is it
23 imposing on itself or on its officers and employees, any obligation for breach of which it is liable for
24 money damages to any person who claims that such breach proximately caused injury.

1 All inspections specified or authorized in this Article shall be conducted at the discretion of the
2 City and nothing in this Article shall be construed as requiring the City to conduct any such inspection
3 nor shall any actual inspection made imply a duty to conduct any other inspection.

4 Sec. 3105. Construction on City Property.

5 All departments, boards, commissions and agencies of the City and County of San Francisco
6 that authorize construction or improvements on land under their jurisdiction under circumstances
7 where no building, grading, street use or other permit or approval is required pursuant to the San
8 Francisco Municipal Codes shall adopt rules and regulations to insure that the procedures set forth in
9 this Article are followed. The San Francisco Redevelopment Agency and the departments of Public
10 Health, Public Works, and Building Inspection shall assist other departments, boards, commissions and
11 agencies to ensure that these requirements are met.

12 Sec. 3106. Former Landfill Disposal Areas. Upon receipt of a site evaluation report from an
13 Applicant, the Director, in consultation with the Local Enforcement Agency and the California
14 Integrated Waste Management Board, shall determine whether the Prescribed Subsurface Activity Area
15 is subject to the provisions of the California Integrated Waste Management Act (Cal. Public Resources
16 Code §40000 et seq.) as amended, relating to development on or near a former landfill disposal site.

17 (a) For any Prescribed Subsurface Activity Area or portion thereof that is subject to such
18 provisions, the Director shall require the Local Enforcement Agency to approve proposed land uses
19 and determine any necessary protective measures or requirements to the extent necessary to comply
20 with California Code of Regulations, Title 27, Chapter 3, Subchapter 4, Article 6 (Section 20917 et
21 seq.) and Subchapter 5 (Section 20950 et seq.), as amended.

22 (b) For any Prescribed Subsurface Activity Area or portion thereof that is located within
23 1,000 feet of a former landfill disposal site, but which is not subject to the above-referenced provisions
24 of the California Integrated Waste Management Act, the Director shall review any proposed structures
25 to ensure that the construction or use of the structure will not pose a threat to public health and safety

1 or the environment. In making this determination, the Director shall consider the potential for adverse
2 impacts on public health and safety and the environment, taking into account the following: the
3 amount, nature and age of solid waste in the landfill disposal area; current and projected gas
4 generation; effectiveness of existing controls; proximity of the proposed land uses to landfill disposal
5 area; and other relevant geographic or geologic features. Based on these factors, the Director shall
6 determine whether the structure must be designed and constructed in accordance with the following
7 measures or requirements (or other design providing an equivalent degree of protection against gas
8 migration into the structure): installation of a geomembrane or equivalent system with low
9 permeability to landfill gas between the concrete floor slab of the structure and subgrade; installation
10 of a permeable layer of open graded material of clean aggregate with a minimum thickness of 12
11 inches between the geomembrane and the subgrade or slab; installation of a geotextile filter to prevent
12 the introduction of fines into the permeable layer; installation of perforated venting pipes, designed to
13 operate without clogging, within the permeable layer; construction of a venting pipe with the ability to
14 be connected to an induced draft exhaust system; installation of automatic methane gas sensors within
15 the permeable gas layer, and inside the structure to trigger an audible alarm when methane gas
16 concentrations are detected; and/or appropriate periodic methane gas monitoring, including
17 monitoring inside structures, with reporting requirements and a contingency and mitigation plan.

18 For purposes of this section, "structures" shall include: buildings, subsurface vaults, utilities or
19 any other buildings or areas where potential gas buildup would be of concern.

20 (c) If the Director determines under subsections (a) or (b) of this Section that protective
21 measures or requirements are necessary, the Director shall inform the relevant department in writing
22 that such measures or requirements must become conditions of the permit or improvement plan.

23 Sec. 3107. Rules and Regulations.

1 (a) Pursuant to the procedures specified in Section 1170 of the Health Code, the Director
2 may adopt rules, regulations and guidelines, including maps, necessary or appropriate to implement
3 this Article.

4 (b) Pursuant to section 3107(a), the Director may subject additional geographic areas to
5 the requirements of this ordinance where those additional areas exhibit the same underlying conditions
6 and will be subject to the same restrictions as areas already subject to this ordinance.

7 (c) Regulations promulgated by the Health Commission shall be maintained in the Office of
8 the Clerk of the Board of Supervisors.

9 (d) The Director shall maintain and update the GIS as site data is received pursuant to this
10 Article and provide public access to the GIS.

11 (e) The Director shall maintain for public distribution a map that reflects the boundaries of
12 each Parcel of the Hunters Point Naval Shipyard. The map shall include former landfill disposal sites
13 and a line representing the 1,000 foot perimeter from those sites. For Parcel A, the Director shall
14 adopt a map showing historic fill areas and utility lines existing prior to the date of transfer of Parcel A
15 from Navy ownership.

16 Sec. 3108. Reserved. Fees.

17 ~~The Director is authorized to charge the following fees to defray the costs of~~
18 ~~document processing and review, consultation with Applicants, and administration of this~~
19 ~~Article: for fiscal year 2004-2005: (1) an initial fee of \$511.00 upon submission of the site~~
20 ~~evaluation report; and (2) an additional fee of \$137.00 per hour for document processing and~~
21 ~~review and applicant consultation exceeding three hours or portion thereof payable on an~~
22 ~~ongoing basis; for fiscal year 2005-2006: (1) an initial fee of \$514.00; and (2) an additional fee~~
23 ~~of \$145.00 per hour exceeding three hours or portion thereof; for fiscal year 2006-2007: (1) an~~
24 ~~initial fee of \$539.00; and (2) an additional fee of \$153.00 per hour exceeding three hours or~~
25 ~~portion thereof. Beginning with fiscal year 2007-2008, no later than April 15 of each year, the~~

1 Controller shall adjust the fees provided in this Article to reflect changes in the relevant
2 Consumer Price Index, without further action by the Board of Supervisors. In adjusting the
3 fees, the Controller may round these fees up or down to the nearest dollar, half-dollar or
4 quarter-dollar. The Director shall perform an annual review of the fees scheduled to be
5 assessed for the following fiscal year and shall file a report with the Controller no later than
6 May 1st of each year, proposing, if necessary, an adjustment to the fees to ensure that costs
7 are fully recovered and that fees do not produce significantly more revenue than required to
8 cover the costs of operating the program. The Controller shall adjust fees when necessary in
9 either case.

10 Sec. 3109. Violations.

11 In addition to any other provisions of this Article, fraud, willful misrepresentation, or any
12 willfully inaccurate or false statement in any report required by this Article shall constitute a violation
13 of this Article.

14 Sec. 3110. Enforcement Actions. The Director shall have authority to administer and enforce
15 all provisions of this Article and may enforce the provisions of this Article by any lawful means
16 available for such purpose, including taking any action authorized pursuant to Article 21, Sections
17 1133(a) - (d), (f), and (h) - (i) of the Health Code.

18 Sec. 3111. Reserved.

19 Sec. 3112. Remedies Not Exclusive.

20 Remedies under this Article are in addition to and do not supersede or limit any and all other
21 remedies, civil or criminal.

22 Sec. 3120. Parcel A Institutional Controls. An Applicant must comply with institutional
23 controls included in the deed conveying ownership of Parcel A from the United States Navy to the San
24 Francisco Redevelopment Agency pursuant to the final FOST for Parcel A to the extent such
25 institutional controls apply to activities authorized by a permit or improvement plan subject to this

1 Article. The Director will advise the relevant department of the specific requirement pursuant to the
2 deed; require compliance with the institutional controls as a condition of the permit or improvement
3 plan; and coordinate with the relevant department to monitor and enforce compliance with such
4 institutional controls.

5 Sec. 3121. Parcel A Site Evaluation and Site Mitigation.

6 (a) An Applicant must submit the following, satisfactory to the Director, as further specified
7 in regulations adopted by the Director: (i) site evaluation report; (ii) dust control plan; (iii) disposal
8 plan (if applicable); (iv) health and safety plan; (v) stormwater and erosion control plan; and (vi) a
9 determination of whether additional information is necessary to adequately characterize the Prescribed
10 Subsurface Activity Area. The plans required by (ii)-(v) must be specific to the activities to be
11 conducted under a permit or improvement plan.

12 The Director shall review the site evaluation report and advise the Applicant on whether
13 additional information is necessary to adequately characterize the Prescribed Subsurface Activity Area
14 as follows:

15 (1) Tier I Areas. If a portion of a Prescribed Subsurface Activity Area has been used
16 continuously only for residential purposes or is not located on historic fill (as defined in a map
17 maintained by the Director pursuant to Section 3107(e)) or is not or has not been underlain by utility
18 lines (as defined on a map maintained by the Director pursuant to Section 3107(e)), and, in any case,
19 there is no evidence that hazardous substances are present, no additional information or sampling will
20 be necessary with respect to such portions of the Prescribed Subsurface Activity Area. The Director
21 shall provide the Applicant and the relevant department with written notification that the Applicant has
22 complied with the requirements of this Article as to such portions, and must comply with the plans
23 listed in subsection (a)(ii)-(v) and all laws applicable to soil removal and off-site disposal.

24 (2) Tier II Areas. In portions of Prescribed Subsurface Activity Areas other than those
25 described as Tier I, if the Director determines that such portions are adequately characterized, the

1 Director shall provide the Applicant and the relevant department with written notification that the
2 Applicant has complied with the requirements of this Article as to such portions, and must comply with
3 the plans listed in subsection (a)(ii) –(v) and all laws applicable to soil removal and off-site disposal.
4 If the Director determines that additional information is necessary to adequately characterize portions
5 of the Prescribed Subsurface Activity Area, the Applicant must submit a proposed scope of work for a
6 supplemental site evaluation in accordance with regulations adopted by the Director. Upon approval
7 of the scope of work by the Director, the Applicant shall implement the scope of work and prepare a
8 supplemental site evaluation report summarizing the new information.

9 (A) If the supplemental site evaluation report shows that there is no existing
10 contamination that exceeds the screening criteria established by the Director by regulation, the
11 Director shall provide the Applicant and the relevant department with written notification that the
12 Applicant has complied with the requirements of this Article, and must comply with the plans listed in
13 subsection (a)(ii)-(v) and all laws applicable to soil removal and off-site disposal.

14 (B) If the supplemental site evaluation report shows that there is existing
15 contamination that exceeds the screening criteria established by the Director and the Applicant wishes
16 to retain that soil in the Prescribed Subsurface Activity Area or elsewhere within Parcel A, the
17 Applicant must prepare and submit to the Director a risk evaluation report and a site mitigation plan
18 demonstrating that the property can still be used for unrestricted residential purposes consistent with
19 the FOST. The site mitigation plan must include the plans listed in subsection (a)(ii)-(v) and may
20 include a deed notice, provided that any notice is consistent with use for unrestricted residential
21 purposes. The Director must review and approve the risk evaluation report and the site mitigation
22 plan. Upon approval of these documents, the Director shall provide the Applicant and the relevant
23 department with written notification that the Applicant has complied with the requirements of this
24 Article, and must comply with the site mitigation plan and all laws applicable to soil removal and off-
25 site disposal.

1 (b) If the Director finds that the Applicant intends to remove soil from the Prescribed
2 Subsurface Activity Area and dispose of that soil off-site, then the Director shall find that, as to that
3 soil, no additional information is necessary and shall provide the Applicant and the relevant
4 department with written notification that the Applicant has complied with the requirements of this
5 Article, and must comply with the plans listed in subsection (a)(ii)-(v) and all laws applicable to soil
6 removal and off-site disposal.

7 (c) Upon completion of the activity authorized by the permit or improvement plan, the
8 Applicant shall submit a closure report to the Director including: additional information or data
9 obtained, including information on unanticipated conditions; correcting any information previously
10 submitted; and certifying implementation of the plans listed in subsection (a)(ii)-(v), any applicable risk
11 management or site mitigation plan and all laws applicable to soil removal.

12 Sec. 3130. Parcel B [Reserved]

13 Sec. 3140. Parcel C [Reserved]

14 Sec. 3150. Parcel D [Reserved]

15 Sec. 3160. Parcel E [Reserved]

16 Sec. 3170. Parcel F [Reserved]

17 Sec. 3180. Severability. If any section, subsection, subdivision, paragraph, sentence, clause or
18 phrase of this Article or any part thereof, is for any reason held to be unconstitutional or invalid or
19 ineffective by any court of competent jurisdiction, such decision shall not affect the validity or
20 effectiveness of the remaining portions of this Section or any part thereof. The Board of Supervisors
21 hereby declares that it would have passed each section, subsection, subdivision, paragraph, sentence,
22 clause or phrase thereof irrespective of the fact that any one or more sections, subsections,
23 subdivisions, paragraphs, sentences, causes or phrases be declared unconstitutional or invalid or
24 ineffective.

1 Section 3. The San Francisco Health Code is hereby amended by amending section
2 659, to read as follows:

3 Sec. 659. Use of water wells; permits.

4 (a) It shall be unlawful for any person, firm or corporation to maintain or use any
5 well for the purpose of drawing therefrom water intended for drinking, industrial or irrigation or
6 agricultural purposes without first obtaining from the Department of Public Health a permit to
7 do so; or to use any well after receiving notice from said Department to close or fill it. For well
8 permits in Hunters Point Shipyard Parcel A, such permit application shall not be deemed complete
9 until the department receives written notification from the Director that the applicant has complied
10 with all provisions of Article 31 that are required to be met prior to permit issuance.

11 (b) Whenever it shall appear to the satisfaction of the Department of Public Health
12 that any well, the water of which is used for domestic purposes, drinking, industrial or irrigation
13 or agricultural purposes, or has become polluted or contaminated, or in anywise rendered
14 unsafe for domestic or drinking, industrial, irrigation or agricultural purposes or has become
15 otherwise prejudicial to health and safety or dangerous to life, said Department of Public
16 Health shall give to the owner or his agent, lessee, tenant, or other person in charge of such
17 well, written notice to close and to fill it within a time to be specified in such notice. If such
18 notice be not complied with, the Department of Public Health shall cause such well to be
19 closed and filled up at the cost and expense of the owner thereof.

20 (c) Any person, firm or corporation who constructs, reconstructs, repairs, destroys
21 or converts any water well shall comply with Article 31 and the Water Well Standards of the
22 State of California, Department of Water Resources and San Francisco County.

23 Section 4. The San Francisco Health Code is hereby amended by amending section
24 1120.1, to read as follows:

25 Sec. 1120.1. Application for permit.

1 (a) Any person that is required to obtain one or more UST permits shall obtain the
2 permits by filing application forms required by the Department, paying the required permit fee
3 and demonstrating compliance with this Article and Article 31 if the permit is for a site located in
4 Hunters Point Shipyard Parcel A as determined by inspection of the UST by the Department. For
5 permits in the area of San Francisco subject to the requirements of Article 31, such permit application
6 shall not be deemed complete until the department receives written notification from the Director that
7 the applicant has complied with all provisions of Article 31 that are required to be met prior to permit
8 issuance.

9 (b) Any person required to obtain a UST permit shall submit the information
10 required by the Department, Article 31 and Chapters 6.7 and 6.75 of the California Health and
11 Safety Code (commencing with Section 25280) and implementing regulations adopted by the
12 State Water Resources Control Board and the Health Commission. No permit shall be granted
13 to the owner or operator of a UST unless the applicant demonstrates compliance with this
14 Article and its implementing regulations, Article 31 and all applicable provisions of Chapters
15 6.7 and 6.75 of the California Health and Safety Code (commencing with Section 25280) and
16 implementing regulations, as the law and regulations may be amended.

17 (c) All modifications, repairs, closures and removals of USTs shall require approval
18 of the Department, compliance with this Article and its implementing regulations, compliance
19 with Article 31 if the approval is for a site in Hunters Point Shipyard Parcel A, compliance with
20 applicable provisions of Chapters 6.7 and 6.75 of the California Health and Safety Code
21 (commencing with Section 25280) and its implementing regulations, and payment of
22 applicable fees. Any person who performs unauthorized modifications, repairs, removals or
23 closures, or fails to schedule a site inspection with the Department prior to performing such
24 work shall be assessed additional fees and a site investigation fee, if a site investigation is
25 required, as a penalty. The amount of the additional fees and site investigation fee is specified

1 in Section 1176. A person assessed such fees may appeal the amount of the fee levied by
2 requesting a Director's hearing pursuant to Section 1137.

3 (d) No permit may be granted pursuant to this Article until the Department has
4 inspected the UST and unless the applicant has corrected any Code violations cited by the
5 Department; the applicant has furnished all requested information and paid the required
6 permit fees; and the applicant demonstrates to the satisfaction of the Director of Health, by the
7 submission of appropriate plans and other required information, that the design and
8 construction of the UST meets all applicable City, State and federal laws and regulatory
9 requirements.

10 (e) Each permit shall include requirements that the person reimburse the City for
11 extraordinary costs, in addition to applicable permit fees, for inspection and monitoring,
12 administration, incidental expenses and cleanup and remediation costs resulting from
13 releases of hazardous substances or failure by the permittee to handle hazardous substances
14 in accordance with the requirements of this Article. Permits shall not be renewed unless all
15 such costs have been paid to the City.

16 Section 5. The San Francisco Health Code is amended by amending section 1227 to
17 read as follows:

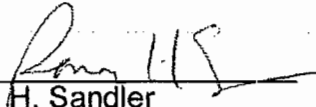
18 Sec. 1227. Known hazardous waste site; Hunters Point Shipyard Parcel A.

19 (a) If the soil sampling and analysis report or site history indicates that the property
20 is listed on the National Priorities List or the list of California Hazardous Substances Account
21 Act release sites, the applicant shall provide to the Director certification or verification from the
22 appropriate federal or State agency that any site mitigation required by the federal or State
23 agency has been completed and complete the certification procedure set forth in Section
24 1229. Certification by a competent State or federal agency that mitigation measures have
25

1 been properly completed shall constitute a conclusive determination and shall be binding
2 upon the Director.

3 (b) Applicants' activities on Parcel A of the Hunters Point Shipyard, as defined in Article
4 31, are governed by Article 31 of the Health Code and not by this Article.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8
9 By: 
10 Rona H. Sandler
11 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Ordinance

File Number: 041541

Date Passed:

Ordinance adding Article 31 to the Health Code and amending sections 659, 1120.1 and 1227 of the Health Code to establish special restrictions for activities on the Hunters Point Shipyard to address potential residual contamination and to authorize the Department of Public Health to implement these restrictions, impose penalties, and charge fees to defray the costs of implementation; and making environmental findings.

December 7, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

December 14, 2004 Board of Supervisors — FINALLY PASSED

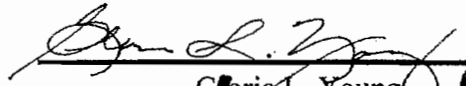
Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

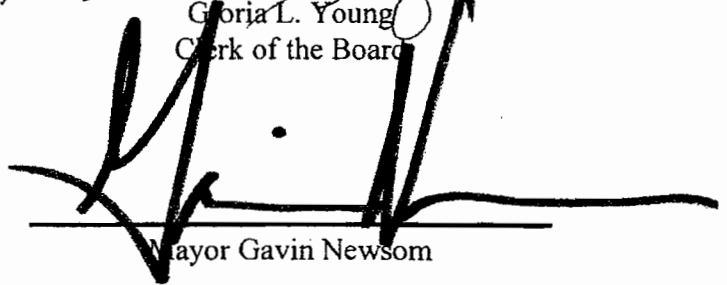
File No. 041541

I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on December 14, 2004 by the Board of Supervisors of the City and County of San Francisco.

12/24/04
Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom

1 [Hunters Point Shipyard – Public Works Code.]

2
3 **Ordinance amending the Public Works Code to add Sections 2.3.1, 2.3.2, and 2.3.3 to**
4 **establish special restrictions for activities on the Hunters Point Shipyard to address**
5 **potential residual contamination and making specified findings.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are *strikethrough italics Times New Roman*.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings.

11 A. In conjunction with Ordinances [DPH] ~~303-04~~, [DBI] ~~302-04~~, and [DPW
12 Subdivision] ~~304-04~~ on file with the Clerk of the Board of Supervisors in File Nos. ~~041541~~, ~~041541~~
13 , and ~~041544~~, this Ordinance enacts a new program to protect human health and safety and
14 the environment at the former Hunters Point Shipyard during and after development and to
15 facilitate redevelopment as envisioned in the Hunters Point Shipyard Redevelopment Plan
16 through enacting additional prerequisites to obtaining certain City permits. This Ordinance
17 would amend the Public Works Code to enact consistent provisions with respect to permits
18 issued by the Department of Public Works.

19 B. In accordance with the actions contemplated herein, this Board adopted Resolution
20 No. ~~751-04~~ concerning findings pursuant to the California Environmental Quality Act
21 (California Public Resources Code sections 21000 et seq.). Said Resolution is on file with the
22 Clerk of the Board of Supervisors in File No. 041533 and is incorporated herein by
23 reference.

24 Section 2. The San Francisco Public Works Code is hereby amended by adding
25 Sections 2.3.1, 2.3.2, and 2.3.3 to read as follows:

1 Sec. 2.3.1. Hunters Point Shipyard Permitting.

2 Notwithstanding any other provision of this Code, applicants for any permit for Hunters Point
3 Shipyard Parcel A, which involves the disturbance of at least 50 cubic yards (38.23m³) of soil or the
4 extraction or management of groundwater, except for purposes of environmental characterization,
5 shall comply with the requirements of Article 31 of the Health Code. Hunters Point Shipyard Parcel A
6 is that area of the City and County of San Francisco shown on Figure 1-1, which is maintained for
7 public distribution by the Director. A copy of said figure is on file with the Clerk of the Board of
8 Supervisors in File No. 041538.

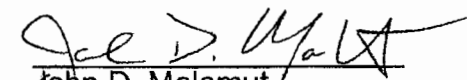
9 Section 2.3.2. Permit Approval.

10 No permit application subject to the requirements of this Section 2.3.1 shall be deemed to be
11 complete until the Department receives written notification from the Director of Public Health that the
12 applicant has complied with all applicable provisions of Article 31 of the Health Code. Approvals or
13 conditions imposed in writing by Department of Public Health shall become conditions of the permit
14 issued by the Department, and violation of such approvals or conditions shall be deemed a violation of
15 the permit.

16 Section 2.3.3. Permit Application Notification.

17 All applications for permits subject to Section 2.3.1 shall bear notice of the above requirements
18 and of the permittee's responsibility to comply.

19
20 APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

21 By: 
22 John D. Malamut
23 Deputy City Attorney



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 041538

Date Passed:

Ordinance amending the Public Works Code to add Sections 2.3.1, 2.3.2, 2.3.3 to establish special restrictions for activities on the Hunters Point Shipyard to address potential residual contamination and making specified findings.

December 7, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

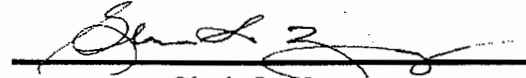
December 14, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

File No. 041538

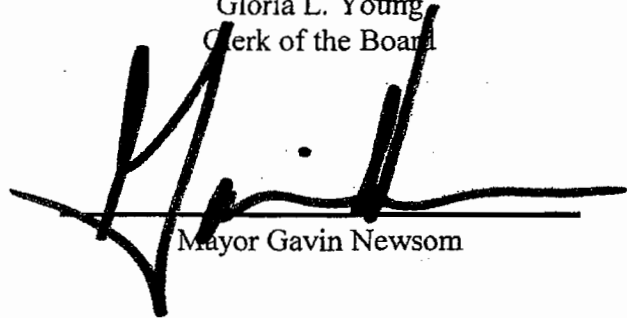
I hereby certify that the foregoing Ordinance was **FINALLY PASSED** on December 14, 2004 by the Board of Supervisors of the City and County of San Francisco.



Gloria L. Young
Clerk of the Board

12/24/04

Date Approved



Mayor Gavin Newsom

1 [Hunters Point Shipyard – Building Code]

2
3 **Ordinance amending the Building Code to add Section 106.3.2.5 to establish special**
4 **restrictions for activities on the Hunters Point Shipyard to address potential residual**
5 **contamination and making environmental findings.**

6 Note: Additions are single-underline italics Times New Roman;
7 deletions are ~~striketrough-italics Times New Roman~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~striketrough-normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings.

11 A. In conjunction with Ordinances ~~300-04~~, ~~303-04~~ and ~~304-04~~ on
12 file with the Clerk of the Board of Supervisors in File Nos. ~~041538~~, ~~041541~~, and ~~041544~~,
13 this ordinance enacts a new program to protect human health and safety and the environment
14 at the former Hunters Point Shipyard during and after development and to facilitate
15 redevelopment as envisioned in the Hunters Point Shipyard Redevelopment Plan through
16 enacting additional prerequisites to obtaining certain City permits. This ordinance would
17 amend the Building Code to enact consistent provisions with respect to permits issued by the
18 Department of Building Inspections.

19 B. In accordance with the actions contemplated herein, this Board adopted
20 Resolution No. ~~75/-04~~, concerning findings pursuant to the California Environmental Quality
21 Act (California Public Resources Code sections 21000 et seq.). Said Resolution is on file
22 with the Clerk of the Board of Supervisors in File No. ~~04/533~~ and is incorporated herein by
23 reference.

24 Section 2. The San Francisco Building Code is amended by adding section 106.3.2.5
25 to read as follows:

1 Sec. 106.3.2.5 Hunters Point Shipyard

2 106.3.2.5.1 Compliance required. Applicants for any building or grading permit for Hunters
3 Point Shipyard Parcel A, which involves the disturbance of at least 50 cubic yards (38.23m³) of soil or
4 the extraction or management of groundwater, except for purposes of environmental characterization
5 shall comply with the requirements of Article 31 of the Health Code. Hunters Point Shipyard Parcel A
6 is that area of the City and County of San Francisco shown on Figure 1-2 which is maintained for
7 public distribution by the Director.

8 NOTE: A copy of Figure 1-2 is on file with the Clerk of the Board of Supervisors in File No. _____.

9 106.3.2.5.2 Permit approval. No building permit application subject to the requirements of this
10 section shall be deemed to be complete until the Department receives written notification from the
11 Director of Public Health that the applicant has complied with all applicable provisions of Article 31 of
12 the Health Code. Approvals or conditions imposed in writing by Department of Public Health shall
13 become conditions of the permit issued by the Department, and violation of such approvals or
14 conditions shall be deemed a violation of the permit.

15 EXCEPTION:

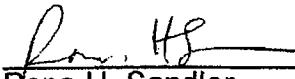
16 1. The Director may issue a site permit pursuant to Section 106.3.4.2 prior to the
17 time an applicant complies with this section.

18 2. Site permit addenda and other permit(s) may be issued to excavate soil or
19 undertake soil sampling or implement other requirements of Article 31 of the Health Code.

20 106.3.2.5.3 No time limits. For the purposes of completing the requirements of this section, the
21 time limitations set forth in Section 106.3.7 of the San Francisco Building Code do not apply.
22
23
24
25

1 106.3.2.5.4 Permit notification. All building permits and grading permits issued by the Central
2 Permit Bureau shall bear notice of the above requirements and of the permittee's responsibility to
3 comply.

4
5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: 
9 Rona H. Sandler
Deputy City Attorney

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 041540

Date Passed:

Ordinance amending the Building Code to add Section 106.3.2.5 to establish special restrictions for activities on the Hunters Point Shipyard to address potential residual contamination and making environmental findings.

December 7, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez


December 14, 2004 Board of Supervisors — FINALLY PASSED

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

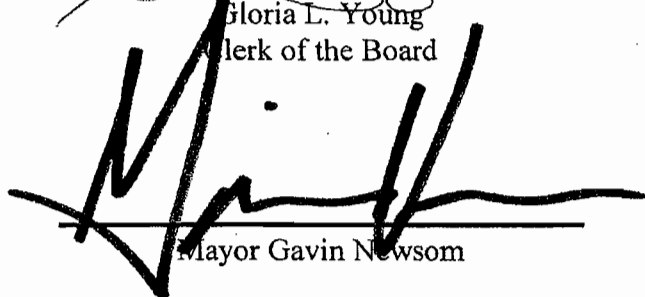
Noes: 2 - Daly, Gonzalez

File No. 041540

I hereby certify that the foregoing Ordinance
was FINALLY PASSED on December 14,
2004 by the Board of Supervisors of the City
and County of San Francisco.



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom

12/24/04

Date Approved

1 [CEQA Findings in Connection with the Hunters Point Shipyard Redevelopment Plan.]

2
3 **Resolution adopting environmental findings pursuant to the California Environmental**
4 **Quality Act, State Guidelines, and Administrative Code Chapter 31 in connection with**
5 **the Hunters Point Shipyard Redevelopment Plan and related implementing actions.**
6

7 WHEREAS, April 19, 1993, by Resolution No. 306-93, the San Francisco Board of
8 Supervisors designated the Hunters Point Shipyard Area as a Redevelopment Survey Area
9 pursuant to California Health and Safety Code Section 33310; and

10 WHEREAS, The Hunters Point Shipyard ("Shipyard") consists of 936.37 acres of real
11 property, together with the buildings, improvements and related and other tangible personal
12 property located thereon and all rights, easements and appurtenances thereto that was closed
13 pursuant to the Defense Base Closure and Realignment Act of 1990 (Public Law-510), as
14 implemented by the 1993 base closure process; and

15 WHEREAS, In March, 1995, the Navy, the City and the San Francisco Redevelopment
16 Agency ("Agency") developed the "Land Use Alternative and Proposed Draft Plan, Hunters
17 Point Shipyard," which, along with amendments made in January, 1997 is the basis for the
18 Redevelopment Plan for acquisition and reuse of the Shipyard ("Redevelopment Plan"); and

19 WHEREAS, By Resolution No. 92-97, the Agency Commission and by Ordinance No.
20 285-97, the Board of Supervisors adopted the Redevelopment Plan in 1997, prior to
21 completion of the requisite environmental review under the California Environmental Quality
22 Act, California Public Resources Code Sections. 21000 et seq. ("CEQA") as authorized by
23 California Health and Safety Code Sections 33492.18 and 33492.22. These laws authorized
24 adoption of the Redevelopment Plan prior to completion of the CEQA environmental review
25 process provided that the Agency and Planning Commissions certified to CEQA compliance

MAYOR, MAXWELL
BOARD OF SUPERVISORS

1 for the Redevelopment Plan within 30 months of the effective date of the ordinance adopting
2 the Redevelopment Plan; and

3 WHEREAS, The City and County of San Francisco ("City") conducted a planning and
4 environmental review process for the Redevelopment Plan and provided public hearings
5 before the Planning and Agency Commissions; and

6 WHEREAS, The project approvals listed in Attachment A (the "Actions") are part of a
7 series of related and collateral actions that constitute a program of redevelopment for the
8 Hunters Point Shipyard Redevelopment Area and these actions in combination with the
9 Redevelopment Plan are the Project, as more particularly defined in Attachment A (the
10 "CEQA Findings"). A copy of said Attachment is attached hereto, incorporated herein by
11 reference, and on file with the Clerk of the Board of Supervisors in File No. 041533 ;
12 and

13 WHEREAS, A joint Draft Environmental Impact Statement/Environmental Impact
14 Report ("DEIS/DEIR") was prepared and issued for distribution to the public on November 14,
15 1997 by the Navy along with the City (through its Planning Department), and the Agency; and

16 WHEREAS, The DEIS/DEIR was prepared and circulated in accordance with the
17 National Environmental Policy Act, 42 U.S.C.A. Sections 4321-4370 d ("NEPA"), CEQA, and
18 the CEQA Guidelines, and four public hearings were held on December 10 and 11, 1997 and
19 January 13 and 15, 1998; and

20 WHEREAS, As a result of public testimony, the Navy, the City, and the Agency jointly
21 decided that a Revised DEIS/DEIR should be prepared and circulated for further public review
22 and comment which Revised DEIS/DEIR was published for such review on November 3, 1998
23 with two further public hearings held on December 9 and 17, 1998, and the public comment
24 period for written comments extended until January 19, 1999; and

25
MAYOR, MAXWELL
BOARD OF SUPERVISORS

1 WHEREAS, Subsequently, the City and the Agency decided to separate the
2 environmental review under NEPA and CEQA, and the City and the Agency in January, 2000
3 issued the FEIR, a program Environmental Impact Report ("EIR") pursuant to Sections 15168
4 and 15180 of the Guidelines, which contains the Revised DEIS/DEIR and the City and Agency
5 Response to Comments to the Revised DEIS/DEIR; and

6 WHEREAS, The Planning Department prepared a Final Environmental Impact Report
7 ("FEIR") for the Redevelopment Plan consisting of the DEIR, the comments received during
8 the review periods, any additional information that became available, and the Summary of
9 Comments and Responses, all as required by law; and,

10 WHEREAS, On February 8, 2000, the Planning Commission and Agency Commission
11 reviewed and considered the FEIR, and by Motion No. 14981 and Resolution No. 11-2000,
12 found that the contents of such report and the procedures through which the FEIR was
13 prepared, publicized and reviewed complied with the provisions of CEQA, and Chapter 31 of
14 the San Francisco Administrative Code. Said Motion and Resolution are incorporated herein
15 by reference and copies of both documents are on file with the Clerk of the Board of
16 Supervisors in File No. 041533 ; and,

17 WHEREAS, By Motion No. 14981 and Resolution No. 11-2000 the Planning
18 Commission and the Agency Commission also found that the FEIR was adequate, accurate
19 and objective, reflected the independent judgment of each Commission and the summary of
20 Comments and Responses contained no significant revisions to the Draft Environmental
21 Impact Report; adopted findings of significant impacts associated with the Redevelopment
22 Plan and certified the completion of the FEIR for the Redevelopment Plan in compliance with
23 CEQA and the CEQA Guidelines, and Chapter 31 of the San Francisco Administrative Code;
24 and,

25
MAYOR, MAXWELL
BOARD OF SUPERVISORS

1 WHEREAS, On February 8, 2000, the Agency Commission by Resolution 12-2000
2 reviewed and considered the FEIR and adopted environmental findings with respect to the
3 FEIR, including a statement of overriding consideration and a mitigation monitoring and
4 reporting program, as required by CEQA. Said Resolution is incorporated herein by reference
5 and a copy of the resolution is on file with the Clerk of the Board of Supervisors in File No.
6 041533 ; and

7 WHEREAS, On November 19, 2003, the Planning Department issued an memorandum
8 pursuant to CEQA Guidelines Section 15164 ("Addendum") to the FEIR finding that no
9 changes have occurred that would indicate new significant impacts not identified in the FEIR,
10 and no new mitigation measures would be necessary to reduce significant impacts; and

11 WHEREAS, The Addendum prepared by the Planning Department further found that
12 no changes have occurred with respect to circumstances surrounding the Project that would
13 cause significant environmental impacts not analyzed in the FEIR, and no new information
14 has become available that shows that the Project would cause significant environmental
15 impacts and, therefore, no supplemental environmental review is required beyond the
16 Addendum; and

17 WHEREAS, On December 2, 2003, by Resolution 179-2003 the Agency Commission
18 authorized the Agency to execute a disposition and development agreement ("DDA") between
19 the Agency and Lennar/BVHP LLC ("Developer") for the development of Phase I of the
20 Project and found, based on its review of the FEIR, the Addendum, the proposed
21 modifications to the Project contemplated by the DDA, the Agency Director's memorandum
22 and the public comments submitted, that the Project as modified would not require major
23 revisions to the FEIR and that no environmental review was necessary. Said Resolution is
24 incorporated herein by reference and a copy of the resolution is on file with the Clerk of the
25 Board of Supervisors in File No. 041533 ; and

MAYOR, MAXWELL
BOARD OF SUPERVISORS

1 WHEREAS, On April 29, 2004, by Resolution 50-2004, the Agency Commission,
2 authorized the execution of a conveyance agreement with the United States Department of
3 the Navy ("Navy") concerning the Project site, the execution of a Security Services
4 Cooperative Agreement with the Navy concerning the Project Site and the execution and
5 approval of ancillary related documents and actions regarding the Project site. The Agency
6 Commission found that based on its review of the FEIR, the Addendum, the proposed
7 modifications to the Project contemplated by the Conveyance Agreement, the Agency
8 Director's memorandum, the administrative record and the public comments submitted, that
9 the Project as modified would not require major revisions to the FEIR and that no
10 environmental review was necessary. Said Resolution is incorporated herein by reference
11 and a copy of the resolution is on file with the Clerk of the Board of Supervisors in File No.
12 041533; and

13 WHEREAS, a Notice of Determination was issued by the Planning Department for the
14 Project on May 5, 2004; and

15 WHEREAS, since the issuance of the Addendum no changes have occurred with
16 respect to circumstances surrounding the Project that would cause significant environmental
17 impacts not analyzed in the FEIR, and no new information has become available that shows
18 that the Project would cause significant environmental impacts; and

19 WHEREAS, The FEIR files and Addendum and other Redevelopment Plan-related
20 Department files are available for review by this Board of Supervisors and the public. The
21 Planning Department files are available at 1660 Mission Street and the Agency files are
22 available at 770 Golden Gate Avenue. Those files are part of the record before this Board of
23 Supervisors and are incorporated by reference herein; and,

24 Resolved, That this Board of Supervisors finds on the basis of substantial evidence in
25 light of the whole record that: (1) modifications incorporated into the Project and reflected in

1 the Actions before the Board of Supervisors will not require important revisions to the FEIR
2 due to the involvement of new significant environmental effects or substantial increase in the
3 severity of previously identified significant effects; (2) no substantial changes have occurred
4 with respect to the circumstances under which the Project will be undertaken which would
5 require major revisions to the FEIR due to the involvement of new significant environmental
6 effects, or a substantial increase in the severity of effects identified in the FEIR; and (3) no
7 new information of substantial importance to the Project has become available which would
8 indicate (a) the Project will have significant effects not discussed in the FEIR; (b) significant
9 environmental effects will be substantially more severe; (c) mitigation measures or
10 alternatives found not feasible which would reduce one or more significant effects have
11 become feasible; or (d) mitigation measures or alternatives which are considerably different
12 from those in the FEIR would substantially reduce one or more significant effects on the
13 environment; and, be it

14 FURTHER RESOLVED, That the Board of Supervisors reviewed and considered the
15 FEIR and hereby adopts the CEQA Findings attached hereto as Attachment A and its Exhibit
16 1 (Hunters Point FEIR Mitigation Monitoring and Reporting Program).

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City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails Resolution

File Number: 041533

Date Passed:

Resolution adopting environmental findings pursuant to the California Environmental Quality Act, State Guidelines, and Administrative Code Chapter 31 in connection with the Hunters Point Shipyard Redevelopment Plan and related implementing actions.

December 7, 2004 Board of Supervisors — ADOPTED

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

File No. 041533

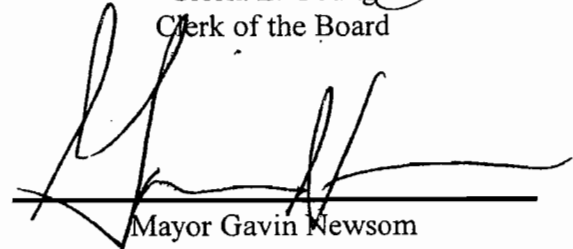
I hereby certify that the foregoing Resolution was ADOPTED on December 7, 2004 by the Board of Supervisors of the City and County of San Francisco.

Dec. 14, 2004

Date Approved



Gloria L. Young
Clerk of the Board



Mayor Gavin Newsom

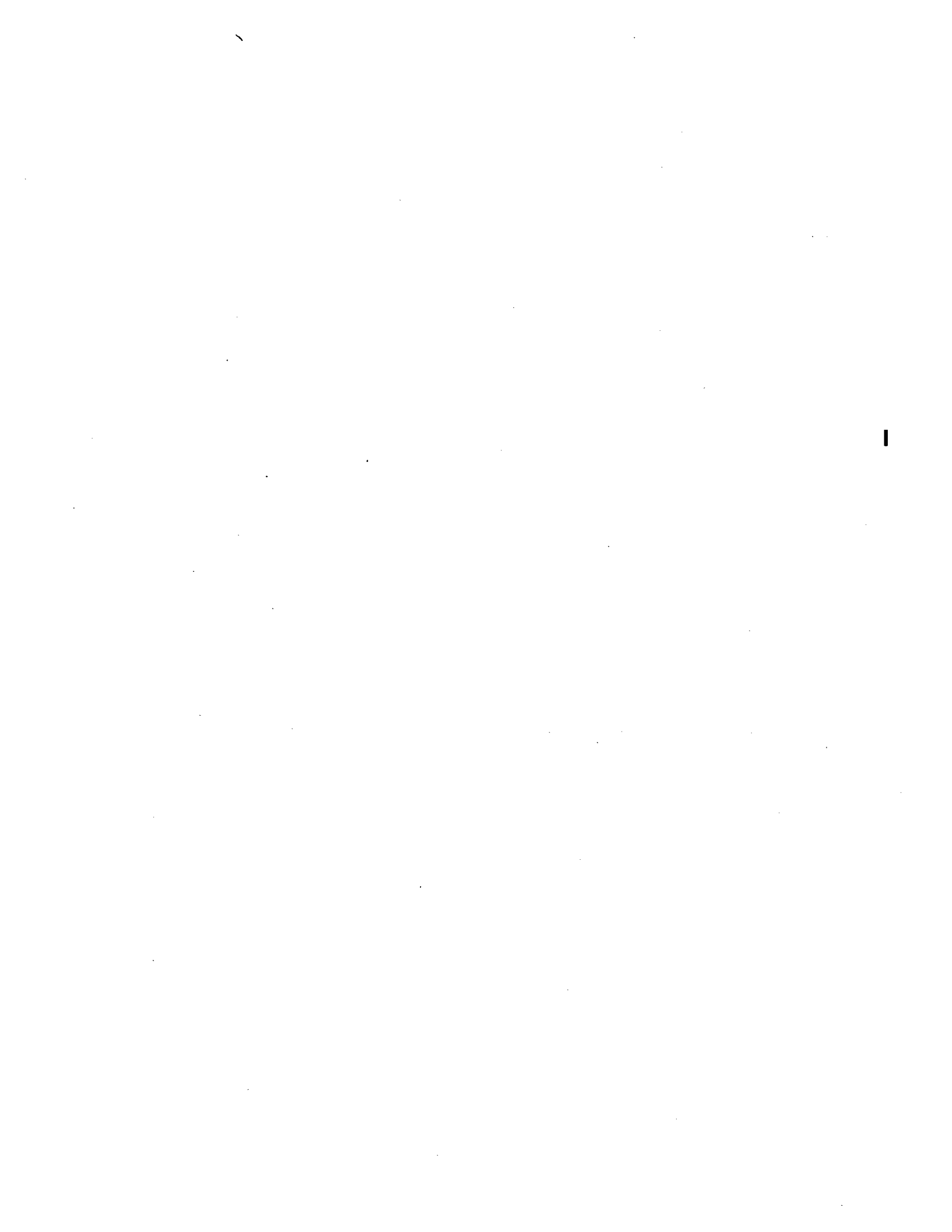


Exhibit I

Open Space Build-Out Schedule of Performance

OPEN SPACE "BUILD OUT" SCHEDULE OF PERFORMANCE

The following capitalized terms have the meanings set forth in this Section, wherever used in this Agreement.

COMPLETE OPEN SPACE CONSTRUCTION means Complete Construction of all items contemplated in the Open Space Master Plan or Complete Construction of the Interim African Marketplace as applicable. At the time this Schedule of Performance for Infrastructure Development is amended, the Open Space Master Plan is at a conceptual level of detail and is required to be developed in accordance with the H-DRDAP. Items of work will be established when the final Construction Documents for the work are permitted.

Parcel A-1

| COMPLETE OPEN SPACE CONSTRUCTION | SCHEDULE |
|----------------------------------|--|
| Innes Court Park | 120 Calendar Days after Innes Avenue from Friedell Street to Coleman Street is completed |
| Hillpoint Park | 120 Calendar Days after Innes Avenue from Friedell Street to Coleman Street is completed |
| Interim African Marketplace | 135 Calendar Days after Commencement of Construction |
| "Pocket" Parks | 120 calendar days after vertical construction is complete with respect to adjacency |

Parcel A-2

| COMPLETE OPEN SPACE CONSTRUCTION | SCHEDULE |
|----------------------------------|---|
| Central Park | 120 Calendar Days after Oakdale Avenue from Griffith Street to Navy Road is completed |
| "Pocket" Parks | 120 calendar days after vertical construction is complete with respect to adjacency |

Parcel B-1

| COMPLETE OPEN SPACE CONSTRUCTION | SCHEDULE |
|----------------------------------|---|
| Complete Open Space Construction | 120 calendar days after vertical construction is complete with respect to adjacency |
| "Pocket" Parks | 120 calendar days after vertical construction is complete with respect to adjacency |

Exhibit J

Design Review and Document Approval Procedure for Infrastructure Development

HUNTERS POINT SHIPYARD

PHASE 1

HORIZONTAL DESIGN REVIEW AND DOCUMENT APPROVAL

PROCEDURE FOR INFRASTRUCTURE DEVELOPMENT

(“HORIZONTAL DRDAP”)

I. INTRODUCTION

This Horizontal DRDAP sets forth the procedure for design, plan and specification review of the Infrastructure or Horizontal Improvements (“Horizontal Improvements”) that Lennar/BVHP, LLC (“Developer”) is required to construct under the terms of the Disposition and Development Agreement Hunters Point Shipyard Phase 1 (“Phase 1 DDA”). The San Francisco Redevelopment Agency (the “Agency”) shall review plans and specifications to assure that they conform to the Phase 1 DDA, including without limitation the Infrastructure Plan and the Open Space Master Plan, including the Streetscape Plan. To the extent provided in this Horizontal DRDAP, City Agencies will review plans and specifications for compliance with applicable City Regulations.

A. DEFINITIONS

Capitalized terms, unless separately defined in this Horizontal DRDAP shall have the meanings set forth in the Phase 1 DDA.

“Agency Commission” means the Commission of the San Francisco Redevelopment Agency. The term Agency Commission is used in this Horizontal DRDAP whenever any determination is required to be made by the Commission for the San Francisco Redevelopment Agency.

“Agency” means the San Francisco Redevelopment Agency, acting in its official capacity either through the Agency Commission or the Agency’s Executive Director, as authorized by law and/or as set forth in the Phase 1 DDA or this Horizontal DRDAP.

“City Agencies” (or “City Agency,” in the singular) means all City departments, agencies, boards, commissions and bureaus with subdivision or other permit, entitlement or approval authority or jurisdiction over any phase of, or individual development project within, the area covered by the Phase 1 DDA, or any portion thereof, including, without limitation, the Arts Commission, the Building Inspection Commission, the Fire Commission, the Municipal Transportation Commission, the Planning Commission, the Public Health Commission, the Public Utilities Commission, the Department of Public

Works, and the Department of Real Estate, together with any successor City agency, department or officer designated by or pursuant to law.

“City Regulations” means (i) the City Building Code, Fire Code, Planning Code (to the extent incorporated into the Design for Development), Public Works Code, Subdivision Code and General Plan; (ii) those ordinances, rules, regulations and official policies adopted thereunder, and (iii) San Francisco Health Code Article 31 and all other ordinances, rules, regulations, official policies and plans governing subdivisions and subdivision, public improvements and dedications, construction standards, new construction and use, permit restrictions, development fees or exactions, terms and conditions of occupancy, or environmental guidelines or review, including those relating to hazardous substances, pertaining to the Hunters Point Shipyard Redevelopment Project Area, as adopted and amended by the City from time to time.

“Design for Development” means the Design for Development for Hunters Point Shipyard Redevelopment Project, as amended.

“Design Documents” means Schematic Design documents, Design Development Documents, Final Construction Documents and all other documents, plans and drawings setting forth details concerning the proposed design of the Horizontal Improvements.

“Director” means the Executive Director of the San Francisco Redevelopment Agency, or staff of the San Francisco Redevelopment Agency as designated by the Director.

“Director of Public Works” means the Director of the Department of Public Works of the City and County of San Francisco, or his or her designee.

“Plan Documents” means the Redevelopment Plan and its implementing documents, including, without limitation, the Phase 1 DDA, including the Infrastructure Plan, the Design for Development, the Horizontal and Vertical Design Review and Document Approval Procedures, the Hunters Point Shipyard Subdivision Ordinance and regulations adopted thereunder, the Open Space Master Plan, including a Streetscape Plan, and implementing ordinances for the Plan for Environmental Investigation and Remediation, including but not limited to San Francisco Health Code Article 31 and regulations adopted thereunder.

“Streetscape Plan” means a master plan for design and development of the street and sidewalk areas of the Phase 1 development area and governing hardscape materials, planting materials, street light design, signage and street furniture in these areas.

B. REVIEW PROCESS

1. Developer Requirement to Comply with Process

Developer shall not construct any Horizontal Improvements prior to approval of the Horizontal Improvements in accordance with this Horizontal DRDAP and the Plan Documents.

2. Agency and City Roles in the Horizontal DRDAP Process

Developer shall submit all applications for approval of Design Documents for the Horizontal Improvements to the Agency, except that Developer may first submit the Streetscape Plan portion of the Open Space Master Plan to the Arts Commission for its design comments and concurrently submit any application to the Director of Public Works and the Agency, as provided herein. The Agency shall review applications for completeness and consistency with the Plan Documents, Arts Commission design comments and other documents as set forth herein relating to overall design of the Horizontal Improvements. The Agency shall submit application materials to the Director of Public Works, unless previously submitted to the Director of Public Works by Developer, for processing by City Agencies in accordance with this Horizontal DRDAP. In accordance with a Letter Agreement between the Agency, the Mayor's Office and various City departments, or an Interagency Cooperation Agreement, as applicable, between City Agencies and the Agency, City Agencies shall review applications for completeness and consistency with City Regulations.

3. Arts Commission Design Review

Although the Agency has land use authority over the entire Shipyard, the Agency is requiring that Developer submit the Streetscape Plan portion of the Open Space Master Plan to the Arts Commission for comment on the design of structures on City property in deference to Charter Section 5.103 and Civic Design Review Guidelines adopted by the Arts Commission because the streetscape elements to be constructed by Developer will be in streets dedicated to the City. Developer is encouraged to seek Arts Commission design comments prior to submittal of an application to the Agency. Developer may seek comment from the Arts Commission concurrently with Agency and City Agency review of applications, and the Arts Commission shall endeavor to process design comment requests referred to it by Developer expeditiously. However, failure of the Arts Commission to complete its comments expeditiously does not waive Developer's obligation to complete Arts Commission design comment. Developer acknowledges that, in any case, either the Arts Commission or the Agency Commission may require additional hearings on Developer's application for any reason.

4. Subdivision Map Review

The review and approval of Design Documents by the Agency pursuant to this Horizontal DRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act, the City's Subdivision Code and the Hunters Point Shipyard Subdivision Ordinance and regulations thereunder. The processing of a subdivision map may occur concurrently with or independently of the Agency's review of Horizontal Improvements; however, the Director of Public Works shall submit to the Agency for review and comment any subdivision authorization request from Developer. In addition, the following requirements shall apply in the Parcel A-1 portion of the Phase 1 development area.

- Developer shall have obtained an approved tentative subdivision map for the applicable property prior to the issuance by the Director of Public Works of any street improvement permit that authorizes the construction of public improvements on future public right-of-way, or the Director of Public Works may condition the permit on Developer obtaining an approved tentative subdivision map prior to the installation of any public improvements on future public right-of-way. The tentative subdivision map and any final merger and resubdivision map based thereon shall include the Agency as a co-applicant and address a merger and resubdivision of the applicable property to appropriately reflect property ownership as contemplated in the Phase 1 DDA between the Agency and Developer.
- The property contained in any irrevocable offer of dedication of future public right-of-way, required as a condition of a street improvement permit, shall be consistent with the identified public right-of-way in the approved tentative map or any final merger and resubdivision map.
- If the public right-of-way areas in the approved tentative map differ from the property described in recorded easements over future public right-of-way areas granted by Developer to the Agency or vice versa, or if the applicable property shown on the tentative map differs from the legal descriptions of the property described in the recorded deed(s) conveying property from the Agency to Developer as contemplated in the Phase 1 DDA between the Agency and Developer, Developer shall cooperate with the Agency to record corrected legal descriptions of the easements and any other corrected legal descriptions required as a result of such adjustments. The Agency, in its discretion, may defer the need to record such corrected legal descriptions, but in no case shall the deferral extend beyond the conveyance between the Agency and Developer of respective Agency and Developer property pursuant to the final merger and resubdivision map for the applicable property. The Agency and Developer acknowledge that additional corrections to legal descriptions of the applicable property may be needed as a result of the final merger and resubdivision map for the applicable property or when the final as-built drawings for the public infrastructure have been submitted and approved by the City. At such time, Developer shall cooperate with the Agency and the City, as necessary, to record corrected legal descriptions of the property to be retained by the Agency, the City and Developer.
- Developer shall obtain an approved final merger and resubdivision map before the sale of the first Lot.

II. APPROVAL OF IMPROVEMENTS

Horizontal Improvement review shall consist of three components or stages. The three components or stages are:

- Schematic Design
- Design Development Documents
- Final Construction Documents

A. APPLICATION AND REVIEW PROCESS

1. Horizontal Improvement Application

The Phase 1 DDA provides for agreement between the Agency and Developer of an Open Space Master Plan prior to the Date of Closing. The Open Space Master Plan, including a Streetscape Plan (collectively referred to herein as “Open Space and Streetscape Plans”), shall have been agreed upon and adopted by the Agency Commission as provided for in the Phase 1 DDA prior to the Agency beginning formal processing of Developer’s application for review of the Design Documents for the Horizontal Improvements under this Horizontal DRDAP. Following Agency Commission approval of the Open Space and Streetscape Plans, Developer shall submit an application or applications to the Agency for Schematic Design, Design Development Document and Final Construction Document approval of the Horizontal Improvements for Parcel A-1 or Parcel B-1. Developer may concurrently submit such applications to the Director of Public Works as provided herein. In the event the Agency or the Director of Public Works or both approve Construction Documents at the 90% design level to facilitate Developer's satisfaction of the requirement of Section 6.6(b)(2) of the Phase 1 DDA prior to Agency or Art Commission design approval of the Open Space and Streetscape Plans, as applicable, Developer shall revise and resubmit to the Director of Public Works, as necessary, Final Construction Documents once the Agency or Art Commission, as applicable, completes design approval as provided for herein.

2. Review by the Agency

The redevelopment of the Hunters Point Shipyard contemplated by the Hunters Point Shipyard Redevelopment Plan and Plan Documents is a priority project for the City and the Agency. The Agency shall review all applications for Horizontal Improvements as expeditiously as possible. The Agency shall keep Developer informed of the Agency's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by the Agency, and shall provide Developer opportunities to meet and confer with Agency staff prior to the Agency Commission hearing, if any, to review the specific application for Horizontal Improvements. The Agency shall review and approve Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals and the Plan Documents. The Agency shall not disapprove, require changes from or impose conditions inconsistent with the Plan Documents or matters it has previously approved, provided that the project submittals are consistent with any matter the Agency has previously approved.

3. Pre-Submittal Conference

Developer may request a pre-submittal conference with the Agency on Horizontal Improvements prior to Agency Commission approval of the Open Space and Streetscape Plans or in advance of submittal of a formal application for approval of Horizontal Improvements. The Agency shall meet with Developer within fifteen (15) days of receipt of such a request and applicable materials. However, any application for approval of Horizontal Improvements shall not be considered complete until after the Agency and Developer have reached agreement on the Open Space and Streetscape Plans.

4. Cooperation by Developer

In addition to the required information set forth in Exhibit 1 attached hereto, Developer shall submit materials and information as the Agency may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this Horizontal DRDAP. In addition, Developer shall cooperate with, and participate in, design review presentations to the Agency Commission and to the public through the Hunters Point Shipyard Citizens Advisory Committee.

5. Preliminary Review by the City

Pursuant to the Letter Agreement between the Agency, the Mayor's Office and various City departments, City Agencies have undertaken preliminary design review of the Horizontal Improvements for Parcel A-1 and Developer permit applications and authorizations that Developer will need to carry out these Horizontal Improvements, including, without limitation, street improvement permits, street vacations, demolition permits, a tentative transfer map and a final transfer map. However, the applications for Horizontal Improvements for Parcel A-1 shall not be considered officially submitted to the City for processing until after the Agency Commission has approved the Open Space and Streetscape Plans as provided herein.

6. CEQA Mitigation Monitoring Program Report

With any application for approval of Horizontal Improvements, Developer shall submit a report regarding compliance with the Mitigation Monitoring Program adopted pursuant to the California Environmental Quality Act ("CEQA"). The Agency shall review such report to ensure compliance with CEQA and the adopted Mitigation Monitoring Program.

B. REVIEW OF SCHEMATIC DESIGN

Except as provided below, Schematic Design documents shall be submitted to the Agency Commission for review and consideration. Schematic Design documents shall relate to schematic design level of detail for Horizontal Improvements. The purpose of

this submittal is to expand and develop previously approved plans, incorporating changes resulting from resolution of the Agency's design concerns and comments.

1. Timing of the Agency's Review

The Agency shall review the application for Schematic Design for completeness and advise Developer in writing of any deficiencies within fifteen (15) working days after the receipt of Developer's Schematic Design documents. In the event the Agency does not so advise Developer, the application for Schematic Design shall be deemed complete.

The Agency Commission may elect, in its sole discretion, to delegate approval of the Schematic Design to Agency staff at the time the Agency Commission reviews the Open Space and Streetscape Plans. If the Agency disapproves the Schematic Design in whole or in part, the Agency shall state the reasons for such disapproval. If the Agency approves the Schematic Design subject to conditions, such approval shall set forth the concerns and/or conditions on which the Agency is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of the resubmitted or corrected documents to Agency staff.

The Agency shall forward Schematic Design applications to the Director of Public Works for comment and review by City Agencies within three (3) days of the Director's determination that the application is complete. If Developer concurrently submits an application to the Agency and the Director of Public Works, the Agency shall notify the Director of Public Works that the application is complete within three (3) days of the Director's determination. The Director of Public Works shall arrange for review and comment by appropriate City Agencies and shall make recommendations to the Agency at his/her earliest convenience. The time limit for the Director's review, including receipt of any comments and recommendations from City Agencies, shall be as soon as reasonably possible but no more than sixty (60) days from the date the Agency determines the Schematic Design documents to be complete. The Director shall take such reasonable measures necessary to comply with the time periods set forth herein. Developer and the Director may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Director. The Director shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Director and Developer. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

Notwithstanding the foregoing, Developer may submit a joint application for Schematic Design and Design Development Document review as provided below under Review of Design Development Documents.

2. Document Submittals

Developer shall submit Schematic Design documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. In addition, as set forth in Section II.A.4 above, Developer shall submit materials and information as the Agency may reasonably request which are consistent with the type of documents listed in Exhibit-1 and which are required to clarify a submittal provided pursuant to this Horizontal DRDAP. The Agency may waive certain document submittal requirements if the Agency, in consultation with the Director of Public Works, determines that such documents are not necessary for the specific application.

C. REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by the Agency following approval of the Schematic Design.

1. Scope of Review

The Agency shall review the Design Development Documents for consistency with earlier approved documents and Plan Documents. Design Development Documents will relate to design development level of detail for the Horizontal Improvements. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

2. Timing of the Agency's Review.

The Agency shall review the Design Development Documents for completeness and advise Developer in writing of any deficiencies within ten (10) working days after the receipt of the Design Development Documents. In the event the Agency does not so advise Developer, the Design Development Documents shall be deemed complete.

The Agency shall forward Design Development applications to the Director of Public Works for comment and review by City Agencies within three (3) days of the Director's determination that the application is complete. If Developer concurrently submits an application to the Agency and the Director of Public Works, the Agency shall notify the Director of Public Works that the application is complete within three (3) days of the Director's determination. The Director of Public Works shall arrange for review and comment by appropriate City Agencies and shall make recommendations to the Agency at his/her earliest convenience. The time limit for the Director's review, including receipt of any comments and recommendations from City Agencies, shall be as soon as reasonably possible but no more than sixty (60) days from the date the Agency determines the Design Development Documents to be complete. The Director shall take reasonable measures necessary to comply with the time periods set forth herein. Developer and the Director may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Director. The Director shall review all

such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Director and Developer.

Developer may request to submit Schematic Design and Design Development Documents simultaneously to the Agency. After determining that the applications are complete, the Agency shall endeavor to approve or disapprove the Schematic Design and Design Development Documents within the time period for approval of the Schematic Design. The Design Development Document submittal shall govern if there is any discrepancy between the two design submittals.

3. Document Submittals

Developer shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. In addition, as set forth in Section II.A.4 above, Developer shall submit materials and information as the Agency may reasonably request which are consistent with the type of documents listed in Exhibit-1 and which are required to clarify a submittal provided pursuant to this Horizontal DRDAP. The Agency may waive certain document submittal requirements if the Agency, in consultation with the Director of Public Works, determines that such documents are not necessary for the specific application.

D. FINAL CONSTRUCTION DOCUMENT REVIEW

1. Process for City Review of Final Construction Documents

Developer shall submit applications to the Director of Public Works and the Agency for Final Construction Document review for the applicable Horizontal Improvements, including Final Construction Documents for the Open Space and Streetscape areas consistent with the approved Open Space and Streetscape Plans. The Final Construction Documents submitted to the City shall be submitted in a form that complies with the requirements of the City's Department of Public Works and other City Agencies with jurisdiction, as applicable, and shall include Final Construction Documents for all Infrastructure Plan elements for either Parcel A-1 or Parcel B-1, as applicable, including, without limitation, construction drawings and specifications ready for bidding. City review of the Final Construction Documents for Horizontal Improvements shall be based upon Plan Documents and applicable City Regulations.

Developer shall be responsible for submittal of plans and specifications and necessary supporting data to the Director of Public Works in a quantity as determined by the Director of Public Works and additional copies to the Agency as determined by the Agency. The submittal shall be coordinated and be of a quality that uses the standard of care in the profession.

The Director of Public Works shall coordinate the review by all appropriate City Agencies to effect the Final Construction Document approval and permitting. The Director of Public Works shall conduct the review and the approval process of the Horizontal Improvement Final Construction Documents on a timely basis. The time to review documents will depend on the quality of the submittal. For planning purposes,

should Developer elect to submit progress sets for review, the estimated review time is eighteen (18) working days each for 30%, 65% and 100% design submittals. Incomplete or uncoordinated drawings or lack of progress reviews will require additional time. Approval of the Final Construction Documents and permit issuance will take up to ten (10) days after the completion of revisions based on the final review.

2. Process for Agency Review of Final Construction Documents

The Director shall review Horizontal Improvement Final Construction Documents within fifteen (15) days of receipt of such documents from and approval of such documents by the Department of Public Works and other appropriate City Agencies with jurisdiction. In the event the Director does not so advise Developer, the Design Documents shall be deemed approved by the Agency. Developer shall be responsible for submittal of such documents to the Agency. No building or other City permit, including but not limited to any permits required by the Department of Public Works, shall be issued by a City Agency unless the Agency has reviewed and approved the permit application.

EXHIBIT 1**DOCUMENTS TO BE SUBMITTED FOR HORIZONTAL IMPROVEMENTS
DESIGN REVIEW**

During each stage of Horizontal Improvements review, the Agency and Developer shall agree upon the scale of the drawings for submissions. Developer shall submit a report outlining compliance with the adopted Mitigation and Monitoring Program.

A. SCHEMATIC DESIGN DOCUMENTS

Documents submitted at this stage in the design review will relate to schematic design level of detail for the Horizontal Improvements. The purpose of this submittal is to expand and develop the Open Space Master Plan, including the Streetscape Plan and the Infrastructure Plan, incorporating changes resulting from resolution of the Agency's design concerns and comments. The Schematic Design submission for the Horizontal Improvements should generally be consistent with approvals for the Open Space Master Plan, including the Streetscape Plan and the Infrastructure Plan. A Schematic Design submittal will include the following documents.

1. Streetscape

Developer shall submit an application including an overall site plan for Parcel A-1 or Parcel B-1, as applicable, showing locations of streets, turn lanes, pedestrian access points, bicycle paths, paved areas, planted areas, lighting and pole locations, all street fixture locations and signage locations. Examples of all types of streetscape shall be shown in detail along with materials that will be used, including street sections, sidewalks, points of pedestrian access, bicycle lanes, proposed paving materials, proposed plantings, street lighting design, all street fixture designs and signage design. The submittal shall include calculations supporting streetlight spacing.

2. Open Space

Developer shall submit an application including landscape plans, sections and details at 1/8"=1'0" or other approved scale fixing locations and design of all landscape elements including paving, site furniture, stairs and other construction items, grading and drainage, planting, irrigation, lighting, artworks, sidewalks and crosswalks, service and vehicular access and signage.

3. Studies, Reports and Cost Estimates

Developer shall analyze and determine the infrastructure demands of the Horizontal Improvements as well as the available capacity of the existing infrastructure. Studies and reports shall be submitted including but not limited to (1) the existing physical conditions of the site, (2) the existing utility systems and (3) project constraints including those listed in the Mitigation and Monitoring Program. Developer shall submit a list of the studies and reports to be produced along with a proposed schedule for

Agency approval in advance of completing the Schematic Design documents. Developer shall submit a cost estimate performed by an independent third party with an appropriate level of design contingency.

B. DESIGN DEVELOPMENT DOCUMENTS

Documents submitted at the design development stage in design review will relate to design development level of detail for Horizontal Improvements. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to demolition, grading, roadway, wet utilities, dry utilities, traffic and mass transit systems, landscape architecture, and site furnishings. Developer shall submit a refined cost estimate performed by an independent third party with an appropriate level of design contingency. A proposed schedule consistent with the timelines provided herein shall be submitted including the Design Development Documents through the end of construction.

The Design Development Document submission for Horizontal Improvements should generally be consistent with the Schematic Design approval.

1. Site plans showing where applicable:
 - (a) Landscaped areas, roads, sidewalks, mid-block connections, any transit facilities, and public open space areas. All land uses within the area shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.
 - (b) All utilities or service facilities that are a part of the public Infrastructure shall be shown.
 - (c) Grading plans depicting proposed finish site elevations.
 - (d) Site drainage.
 - (e) Required connections to existing and proposed utilities.
 - (f) All existing structures adjacent to the site.
2. Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City's future right-of-way shall be shown.
3. Drawings showing structural, mechanical and electrical systems.
4. Materials and colors samples as they may vary from those submitted for Schematic Design approval.

5. Sign locations and design.
6. Outline specifications for materials and methods of construction.

C. FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for Horizontal Improvements. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the Horizontal Improvements and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Departments of Public Works and Building Inspection, including Site Plans and Construction Drawings and Specifications ready for bidding. The Agency and Developer shall continue to work to resolve any outstanding design issues, as necessary.

Developer shall submit a final cost estimate performed by an independent third party. An updated proposed schedule shall be submitted showing all major milestones including the Final Construction Documents through the end of construction. Major milestones include actions by the Agency and the Agency Commission, City Agencies, permits by third parties, and interim points in the construction of Horizontal Improvements.

K

Exhibit K

Design Review and Document Approval Procedure for Vertical Improvements

HUNTERS POINT SHIPYARD**PHASE 1****VERTICAL DESIGN REVIEW AND DOCUMENT APPROVAL PROCEDURE**

I. INTRODUCTION This **Vertical Design Review and Document Approval Procedure, ("VDRDAP")** sets forth the procedure for design submittals of the plans and specifications for the vertical developments of Phase 1 and their review. The vertical developments will include residential, streetscape, private open spaces, and other permanent and interim uses. The developments will include those developed by Lennar-BVHP, LLC ("Developer"), Developer's affiliates and other entities (each, a "Vertical Developer"). The San Francisco Redevelopment Agency ("Agency") shall review plans and specifications to assure that they conform to the Disposition And Development Agreement Phase 1 Hunters Point Shipyard ("Phase I DDA") by and between Developer and the Agency and the Vertical Disposition and Development Agreement by and among Developer, the Vertical Developer and the Agency. City Agencies will review plans and specifications for compliance with applicable City Regulations.

A. DEFINITIONS

Capitalized terms unless separately defined in this VDRDAP shall have the meanings set forth in the Phase I DDA. For vertical development purposes of this VDRDAP, when the term "Agency" is used herein, the use of such term shall mean the San Francisco Redevelopment Agency, acting in its official capacity either through the Agency Commission or the Agency's Executive Director, as authorized by law and/or as set forth in the Phase I DDA or this VDRDAP. For purposes of this VDRDAP, when the term "Director" is used, such term shall mean the Executive Director of the San Francisco Redevelopment Agency, or staff of the San Francisco Redevelopment Agency as designated by the Director. The term "Agency Commission" is used in this VDRDAP whenever any determination is required to be made by the Commission for the San Francisco Redevelopment Agency.

B. REVIEW**1. Subdivision Map Review.**

The review and approval of Design and Construction Documents by the Agency pursuant to this VDRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act and in the Hunters Point Shipyard Subdivision Code and Hunters Point Shipyard Subdivision Regulations. The processing of a subdivision map may occur concurrently with or independently of a project approval.

2. Temporary and Interim Uses.

The Agency architectural staff shall review applications for temporary and interim uses.

II. PROJECT APPROVALS

Project Approval submissions shall consist of four components or stages:

- Basic Concept Design,
- Schematic Design,
- Design Development Documents, and
- Final Construction Documents.

A. SCOPE OF REVIEW

The Agency shall review and approve Basic Concept Design plans, Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Hunters Point Shipyard Redevelopment Plan and Plan Documents, including but not limited to the Design for Development. The Agency's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the final Environmental Impact Report. The mitigation measures are intended to reduce the major impacts of this development on the environment. The Agency shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program. The Agency shall not disapprove, require changes from or impose conditions inconsistent with the Hunters Point Shipyard Redevelopment Plan, Plan Documents or matters it has previously approved, provided that the project submittals are consistent with any matter the Agency has previously approved.

B. AGENCY PROCESS

1. Review by Agency.

The redevelopment of the Hunters Point Shipyard contemplated by the Hunters Point Shipyard Redevelopment Plan and Plan Documents is a priority project for the City and the Agency. The Agency shall review all applications for project approvals as expeditiously as possible. The Agency architectural staff shall keep the applicant informed of the Agency's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by the Agency, and shall provide applicant opportunities to meet and confer with Agency staff prior to the Agency Commission hearing, if any, to review the specific application for project approval.

2. Pre-Submission Conference.

Prior to filing an application for any project approval, the applicant or applicant may submit to the Agency architectural staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, the Agency architectural staff shall hold a conference with the applicant to discuss the proposed application.

3. Cooperation by Applicant.

In addition to the required information set forth in Exhibit 1 attached hereto, the applicant shall submit materials and information as the Agency architectural staff may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this VDRDAP. Additionally, the applicant shall cooperate with, and participate in, design review presentations to the Agency Commission and to the public through the Hunters Point Shipyard Citizens Advisory Committee.

C. REVIEW OF BASIC CONCEPT DESIGN

Basic Concept Design documents shall be submitted to the Agency for review and approval. Basic Concept Design documents shall demonstrate a concept level of detail consistent with the Hunters Point Shipyard Redevelopment Plan and Plan Documents.

1. Timing of Agency's Review.

The Agency architectural staff shall review the Basic Concept Design for completeness and advise the applicant in writing of any deficiencies within fifteen (15) working days following receipt of the applicant's Basic Concept Design submittal. In the event the Agency architectural staff does not so advise the applicant, the application for Basic Concept

Design shall be deemed complete. The time limit for the Agency staff's review shall be within sixty (60) days from the date the Basic Concept Design has been determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

The Agency Commission shall review and approve, conditionally approve or disapprove the application for Basic Concept Design within the sixty (60) day period set forth above. If the Agency Commission disapproves the Basic Concept Design in whole or in part, the Agency Commission shall set forth the reasons for such disapproval in the resolution adopted by the Agency Commission. If the Agency Commission conditionally approves the Basic Concept Design, such approval shall set forth the concerns and/or conditions on which the Agency Commission is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of such resubmitted or corrected documents to the Agency architectural staff.

The applicant and the Agency may agree to any extension of time necessary to allow revisions of submittals. The Agency shall review all revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency and the applicant. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

2. Document Submittals.

The applicant shall submit Basic Concept Design plans, which plans shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

D. REVIEW OF SCHEMATIC DESIGN

Except as provided below, Schematic Design documents shall be submitted to the Agency Commission for review and consideration. Schematic Design documents shall relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency's design concerns and comments.

1. Timing of Agency's Review.

The Agency architectural staff shall review the application for Schematic Design for completeness and advise the applicant in writing of any deficiencies within fifteen (15) working days after the receipt of the applicant's Schematic Design documents. In the event the Agency architectural staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for the Agency staff's review shall be forty nine (49) days from the date the application for Schematic Design was determined to be complete. The Agency shall take such reasonable measures necessary to comply with the time periods set forth herein.

The Agency Commission may elect, in its sole discretion, to delegate approval of the Schematic Design to the Agency architectural staff at the time the Agency Commission reviews the Basic Concept Design. If the Agency disapproves the Schematic Design in whole or in part, the Agency shall state the reasons for such disapproval. If the Agency approves the Schematic Design subject to conditions, such approval shall set forth the concerns and/or conditions on which the Agency is granting approval. If the Agency Commission disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the Agency Commission, the Agency Commission may delegate approval of the resubmitted or corrected documents to the Agency architectural staff.

The applicant and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency. The Agency shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and the applicant. If required to be submitted to the Agency Commission, the Agency Commission shall either approve or disapprove such resubmitted or corrected documents as soon as possible.

The applicant may request to submit Basic Concept Design and Schematic Design documents simultaneously. The Agency architectural staff shall approve or disapprove such request within a reasonable time. In the event that Agency architectural staff permits the applicant to submit complete sets of Basic Concept Design and Schematic Design documents simultaneously, the Agency Commission shall approve, conditionally approve or disapprove the Schematic Design documents at the same time it approves the Basic Concept Design, and no later than twenty-one (21) days following the time period for approval of the Basic Concept Design. The Schematic Design submittal shall govern if there is any discrepancy between the two design submittals.

2. Document Submittals.

The applicant shall submit Schematic Design Documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

E. REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by the Agency architectural staff, following approval of the Schematic Design.

1. Scope of Review.

The Agency architectural staff shall review the Design Development Documents for consistency with earlier approved documents, the Hunters Point Shipyard Redevelopment Plan and Plan Documents, including the Scope of Development and the Design for Development. Design Development Documents will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

2. Timing of Agency's Review.

The Agency architectural staff shall review the Design Development Documents for completeness and advise the applicant in writing of any deficiencies within ten (10) working days after the receipt of the Design Development Documents. In the event the Agency architectural staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for the Agency architectural staff's review shall be forty-nine (49) days from the date the Design Development Documents were determined to be complete. The Agency architectural staff shall take such reasonable measures necessary to comply with the time periods set forth herein.

The applicant and the Agency architectural staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by the Agency architectural staff. The Agency architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by the Agency architectural staff and the applicant.

3. Document Submittals.

The applicant shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. The Agency architectural staff may waive certain document submittal requirements if the Agency architectural staff determines such documents are not necessary for the specific application.

F. REVIEW OF FINAL CONSTRUCTION DOCUMENTS

1. Agency Review.

Final Construction Documents will relate to the construction documents' level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City's Department of Building Inspection and the Agency architectural staff. Provided the applicant's Final Construction Documents are delivered to the Agency architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by the Agency architectural staff within twenty-one (21) days following the Agency architectural staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant's Final Construction Documents are not delivered concurrently to the Agency architectural staff, the Agency architectural staff shall review the Final Construction Documents as expeditiously as possible.

2. Document Submittals.

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. The Final Construction Documents submittal shall include the information specified for the Design Development Documents in Exhibit 1 attached hereto.

III. OTHER CITY PERMITS

A. COMPLIANCE WITH OTHER LAWS

No Agency review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

B. AGENCY REVIEW OF CITY PERMITS

No building permit, or any other City permit, including but not limited to any permits required by the Department of Public Works shall be issued unless the Agency has reviewed and approved the permit application.

C. SITE PERMITS

The applicant may apply for and obtain a Site Permit and addenda from the Department of Building Inspection upon the Agency architectural staff's approval of the Design Development documents. This application can be submitted before the Final Construction Documents the project have been completed and submitted for approval to the Agency architectural staff and the Department of Building Inspection. Notwithstanding the foregoing, the applicant may apply for City permits related to grading and excavation activities prior to the Agency architectural staff's approval of the Design Development Documents, provided that the Agency architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by the Agency architectural staff and Department of Building Inspection. Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

IV. MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

The Agency may, by written decision, approve project applications which amend or modify the previously approved project, provided that the Agency makes the following determinations: (1) the project approval requested involves a deviation that does not constitute a material change; (2) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and (3) the grant of the project approval will be consistent with the general purposes and intent of the Hunters Point Shipyard Redevelopment Plan and Plan Documents. In the event that the Agency determines that the project application deviates materially from the project already approved by the Agency, the Agency may require submittal of an amended project application, as appropriate, for review by the Agency in accordance with the provisions herein.

Amendments and modifications will be processed in accordance with this VDRDAP.

V. GOVERNMENT REQUIRED PROVISIONS, CHANGES

The Agency and the Applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Concept Plans, Basic Concept Design, Schematic Design, Design Development Documents or Final Construction Documents which are required by any City Agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or the Agency's architect, as the case may be, and (ii) the applicant or the Agency shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and the Agency each agrees to use its diligent, good faith efforts to obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.

EXHIBIT 1**DOCUMENTS TO BE SUBMITTED FOR PROJECT APPROVALS**

During each stage of the project design review process, the Agency architectural staff and the applicant shall agree upon the scale of the drawings for project submissions. The Agency architectural staff and the applicant shall also discuss and agree upon the scope of the subsequent project submissions recognizing that each project is unique and that all documents outlined herein may not be required for each project.

Design Development Documents and other Construction Documents to be submitted shall be prepared by an architect licensed to practice in and by the State of California. The applicant shall submit a report outlining compliance with the adopted Mitigation and Monitoring Program.

A. BASIC CONCEPT DESIGN DOCUMENTS

Three (3) sets of Basic Concept Design documents shall be submitted to the Agency. The program of uses, the height of buildings or other factors in the proposed project may trigger some variation in the submittal requirements in order to illustrate consistency with standards and guidelines in the Hunters Point Shipyard Redevelopment Plan and Plan Documents. Basic Concept Design documents will illustrate building height, building bulk, block development, street frontage, conceptual building elevations, and streetwall length, height and character. Project Basic Concept Design submittals will include the following documents.

1. Data Charts

Data charts submitted should provide information appropriate to a Basic Concept Design submittal consistent with the project being proposed, including:

- a. Program of uses
- b. Maximum development density
- c. Approximate number of parking and loading spaces
- d. Building coverage and streetwall calculations

2. Vicinity Plan

In addition to the site plan for the immediate area of the project under review, a diagrammatic vicinity plan should be submitted showing this project in the context of planned and existing:

- a. Utilities, including interim facilities
- b. Vehicular, bicycle and pedestrian circulation
- c. View corridors
- d. Public and private open space

3. Site Plan (at a scale of 1"=40' unless otherwise agreed upon)

The Site Plan will pertain to the total area of development and improvement included in this project which may include required streets, open space and other existing infrastructure improvements. A Site Plan should indicate the location of uses; the general location, scale, relationship, and orientation of buildings; the general site circulation and relationship of ground floor uses, and:

- a. Site boundaries
- b. Building footprints
- c. Existing public open space areas
- d. Private open space areas
- e. Setbacks
- f. Existing roads, sidewalks, mid-block connections
- g. Parking and loading facilities (including interim facilities)
- h. Circulation diagram including entry locations for pedestrians, autos and service vehicles
- i. Existing and proposed streetscape improvements

4. Building Plans, Elevations and Sections sufficient to describe the development proposal

Written Statement of Program, including: size and use of the facilities proposed, structural system and principal building materials.

5. Model

A Basic Concept Design level block model shall illustrate the location, scale and massing of proposed building(s) and its relationship to existing public open space, streets and surrounding development areas.

6. Illustrative Materials

Sketches or perspective renderings (and other appropriate illustrative materials acceptable to the Agency) shall be submitted to illustrate the character of the proposed development.

7. Phasing Plan

Within the project, any anticipated phasing of construction or temporary Improvements, including temporary or interim parking facilities and infrastructure, to ease the transition among projects and between phases, if any, shall be indicated.

B. SCHEMATIC DESIGN

Documents submitted at this stage in the design review will relate to schematic design level of detail for a specific project. The purpose of this submittal is to expand and develop the Basic Concept Design, incorporating changes resulting from resolution of the Agency's design concerns and comments. The Schematic Design submission for a specific project should generally be consistent with the Basic Concept Design approval. A Schematic Design submittal will include the following documents.

1. Written Statement

A written statement of proposal shall cover items similar to those on the Basic Concept Design data charts including number of parking and loading spaces, size and use of the facilities provided, with the addition of the structural system, principal building materials and area calculations.

2. Schematic design drawings

The Schematic Drawings shall generally include, but not be limited to:

- a. Isometric or perspective drawings sufficient to illustrate overall project.
- b. Site plan at appropriate scale showing relationships of buildings with their respective uses designating open spaces, terraces,

landscaped areas, walkways, loading areas, streets, water elements, and adjacent uses. Adjacent existing and proposed street and structures should also be shown. Scale: minimum 1/16"=1'0

- c. Site sections showing height relationships of those areas noted above. Scale: minimum 1/16"=1'0
- d. Building plans, elevations and sections sufficient to describe the development proposal, the general architectural character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/8"=1'0
- e. Written Statement of program, including: size and use of the facilities proposed, structural system and principal building materials.

3. Model

A model shall be submitted to the Agency which shall be prepared at an appropriate scale indicating the exterior building design.

4. Perspectives, Sketches and Renderings

Perspectives, sketches, and renderings, as necessary to indicate the architectural character of the project and its relationship to the pedestrian level shall be submitted to the Agency.

5. Samples

Samples of proposed materials and exterior colors shall be submitted to the Agency.

- 6. Perspective drawings sufficient to depict the design characteristics of the project.

C. DESIGN DEVELOPMENT DOCUMENTS

Documents submitted at the design development stage in design review will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

The Design Development Document submission for a specific project should generally be consistent with the Schematic Design approval.

- 1. Site plans showing where applicable:**
 - a. Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.
 - b. All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.
 - c. Grading plans depicting proposed finish site elevations
 - d. Site drainage and roof drainage.
 - e. Required connections to existing and proposed utilities.
 - f. All existing structures adjacent the site.
- 2. Building floor plans and elevations including structural system, at an appropriate scale (1/8" to 1' minimum).**
- 3. Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of ground floor uses to pedestrian outdoor areas, and including mechanical equipment**
- 4. Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City's right of way shall be shown.**

5. **Drawings showing structural, mechanical and electrical systems.**
6. **Materials and colors samples as they may vary from those submitted for Schematic Design approval**
7. **Sign locations and design**
8. **Outline specifications for materials and methods of construction**
9. **Roof plan showing location of and screen design for all rooftop equipment; and roof drainage**

D. FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Department of Building Inspection, including Site Plans and Construction Drawings and Specifications ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. The Agency architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.

L

Exhibit L

Subdivision Map Ordinance and Regulations

304-04

1 [Hunters Point Shipyard – Subdivision Code.]

2
3 **Ordinance amending the San Francisco Subdivision Code by adding the Hunters Point**
4 **Shipyard Subdivision Code, Division 3, Articles 1-8, Sections 1600 et seq. and making**
5 **environmental findings.**

6 Note: Additions are *single-underline italics Times New Roman*;
7 deletions are ~~*strikethrough italics Times New Roman*~~.
8 Board amendment additions are double underlined.
9 Board amendment deletions are ~~strikethrough normal~~.

9 Be it ordained by the People of the City and County of San Francisco:

10 Section 1. Findings.

11 A. In conjunction with Ordinances [DPH] ~~303-04~~, [DBI] ~~302-04~~, and [DPW Public
12 Works Code] ~~300-04~~ on file with the Clerk of the Board of Supervisors in File Nos. ~~041541~~,
13 ~~041546~~, and ~~041538~~, this Ordinance enacts a new program to protect human health and
14 safety and the environment at the former Hunters Point Shipyard during and after
15 development and to facilitate redevelopment as envisioned in the Hunters Point Shipyard
16 Redevelopment Plan through enacting additional prerequisites to obtaining certain City
17 permits. This Ordinance would amend the Subdivision Code to enact consistent provisions
18 with respect to permits issued by the Department of Public Works.

19 B. In accordance with the actions contemplated herein, this Board adopted Resolution
20 No. ~~751-04~~, concerning findings pursuant to the California Environmental Quality Act
21 (California Public Resources Code sections 21000 et seq.). Said Resolution is on file with the
22 Clerk of the Board of Supervisors in File No. 041533 and is incorporated herein by
23 reference.

24 Section 2. The San Francisco Subdivision Code is hereby amended by adding Division
25 3, Articles 1-8, Sections 1600 et seq., to read as follows:

1 DIVISION 3: HUNTERS POINT SHIPYARD SUBDIVISION CODE

2 ARTICLE 1: GENERAL PROVISIONS

3 Sec. 1600. Title.

4 Sec. 1601. Authority and Mandate.

5 Sec. 1602. Purposes.

6 Sec. 1603. Scope.

7 Sec. 1604. Enforcement.

8 Sec. 1604.1. Certificate of Compliance.

9 Sec. 1605. Severability.

10 SEC. 1600. TITLE.

11 This Chapter shall be known as the "Subdivision Code of the City and County of San Francisco
12 for the Hunters Point Shipyard Project Area" (hereinafter referred to as this "Code") and applies only
13 to the areas designated as the Hunters Point Shipyard Redevelopment Project Area (hereinafter
14 referred to as the "Hunters Point Shipyard Project Area").

15 SEC. 1601. AUTHORITY AND MANDATE.

16 (a) This Code is adopted pursuant to the Subdivision Map Act of California, Title 7,
17 Division 2 of the Government Code, commencing with Section 66410 (hereinafter referred to as
18 "SMA").

19 (b) Any amendments to SMA, adopted subsequent to the effective date of this Code, shall not
20 invalidate any provisions of this Code. Any amendments to SMA that may be inconsistent with this
21 Code shall govern.

22 (c) Subject to the procedures and requirements for development in the Hunters Point
23 Shipyard Project Area set forth in the Plan and Plan Documents, as defined herein, this Code shall
24 govern in relation to all other City regulations to the extent such regulations are inconsistent. Except as
25

1 required by the SMA, in the event of any inconsistency or conflict between the provisions of this Code
2 and the Plan,, the Plan and Plan Documents shall control. All applications for Tentative Maps, Vesting
3 Tentative Maps, Parcel Maps and Final Maps shall be consistent with the Plan and Plan Documents.

4 (d) This Code and the regulations adopted pursuant to this Code shall apply to all
5 subdivisions hereafter made entirely or partially within the Hunters Point Shipyard Project Area. This
6 Code shall be effective until the termination of the Plan, including any modifications or extensions
7 thereof. Upon termination all the subdivisions in the Hunters Point Shipyard Project Area shall be
8 governed by the San Francisco Subdivision Code and applicable regulations unless otherwise
9 specified.

10 SEC. 1602. PURPOSES.

11 (a) This Code is enacted to establish procedures and requirements for the control and
12 approval of subdivision development within the Hunters Point Shipyard Project Area of the City and
13 County of San Francisco in accordance with SMA and the Plan and Plan Documents.

14 (b) This Code is enacted to accomplish the following purposes in accordance with the
15 procedures and requirements for the control and approval of development of the Project Area as set
16 forth in the Plan and Plan Documents:

17 (1) To provide policies, standards, requirements, and procedures to regulate and control
18 the design and improvement of all subdivisions within the Hunters Point Shipyard Project Area, and to
19 ensure that all subdivisions are built to City standards consistent with the Plan and Plan Documents;

20 (2) To assist in implementing the objectives, policies, and programs of the General Plan by
21 ensuring that all proposed subdivisions, together with the provisions for their design and improvement,
22 are consistent with the General Plan of the City;

23 (3) To preserve and protect, to the maximum extent possible, the unique and valuable
24 natural resources and amenities of the City's environment, including topographic and geologic

1 features, open space lands, waterfront recreational areas, fish and wildlife habitats, historical and
2 cultural places, and scenic vistas and attractions; and, to maximize the public's access to and
3 enjoyment of such resources and amenities through the dedication or continuance of applicable
4 easements thereto;

5 (4) To relate land use intensity and population density to existing development, street
6 capacity and traffic access, the slope of the natural terrain, and the availability of public facilities and
7 utilities and open space;

8 (5) To provide lots of sufficient size and appropriate design for the purposes for which they
9 are to be used;

10 (6) To provide streets of adequate capacity and design for anticipated uses and to ensure
11 maximum safety for pedestrians and vehicles;

12 (7) To ensure adequate access to each building parcel;

13 (8) To provide sidewalks, and where needed, pedestrian ways, biking paths, and jogging
14 trails for the safety, convenience, and enjoyment of the residents of new developments;

15 (9) To provide adequate systems of water supply, sanitary sewage disposal, storm drainage,
16 street lighting, and other utilities needed for the public health, safety and convenience;

17 (10) To provide adequate sites for public facilities needed to serve the residents of new
18 developments;

19 (11) To ensure that land is subdivided in a manner that will promote the public health, safety,
20 convenience, and general welfare in conformance with the General Plan and the Hunters Point
21 Shipyard Redevelopment Plan.

22 SEC. 1603. SCOPE.

23 (a) This Code supplements SMA, prescribing rules, regulations and procedures authorized
24 therein.

1 (b) The necessity for Tentative Maps, Final Maps and Parcel Maps shall be governed by
2 this Section and SMA.

3 (c) For subdivisions creating five or more parcels or units, a Tentative Map and a Final
4 Map shall be required pursuant to this Code and SMA.

5 (1) A Tentative Map and a Final Map shall be required for all such subdivisions except
6 those coming within the exceptions set forth in Section 66426 of SMA.

7 (2) A Tentative Map and a Parcel Map shall be required for all subdivisions coming within
8 the exceptions set forth in Section 66426 of SMA.

9 (d) For subdivisions creating fewer than five parcels or units, no Tentative Map shall be
10 required except as provided in Section 1633.1(a) for Vesting Tentative Maps and except where the
11 Director deems a Tentative Map would be appropriate and the applicable City regulations for the
12 subject property would permit development at a density such that the subject property, or any portion
13 thereof, may be resubdivided in a manner which would ultimately permit five or more parcels on the
14 subject property. In all other subdivisions creating fewer than five parcels or units, a Parcel Map
15 containing the information specified by Section 1659 of this Code and SMA shall be required. Said
16 Parcel Map shall be filed with the Director and recorded according to the procedure set forth in
17 Sections 1660 through 1664 of this Code.

18 (e) No Tentative Map, Final Map or Parcel Map shall be required for those specific types of
19 subdivision exempted by Sections 66412 and 66428 of SMA; provided, however, that with respect to
20 subdivisions described in Subsection (h) of Section 66412 of the SMA, certification pursuant to the
21 provisions of Section 1397 must be obtained.

22 (f) The Director may waive the requirement of a Parcel Map for any improved or
23 unimproved land shown on the latest equalized County assessment roll as contiguous units or parcels
24 where the units or parcels have been subdivided legally and comply with the requirements as to lot
25

1 width and area, improvement and design, floodwater drainage control, appropriate improved public
2 roads, sanitary disposal facilities, water supply availability and environmental protection.

3 (g) Nothing herein shall preclude the approval and filing of Subdivision Maps for purposes
4 of financing and conveyancing only as provided in Section 1612.1 herein.

5 SEC. 1604. ENFORCEMENT.

6 (a) It is unlawful for any person, firm, corporation, partnership or association to offer or
7 contract to sell, lease, finance, or construct any building for sale, lease or financing on any parcel or
8 parcels of real property for which a Final Map or a Parcel Map is required unless and until a Final
9 Map or Parcel Map in full compliance with the provisions of this Code and SMA, has been duly
10 recorded in the office of the Recorder. This Section does not prohibit an offer or contract to sell, lease,
11 or finance any parcel or parcels of real property where the sale, lease or financing is expressly
12 conditioned upon the filing, approval and recordation of a Final or Parcel Map, where the SMA
13 otherwise allows an offer or contract to sell, lease, or finance, or where the SMA is inapplicable.

14 (b) All departments, officials and public employees of the City, City agencies or the agency
15 vested with the duty or authority to approve or issue permits, shall act consistent with the provisions of
16 this Code, the Plan, and the Plan Documents and shall neither approve nor issue any permit or license
17 for use, construction, or purpose in conflict with the provisions of this Code, the Plan and the Plan
18 Documents. Any such permit or license issued in conflict with the provisions of this Code, Plan and the
19 Plan Documents shall be null and void. No conditions shall be imposed on or in connection with
20 Tentative Maps, Vesting Tentative Maps, Parcel Maps or Final Maps, including improvements plans
21 and improvement agreements, that conflict with the Plan and Plan Documents.

22 (c) Any Subdivider, agent of a Subdivider, successor in interest of a Subdivider, tenant,
23 purchaser, builder, contractor or other person who violates any of the provisions of this Code or any
24 conditions imposed pursuant to this Code, or who knowingly submits incorrect information to endeavor
25

1 to mislead or misdirect efforts by City agencies in the administration of this Code, shall be deemed
2 guilty of a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding \$2,000
3 or be imprisoned for a period not exceeding six months or be both so fined and imprisoned. Each day
4 such violation is committed or permitted to continue shall constitute a separate offense and shall be
5 punishable as such hereunder.

6 (d) The Director shall have the authority to enforce this Code against violations thereof in
7 accordance with Chapter 7, Sections 66499.30 et seq. of the SMA. The City shall not issue a permit or
8 grant any approval necessary to develop any real property which has been divided, or which has
9 resulted from a division, in violation of the provisions of this Code or the SMA if it finds that
10 development of the real property is contrary to the public health, safety or welfare. The authority to
11 deny a permit or approval shall apply whether the applicant was the owner of the real property at the
12 time of the violation or whether the applicant is the current owner of the real property, with or without
13 actual or constructive knowledge of the violation at the time of the acquisition of interest in the real
14 property. Whenever the City has knowledge that property has been divided in violation of the
15 provisions of the SMA or this Code, the Director shall process a notice of violation and meet and
16 confer with the owner pursuant to SMA Section 66499.36.

17 SEC. 1604.1. CERTIFICATE OF COMPLIANCE.

18 (a) Any person owning real property or a vendee of that person pursuant to a contract of
19 sale of the real property, may request the Director to determine whether the real property complies
20 with the provisions of this Chapter and the SMA. The Director shall forward the request to the City
21 Attorney for review.

22 (b) Upon making a determination of compliance, the Director shall, in accordance with
23 Section 66499.35 of the SMA, cause a certificate or conditional certificate of compliance to be filed for
24 record with the County Recorder. The certificate of compliance shall identify the real property and
25

1 shall state that the division of land complies with applicable provisions of the City regulations and the
2 SMA.

3 (c) A recorded Final or Parcel Map shall constitute a certificate of compliance with respect
4 to the parcels of real property described therein.

5 (d) If the Director determines that the real property does not comply with the provisions of
6 this Code or the SMA the Director shall issue a conditional certificate of compliance. In issuing a
7 conditional certificate of compliance the Director may impose such conditions (including but not
8 limited to filing an application for a corrected Tentative, Final or Parcel Map) as would have been
9 applicable to the division of the property at the time the applicant acquired his or her interest therein,
10 and which had been established at such time by this Code or the SMA. Where the applicant was the
11 owner of record at the time of the initial violation of the provisions of this division or of local
12 ordinances enacted pursuant thereto who by a grant of real property created a parcel or parcels in
13 violation of this Code or the SMA, and that person is the current owner of record of one or more of the
14 parcels which were created as a result of the grant on violation of this Code or the SMA, then the
15 Director may impose any conditions which would have been applicable to a current division of the
16 property.

17 **SEC. 1605. SEVERABILITY.**

18 (a) If any Article, Section, subsection, paragraph, sentence, clause or phrase of this Code,
19 or any part thereof, is for any reason held to be unconstitutional or invalid or ineffective by any court
20 of competent jurisdiction, or other competent agency, such decisions shall not affect the validity or
21 effectiveness of the remaining portions of this Code or any part thereof. The Board of Supervisors
22 hereby declares that it would have passed each Article, Section, subsection, paragraph, sentence,
23 clause or phrase thereof, irrespective of the fact that any one or more Articles, Sections, subsections,
24 paragraphs, sentences, clauses or phrases be declared unconstitutional, invalid or ineffective.

1 (b) If the application of any provision or provisions of this Code to any person, property or
2 circumstances is found to be unconstitutional, invalid or ineffective in whole or in part by any court of
3 competent jurisdiction, or other competent agency, the effect of such decision shall be limited to the
4 person, property or circumstances immediately involved in the controversy and the application of any
5 such provisions to other persons, properties and circumstances shall not be affected.

6 (c) This Section shall apply to this Code as it now exists and as it may exist in the future,
7 including all modifications thereof and additions and amendments thereto.

1 **ARTICLE 2: DEFINITIONS**

2 Sec. 1606. General.

3 Sec. 1607. Government Agencies and Redevelopment Plan.

4 Sec. 1609. Terminology.

5 **SEC. 1606. GENERAL.**

6 Officials and agencies referred to in this Code and in SMA are officials and agencies of the City
7 and County of San Francisco and the Agency, unless the contrary is either stated or implied.

8 Capitalized terms unless separately defined in this Code have the meanings and content set forth in the
9 Plan and Plan Documents.

10 **SEC. 1607. GOVERNMENT AGENCIES AND REDEVELOPMENT PLAN.**

11 (a) "Advisory Agency" means the Director of the City Department of Public Works.

12 (b) "Agency" means the Redevelopment Agency of the City and County of San Francisco.

13 (c) "Agency Housing Parcels" means the parcels to be retained by the Agency as designated
14 in the Disposition and Development Agreement for Hunters Point Phase I.

15 (d) "Agency Parcels" means, collectively, the Agency Housing Parcels, Community Facility
16 Parcels and Open Space, as defined herein.

17 (e) "Bureau of Engineering" means the City Bureau of Engineering of the Department of
18 Public Works.

19 (f) "City" means the City and County of San Francisco.

20 (g) "City agencies" means the City and, where appropriate, all City departments, agencies,
21 boards, commissions, and bureaus with subdivision or other permit, entitlement, review or approval
22 authority or jurisdiction over any major phase or project in the Hunters Point Shipyard Project Area or
23 any portion thereof

1 (h) "City regulations" shall mean (i) those City land use codes, including without limitation
2 its Building Code, Fire Code, Planning Code (to the extent applicable in accordance with the Hunters
3 Point Shipyard Redevelopment Plan Design for Development), Public Works Code, Subdivision Code,
4 Health Code, Environment Code and General Plan; (ii) those ordinances, rules, regulations and
5 official policies adopted thereunder, and (iii) all those ordinances, rules, regulations, official policies
6 and plans governing zoning, subdivisions and subdivision design, land use, rate of development,
7 density, building size, public improvements and dedications, construction standards, new construction
8 and use, design standards, permit restrictions, development fees or exactions, terms and conditions of
9 occupancy, or environmental guidelines or review, including those relating to hazardous substances,
10 pertaining to the Hunters Point Redevelopment Plan Area, as adopted and amended by the City from
11 time to time.

12 (i) "Clerk" means the Clerk of the Board of Supervisors for the City.

13 (j) "Community Facility Parcels" means the parcels retained by the Agency and designated
14 for ultimate disposition for community development or community facilities, as designated in the
15 Disposition and Development Agreement for Hunters Point Phase I, and as may be designated in
16 subsequent disposition and development agreements.

17 (k) "County," "City," "City and County," "Municipality" and "Local Agency" mean the City
18 and County of San Francisco.

19 (l) "County Surveyor," "County Engineer" and "City Engineer" mean the Director and his
20 staff.

21 (m) "Department of Building Inspection" and "DBI" mean the City Department of Building
22 Inspection.

23 (n) "Department of Public Works" means the City Department of Public Works.

24 (o) "Director" means the Director of the City Department of Public Works.

1 (p) "Governing Body," "Legislative Body" and "Board" mean the City Board of Supervisors.

2 (q) "Government agencies" means State, federal, regional or local governmental agencies,
3 other than City agencies, having or claiming jurisdiction over all or portions of the Hunters Point
4 Shipyards Project Area or aspects of its development.

5 (r) "Open Space" means the parcels retained by the Agency and designated for public
6 recreation and other open space uses, as designated in the Disposition and Development Agreement for
7 Hunters Point Phase I, and as may be designated in subsequent disposition and development
8 agreements.

9 (s) "Plan Documents" means the Plan and its implementing documents, including without
10 limitation, the City Regulations, this Code and the Subdivision Regulations adopted hereunder,
11 disposition and development agreements, owner participation agreements, and the design for
12 development.

13 (t) "Plan" means the Redevelopment Plan for Hunters Point Shipyards.

14 (u) "Planning Department" means the City Department of Planning.

15 (v) "Planning Director" shall mean the City Director of Planning.

16 (w) "Project Area" or "Hunters Point Shipyards Project Area" includes all of the Plan Area
17 as described in the Hunters Point Shipyards Redevelopment Plan.

18 (x) "Subdivider" or "applicant" shall mean the owner of real property, or the owner's
19 authorized agent or representative, who applies for, or obtains, approval to subdivide such real
20 property.

21 (y) "Subdivision" shall mean, in accordance with Government Code Section 66424 and
22 subject to the exclusions described in the SMA, including Government Code Section 66412, the division
23 of any improved or unimproved land, shown on the latest equalized County assessment roll as a unit or
24 as contiguous units, for the purpose of sale, lease or financing, whether immediate or future. Property
25

1 shall be considered as contiguous units, even if it is separated by roads, streets, utility easements or
2 railroad rights-of-way. Subdivision includes a condominium project, as defined in Section 1351(f) of
3 the California Civil Code or a community apartment project, as defined in Section 1351(d) of the
4 California Civil Code. Any conveyance of land to a governmental agency, public entity, public utility or
5 subsidiary of a public utility for rights-of-way shall not be considered a division of land for purposes of
6 computing the number of lots. Subdivision does not include a lot line adjustment.

7 **SEC. 1609. TERMINOLOGY.**

8 (a) "Application packet" shall mean the Tentative Map together with all documents,
9 statements and other materials that are required as attachments thereto.

10 (b) "Final Map" shall mean a map prepared in accordance with Chapter 2, Article 2 of
11 SMA and this Code, which map is designed to be placed on record in the office of the Recorder.

12 (c) "Improvement plan" shall mean an engineering plan or a set of engineering plans
13 showing the location and construction details of improvements.

14 (d) "Parcel Map" shall mean a map prepared in accordance with Chapter 2, Article 3 of
15 SMA and this Code, which map is designed to be placed on record in the office of the Recorder.

16 (e) "Soil engineer" shall mean a qualified and duly licensed engineer, experienced in
17 engineering geology, responsible for the soil engineering work outlined in this Code, including
18 supervision, analysis and interpretation of field investigation and laboratory tests for a specific project;
19 preparation of geological and soil engineering recommendations and specifications; and supervision of
20 grading construction work.

21 (f) "Standard Specifications" shall mean the 1986 Standard Plans and 1987 Standard
22 Specifications of the Department of Public Works, Bureau of Engineering, including any modifications
23 thereof as set forth in the Subdivision Regulations.

1 (g) "Tentative Map" shall mean a map made for the purpose of showing the design of a
2 proposed subdivision and the existing conditions in and around it; such a map need not be based upon
3 an accurate or detailed final survey of the property.

4 (h) "Vesting Tentative Map" shall mean a tentative map which has been filed, processed and
5 approved in accordance with the Vesting Tentative Map Statute, Government Code Section 66498.1 et
6 seq., and this Code and which shall have at the time of filing printed conspicuously on its face the
7 words "Vesting Tentative Map."

1 **ARTICLE 3: GENERAL PROCEDURAL PROVISIONS**

2 Sec. 1610. Advisory Agency.

3 Sec. 1611. Subdivision Regulations.

4 Sec. 1612. Exceptions.

5 Sec. 1612.1. Conveyancing or Finance Maps.

6 Sec. 1612.2. Lot Line Adjustments.

7 Sec. 1613. Notice and Hearing.

8 Sec. 1614. Appeals.

9 Sec. 1615. Fees.

10 **SEC. 1610. ADVISORY AGENCY.**

11 (a) The Director is hereby continued as the Advisory Agency for all purposes hereunder and
12 under the SMA.

13 (b) All maps, plans and reports required by this Code shall be filed with the Director.

14 **SEC. 1611. SUBDIVISION REGULATIONS.**

15 (a) The Director, with the assistance of other City Agencies, shall prepare and publish the
16 Hunters Point Shipyard Subdivision Regulations ("Subdivision Regulations") needed to implement and
17 supplement this Code in accordance with the SMA, this Code, and the Plan.

18 (b) Such Regulations shall be adopted or amended by the Director after holding a public
19 hearing. Prior to the decision of the Director to amend or adopt the Subdivision Regulations, the
20 Agency shall find such regulations consistent with the Plan.

21 **SEC. 1612. EXCEPTIONS.**

22 (a) Upon written application by the Subdivider, the Director, subject to the SMA, may
23 authorize exceptions, waivers or deferrals to any of the requirements set forth in this Code and in the
24 Subdivision Regulations.

1 (b) Before granting any such exception, waiver, or deferral, in whole or in part, the
2 Director must find:

3 (1) That the application of certain provisions of this Code or the Subdivision Regulations
4 would result in practical difficulties or unnecessary hardships affecting the property inconsistent with
5 the general purpose and intent of the Plan and Plan Documents;

6 (2) That the granting of the exception, waiver, or deferral will not be materially detrimental
7 to the public welfare or injurious to other property in the area in which said property is situated; and

8 (3) That the granting of such exception, waiver, or deferral will not be contrary to the Plan.

9 (c) In granting any such exception, waiver, or deferral, the Director shall designate the
10 conditions under which the exception is granted.

11 (d) The Director shall not grant any exceptions in violation of the SMA.

12 (e) The standards and requirements of this Code and the Subdivision Regulations shall,
13 where necessary, be modified by the Director where the Director finds such modifications are
14 necessary to assure conformity to and achievement of the standards and goals of the Plan.

15 (f) If the Director elects to hold a public hearing with respect to an application for
16 exception, waiver, or deferral, the Director shall give notice not less than 10 days and no more than 15
17 days prior to the hearing date as provided in Subsection (a) of Section 1613.

18 **SEC. 1612.1 CONVEYANCING OR FINANCE MAPS.**

19 Subdivider may file Subdivision or Parcel Maps for purposes of financing and conveyancing
20 only (hereinafter referred to as a "Transfer Map").

21 (a) When Subdivider submits a Tentative Map or Parcel Map application for a Transfer
22 Map, the proposed map shall have printed conspicuously on its face "FOR PURPOSES OF
23 FINANCING AND CONVEYANCING ONLY."

1 (b) A Transfer Map shall not be subject to any requirement or condition for the provision of
2 any infrastructure, as such infrastructure may be described in the Plan and Plan Documents, that will
3 be provided in connection with subsequent or concurrent City permits, subdivision or parcel maps and
4 improvement plans. An improvement agreement shall not be required in connection with a Transfer
5 Map.

6 (c) The Final or Parcel Map for a Transfer Map shall contain notes, restrictions, references
7 or conditions as approved by the City, which may, among other things, prohibit development on the
8 parcels absent compliance with the Plan and Plan Documents, and all other applicable City
9 regulations.

10 (d) No Transfer Map may be approved without Agency approval.

11 (e) Approval of a Transfer Map shall not be deemed to permit any development of, or
12 construction on, a parcel.

13 (f) The Director may waive certain submittal requirements for Tentative Maps for a
14 Transfer Map application in accordance with Section 1622(c) hereof.

15 **SEC. 1612.2 LOT LINE ADJUSTMENTS.**

16 "Lot line adjustment" shall have the meaning as described in Government Code Section 66412.
17 Applications for lot line adjustments shall be considered by the Director consistent with the provisions
18 of Government Code Section 66412.

19 **SEC. 1613. NOTICE AND HEARING.**

20 (a) The Director shall give notice in the following manner for each application for a
21 Tentative Map or for a Parcel Map for which a Tentative Map is not required and an application for an
22 exception, waiver, or deferral filed pursuant to Section 1612 if the Director elects to hold a hearing
23 under Section 1612(f).

1 (1) Notice of the Director's receipt of an application shall be published in at least one
2 newspaper of general circulation within the City and County of San Francisco.

3 (2) Notice of the Director's receipt of the application shall be mailed or delivered to each
4 local agency expected to provide or approve water, sewage, streets, roads, schools, or other essential
5 facilities or services to the project, whose ability to provide those facilities and services may be
6 significantly affected.

7 (3) Notice of the Director's receipt of the application shall be mailed or delivered to any
8 person who has filed a written request for notice with the Director's office.

9 (b) If the Director is required or elects to hold a public hearing with respect to an
10 application, he or she shall give notice not less than 10 days prior to the hearing date as provided in
11 Subsection (a) of this Section, including providing notice to any person that requested a hearing. No
12 public hearing shall be held until after government agencies and City agencies comments are received
13 or the time period for receiving such comments has run, whichever occurs first, and the Director has
14 provided a written report in accordance with Section 1629.

15 (c) All applications for a Tentative Map, or for a Parcel Map for which a Tentative Map is
16 not required, shall include, in addition to all other information required:

17 (1) A list of the names, assessor's lot and block numbers and mailing addresses of all those
18 shown in the last equalized assessment roll as owning property within 300 feet of the property proposed
19 to be subdivided.

20 (2) A 300-foot radius map delineating all the properties described in Subsection (c)(1).

21 (3) One set of stamped envelopes preaddressed to each of the listed property owners,
22 suitable for mailing notice of any hearing or appeal thereon. Blank Department of Public Works
23 envelopes will be furnished to a proposed Subdivider on request. Unused envelopes will be returned to
24 the proposed Subdivider on request.

1 (d) Any Department hearing required or permitted by this Code may, at the discretion of the
2 Director, be held jointly with the Department of Planning. The provisions of this Section shall be
3 superseded by those of any amendment to California Government Code Sections 65090 or 65091, or by
4 any provision of the SMA, should the amended provisions require additional notice.

5 (e) Applications for Tentative and Parcel Maps shall be processed in compliance with the
6 Plan, Plan Document, and California Government Code Sections 65920 to 65963.1 and any applicable
7 Government Code Section amendments.

8 **SEC. 1614. APPEALS.**

9 (a) The proposed Subdivider, or any person, may appeal to the Board from a final decision
10 of the Director approving, conditionally approving, or disapproving a Tentative Map, or a Parcel Map
11 for which a Tentative Map is not required. Any such appeal must be filed in writing with the Clerk of
12 the Board within 10 days of the date of the decision appealed, and must be accompanied by the fee
13 specified in this Code.

14 (b) The Director shall mail or deliver to the proposed Subdivider, and any person who owns
15 property within 300 feet of a proposed subdivision, notice of: (1) his or her decision, and the findings in
16 support of such decision, on any Tentative Map, or Parcel Map for which a Tentative Map is not
17 required, and of any conditions which may have been incorporated in a conditional approval; (2) the
18 right to appeal the Director's decision; and (3) the availability for examination of the Director's report.

19 (c) With respect to appeals under this Section, the Board shall schedule a hearing on the
20 appeal to be held within 30 days after the appeal has been filed, and shall give notice as provided in
21 Sections 1613(a)(1) and 1613(a)(2), and to the persons entitled to notice of the Director's decision
22 under Section 1614(b).

23 **SEC. 1615. FEES [RESERVED].**

1 ~~(a) Fees, payable to the Department of Public Works, shall be charged for checking~~
2 ~~and processing all maps, plans and reports, including all condominium maps and Parcel~~
3 ~~Maps, filed under this Code. Said fees shall consist of an initial payment in accordance with~~
4 ~~the estimated actual cost of checking the maps, plans and reports, together with~~
5 ~~investigations incidental thereto, and shall be paid before or at the time of filing a Tentative~~
6 ~~Map or a Parcel Map. Where initial payment is insufficient to compensate the actual cost~~
7 ~~incurred, an additional sum shall be charged to equal such actual cost. Fees for Parcel Maps,~~
8 ~~excepting condominium maps, which do not require the filing of a Tentative Map, and which~~
9 ~~do not involve street dedications or improvements, and for parcel map waivers shall be~~
10 ~~charged for checking and for processing in accordance with the City's Subdivision Code of~~
11 ~~general applicability. All such fees for Parcel Maps shall be paid at time of filing. Fees based~~
12 ~~on the actual cost of processing shall be charged to (1) the person requesting a certificate of~~
13 ~~compliance for processing and making a determination on the request, (2) the owner of the~~
14 ~~property who files a petition for initiating reversion to acreage proceedings for processing the~~
15 ~~petition and (3) the Subdivider for checking, processing and recording an amended map or~~
16 ~~certificate of correction.~~

17 ~~(b) A fee of \$250 shall be charged to the appellant to defray costs of an appeal~~
18 ~~under Section 1614 of this Code.~~

19 ~~(c) Payment of fees charged under this Code does not waive the fee requirements~~
20 ~~of other ordinances and rules and regulations pursuant thereto.~~

1 **ARTICLE 4: TENTATIVE MAPS**

2 Sec. 1620. Pre-Filing Conference.

3 Sec. 1621. Application Packet.

4 Sec. 1622. Tentative Map and Accompanying Documents.

5 Sec. 1624. Filing.

6 Sec. 1625. Referral to Other Agencies.

7 Sec. 1626. Time Limit for Agency Review.

8 Sec. 1627. Agency Reports.

9 Sec. 1628. Subdivision Conference.

10 Sec. 1629. Director's Consolidated Report.

11 Sec. 1630. Conditions.

12 Sec. 1631. Action: Advisory Agency's Decision.

13 Sec. 1632. General Plan and Redevelopment Plan Consistency Determination.

14 Sec. 1633. Vesting Tentative Maps.

15 Sec. 1633.1. Vesting Tentative Map.

16 Sec. 1633.2. Vesting Tentative Map Requirements.

17 Sec. 1633.3. Rights Conveyed.

18 Sec. 1633.4. Vesting Tentative Maps—Inconsistency with Ordinances and Other Standards.

19 Sec. 1634. Agency Review and Approval of Subdivision Maps.

20 **SEC. 1620. PRE-FILING CONFERENCE.**

21 Prior to filing a Tentative Map, the Subdivider may elect to submit to the Director preliminary
22 maps, plans and other data concerning a proposed subdivision. Within 14 days after the receipt of said
23 material, the Director will hold a conference with the Subdivider, Planning Department and any other
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1 interested agencies, including the San Francisco Redevelopment Agency, to discuss the proposed
2 subdivision. This procedure is optional and does not waive the requirements for filing a Tentative Map.

3 **SEC. 1621. APPLICATION PACKET.**

4 The initial action in connection with the making of any subdivision for which a Tentative Map is
5 required shall be the preparation of the application packet. Section 1622, and with respect to Vesting
6 Tentative Maps Sections 1633.1 and 1633.2, of this Code and the Regulations adopted thereunder
7 cover the preparation of the component parts of said application packet.

8 **SEC. 1622. TENTATIVE MAP AND ACCOMPANYING DOCUMENTS.**

9 (a) The Tentative Map shall be prepared by a qualified and duly licensed professional land
10 surveyor or civil engineer.

11 (b) The Tentative Map shall contain the following data, as appropriate, in sufficient detail
12 to enable the Director and other agencies to evaluate the proposed subdivision:

13 (1) Title, as required by the Subdivision Regulations;

14 (2) Explanatory notes, as required by this Code and the Subdivision Regulations; and

15 (3) Topographic map of the proposed subdivision and adjacent lands showing the existing
16 conditions and the proposed changes, as required by the Subdivision Regulations.

17 (c) The Tentative Map shall conform to the Subdivision Regulations regarding format and
18 contents. The Director, for Transfer Maps and where otherwise appropriate in accordance with the
19 Subdivision Regulations, may waive or defer Tentative Map requirements or may authorize deletion or
20 reduction of any Tentative Map requirements not required by the SMA on the determination that the
21 Tentative Map contains sufficient information to be evaluated adequately and preparing it in the
22 prescribed form would impose a hardship upon the Subdivider. Where requirements are waived or
23 deferred, appropriate conditions may be included on the Tentative Map for providing such waived or
24 deferred requirements.

1 (d) The Tentative Map shall be accompanied by the following documents, as provided in the
2 Subdivision Regulations:

3 (1) Statement. A written statement shall contain the following information:

4 (i) Existing use or uses of the property, including whether or not there are existing
5 tenancies and the conditions and terms thereof;

6 (ii) Description of the proposed subdivision, including, if known, the number of lots or units,
7 their sizes and intended uses, nature of the development, and the total area of the development
8 represented by each use;

9 (iii) Any improvements proposed to be constructed or installed including the source of water
10 supply and the sewage disposal proposed, and the tentative schedule for the start and completion
11 thereof;

12 (iv) Whether the Subdivider intends to file a Final Map or a Parcel Map;

13 (v) Description of exceptions or waivers that are requested; and

14 (vi) If the Subdivider plans to file multiple Final Maps on portions of the area covered by the
15 Tentative Map, the Subdivider shall submit a written notice to this effect.

16 (2) Environmental Evaluation Data. Data shall be supplied on the appropriate Planning
17 Department forms for an environmental evaluation or in appropriate format when necessary to satisfy
18 requirements for environmental review under the California Environmental Quality Act.

19 **SEC. 1624. FILING.**

20 (a) The application packet, together with the initial fee payment, shall be filed with the
21 Director.

22 (b) The date of filing shall be the date when a complete application packet has been
23 accepted by the Director.

1 (c) The Director shall determine whether an application packet is complete and notify the
2 Subdivider within 30 days of the date of the submittal of the application packet. If the Director
3 determines that the application packet is not complete, the notice to the Subdivider shall list all of the
4 information necessary to comprise a complete application.

5 **SEC. 1625. REFERRAL TO OTHER AGENCIES.**

6 Within three working days after a complete application packet has been filed with the Director,
7 the Director shall forward copies to the Agency, the Planning Department, the Bureau of Engineering,
8 the Department of Building Inspection, the City Attorney and other appropriate government agencies
9 and City agencies for their review.

10 **SEC. 1626. TIME LIMIT FOR AGENCY REVIEW.**

11 (a) The time limit for government agency and City agencies review shall be 30 days from
12 the date the Director determines that an application packet is complete.

13 (b) The time limit for government agency and City agencies review may be extended by
14 mutual consent of the Subdivider and the Director.

15 **SEC. 1627. AGENCY REPORTS.**

16 Each reviewing agency shall report, in writing, to the Director its findings on and
17 recommendation for approval, conditional approval or denial of an application packet subject to and in
18 accordance with the Plan and Plan Documents. The Subdivider may request from the Director, and
19 shall be provided with, any or all copies of such findings and recommendations. The Planning
20 Department's report shall include a finding on consistency with the General Plan. The Agency's report
21 shall include a finding of consistency with the Plan and Plan Documents.

22 **SEC. 1628. SUBDIVISION CONFERENCE.**

23 No later than five days after expiration of the review time limits set forth in Section 1626, the
24 Director at his or her discretion may hold a subdivision conference to discuss the map application.

1 unless the Subdivider has requested a conference or has filed a notice of intent to file multiple Final
2 Maps, in which case the conference is mandatory. Written notice of such conference shall be sent to the
3 Subdivider, and to all agencies that will be submitting or have already submitted a report on the
4 application packet.

5 **SEC. 1629. DIRECTOR'S CONSOLIDATED REPORT.**

6 (a) Whenever a subdivision conference is held, the Director shall prepare a written report
7 on the findings or recommendations discussed in the conference, attaching thereto copies of the reports
8 from, or comments made at the subdivision conference by, other agencies. A copy of said report shall
9 be sent to each participant in the subdivision conference. Said report shall be prepared by the Director
10 within five working days after the subdivision conference but in no event less than five days prior to any
11 public hearing on the subject map.

12 (b) Whenever a public hearing is required or the Director elects to hold a public hearing,
13 the Director shall provide to the Subdivider the Director's report or recommended findings and the
14 findings and recommendations received from the reviewing agencies. Said information or report shall
15 be submitted within five working days after expiration of the review time limits. Said information or
16 report shall be made available to the public prior to the public hearing. In the event a subdivision
17 conference is required, a public hearing shall be held after such conference, no earlier than five days
18 following preparation of the Director's report thereon, and within the time periods set forth in the SMA.

19 **SEC. 1630. CONDITIONS.**

20 (a) Conditions on approval of a Tentative Map, Vesting Tentative Map, or Parcel Map, or
21 improvement plans or agreement may relate wholly or in part to any improvements or structures
22 required pursuant to the Plan or Plan documents or which may be constructed within, or associated
23 with, the subdivision, as well as to the subdivision itself.

1 (b) Subject to Section 1612.1, conditions may be required to be fulfilled before or after such
2 filing of the related Final or Parcel Map. Where such conditions are to be fulfilled after filing of the
3 related Final Map, the Subdivider shall, where appropriate, enter into an improvement agreement and
4 furnish security for compliance with those conditions including, but not limited to, security satisfying
5 the requirements of California Government Code Section 66499, pursuant to the provisions of Article 6
6 and Article 8 of this Division.

7 (c) No conditions shall be imposed on a Tentative Map, Vesting Tentative Map or Parcel
8 Map or improvement plans or improvement agreement that are not consistent with, exceed the
9 limitations set forth in, or otherwise conflict with the Plan or Plan Documents.

10 (d) The provisions of this Code providing for Vesting Tentative Maps do not enlarge,
11 diminish, or alter the types of conditions which may be imposed on a development, nor in any way
12 diminish or alter the City's power to protect against a condition dangerous to the public health or
13 safety.

14 **SEC. 1631. ACTION: ADVISORY AGENCY'S DECISION.**

15 (a) Within 50 days after the filing of a complete application for the Tentative Map, unless
16 the time has been extended by mutual consent of the Subdivider and the Director, the Director shall
17 take action on the map application by approving, conditionally approving or disapproving the
18 Tentative Map. If the map is disapproved, the Director shall also state the reasons for disapproval.

19 (b) Copies of the Director's decision shall be sent to all agencies that submitted reports to
20 the Board and to the public as set forth in Section 1614.

21 (c) The City shall comply with all time limitations and requirements for processing
22 subdivision maps in the SMA, including, without limitation, those in Government Code
23 Section 66452.4.

1 **SEC. 1632. GENERAL PLAN AND REDEVELOPMENT PLAN CONSISTENCY DETERMINATION.**

2 (a) Whenever a property is to be subdivided, the Department of Planning shall report on the
3 question of consistency of the subdivision with the General Plan and the Redevelopment Agency shall
4 report on consistency with the Plan.

5 (b) The Director shall approve, conditional approve, or disapprove the proposed
6 subdivision, consistent with the SMA, subject to any decision on appeal by the Board of Supervisors.

7 (c) When the Department of Planning or the Agency finds, subject to any decision on appeal
8 by the Board of Supervisors, or when the Board of Supervisors finds, that a proposed subdivision will
9 be consistent with the Plan, Plan Documents or General Plan only upon compliance with certain
10 conditions, the Director shall incorporate said conditions in his or her conditional approval of the
11 proposed subdivision.

12 **SEC. 1633. VESTING TENTATIVE MAPS.**

13 **SEC. 1633.1 VESTING TENTATIVE MAP.**

14 (a) Whenever a provision of this Code requires that a Tentative Map or Parcel Map be
15 filed, the Subdivider may file instead a Vesting Tentative Map and Final Map.

16 (b) Except as otherwise provided in Sections 1633.2 through 1633.4 of this Code, a Vesting
17 Tentative Map shall be subject to the same procedures, requirements and other Code provisions as any
18 other Tentative Map.

19 **SEC. 1633.2 VESTING TENTATIVE MAP REQUIREMENTS.**

20 (a) In addition to meeting the requirements otherwise applicable to Tentative Maps, any
21 Subdivider applying for approval of a Vesting Tentative Map shall also, at the time a Vesting Tentative
22 Map application is filed:

23 (1) Have printed conspicuously on the face of the map the words "Vesting Tentative Map."

24 (2) Provide such additional information as required in Section 1333.2 of this Code.

1 **SEC. 1633.3 RIGHTS CONVEYED.**

2 (a) Approval of a Vesting Tentative Map shall confer a vested right to proceed with
3 development as set forth in Chapter 4.5 of the SMA, Section 66498.1 et seq.

4 (b) The right referred to in Subsection (a) shall expire if a Final Map is not approved before
5 expiration of the related Vesting Tentative Map under California Government Code Section 66452.6
6 and this Code. If a Final Map is approved, the development right referred to in Subsection (a) shall
7 continue during the following period of time:

8 (1) Two years from recording of the approved Final Map. Where several Final Maps are
9 recorded on various phases of a project covered by a single Vesting Tentative Map, this initial time
10 period shall begin for each when the Final Map for that phase is recorded. Where the City uses more
11 than 30 days to process a completed application for a grading permit or for design or architectural
12 review, or such other period of time as provided in the Plan Documents, this initial time period shall be
13 extended by the processing time, counted from the date the application was completed.

14 (2) An additional period of not more than one year, if the proposed Subdivider applies for
15 such an extension at any time before the expiration of the period provided in Subsection (b)(1), and if
16 the Department of Public Works determines that such extension will not prejudice the interests of the
17 public or other private parties. If the Department of Public Works does not act on an application for
18 extension within 40 days after receiving it, it shall be deemed disapproved. The proposed Subdivider
19 may appeal by filing a written appeal with the Clerk of the Board of Supervisors not later than 15 days
20 after the disapproval. Any such appeal shall be heard at the time and under the procedural rules then
21 applicable to appeals from denial of Tentative Maps.

22 (3) If the Subdivider submits a complete building or site permit application before the
23 expiration of the applicable period stated in Subsection (b)(1) or (b)(2), the period during which that
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1 application is being processed and the period of the life of any corresponding building or site permit,
2 or any extension thereof.

3 (4) If a Final Map is recorded based upon a Vesting Tentative Map and the development
4 rights under this Section expire, the Final Map remains in effect without those rights.

5 **SEC. 1633.4** VESTING TENTATIVE MAP — INCONSISTENCY WITH ORDINANCES AND OTHER
6 STANDARDS.

7 (a) Subsections 1633.1 through 1633.3 relate only to conditions and requirements imposed
8 by the City and do not affect the obligation of a Subdivider to comply with the conditions and
9 requirements of State or federal laws, regulations or policies.

10 (b) Notwithstanding any other provision of this Code, a property owner or his or her
11 designee may seek approvals or permits for development which depart from the ordinances, policies or
12 standards applicable under Section 1633.3(a), and the City may grant such approvals or issue such
13 permits to the extent consistent with the Plan and Plan Documents and permitted by otherwise
14 applicable City regulations.

15 **SEC. 1634.** AGENCY REVIEW AND APPROVAL OF SUBDIVISION MAPS.

16 (a) Notwithstanding any provision of the Subdivision Code to the contrary, a Tentative Map
17 shall not be deemed finally approved until the Agency in accordance with the Plan and Plan
18 Documents, reviews and approves the Tentative Map to ensure that it is consistent with the Plan and
19 the Plan Documents, including the Hunters Point Shipyard Phase 1 Infrastructure Development Plan,
20 the scope of development and the design for development. The Agency shall also have the right to
21 review any amendment to the Tentative Map, or a subsequent Tentative Map.

22 (b) The applicant shall submit copies of its application packet for a Tentative Map, and the
23 application packet for an amendment to a Tentative Map or a subsequent Tentative Map, to the Agency
24 when it submits the application packet to the Director. The Agency, in accordance with the Plan and
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1 Plan Documents, shall approve, disapprove or approve with conditions the Tentative Map, amendment
2 to the Tentative Map, or a subsequent Tentative Map within 30 days following the date the Director
3 determines that the application packet is complete, unless such time has been extended pursuant to
4 Section 1626 of the Subdivision Code. The Agency shall deliver the determination to the Director of
5 Public Works in writing, with a copy to the applicant.

6 (c) Notwithstanding any provision of the Subdivision Code to the contrary, in accordance
7 with the Plan and Plan Documents, a proposed Final Map or Parcel Map shall not be deemed finally
8 approved for recordation unless and until the Agency reviews and approves or is deemed to have
9 approved the proposed Final Map or Parcel Map. The Agency shall approve the proposed Final Map
10 or Parcel Map if: (i) development of the area covered by the proposed Final Map or Parcel Map is
11 consistent with the Plan and Plan Documents or project approvals issued by the Agency, if any; and
12 (ii) the conditions that were imposed upon approval of the Tentative Map to provide infrastructure
13 improvements consistent with the Plan and Plan Documents have been satisfied, or the performance of
14 such conditions is otherwise secured by an improvement agreement.

15 (d) The applicant shall submit copies of all proposed Final Maps or Parcel Maps to the
16 Agency at the same time such proposed Final Maps or Parcel Maps are filed with the Director. The
17 Agency shall, in accordance with the Plan and Plan Documents, approve, disapprove, or approve with
18 conditions the proposed Final Maps or Parcel Maps within 30 days following receipt of the complete
19 Final Map or Parcel Map from the applicant, by delivering a determination to the Director of Public
20 Works, with a copy to the applicant.

1 **ARTICLE 5: SUBDIVISION REQUIREMENTS**

2 Sec. 1635. Public Facilities.

3 Sec. 1635.1. Off- Site Improvements.

4 Sec. 1636. Utilities.

5 Sec. 1637. Beautification.

6 Sec. 1638. Parkland Dedication.

7 Sec. 1639. Easements.

8 Sec. 1640. Monuments.

9 **SEC. 1635. PUBLIC FACILITIES.**

10 (a) General. Public facilities listed in this Section shall (where provided) meet the design
11 and construction standards in the Plan, Plan Documents and the Hunters Point Shipyard Subdivision
12 Regulations consistent therewith.

13 (b) Streets.

14 (1) Dedicated Public Streets. A subdivision and each lot, parcel, and unit thereon shall
15 have direct access to a public right-of-way. Title to a new or widened public right-of-way shall be
16 conveyed to the City by proper deed either prior to approval of the Final Map or as provided in an
17 improvement agreement entered into pursuant to Section 1651.

18 (2) Private Streets. Easements for government facilities in private streets shall meet the
19 requirements of Section 1639 of this Code.

20 (c) Frontage Improvements. The frontage of each lot shall be improved to the geometric
21 section specified by the Director in accordance with the Plan, Plan Documents, including any
22 streetscape plan approved by the Agency and the street structural section, curbs, sidewalks, planting
23 areas, driveway approaches and transitions in accordance with the Subdivision Regulations.

1 (d) Pedestrian Ways. Pedestrian ways shall be required in accordance with the Plan and
2 Plan Documents.

3 (e) Sanitary and Drainage Facilities. The Subdivider shall provide sanitary and drainage
4 facilities consistent with the Plan and Plan Documents. When connected to City facilities, such
5 facilities will serve adequately all lots, dedicated areas and all other areas comprising the subdivision.

6 (f) Fire Protection. The Subdivider shall provide for the installation of fire hydrants and
7 other appurtenances and facilities needed for adequate fire protection consistent with the Plan and
8 Plan Documents.

9 (g) Street Lighting. The Subdivider shall provide street lighting facilities along all streets,
10 alleys and pedestrian ways consistent with the Plan and Plan Documents.

11 (h) Fencing. An approved fence may be required on parcels or lots within the subdivision
12 adequate to prevent unauthorized access between the subdivided property and adjacent properties.

13 (i) Other Improvements. Other improvements may be required including, but not limited to,
14 grading, dry utilities, open space parcel improvements, temporary fencing, signs, street lines and
15 markings, street trees and shrubs, street furniture, landscaping, monuments, bicycle facilities, and
16 smoke detectors, or fees in lieu of any of the foregoing, shall also be required as determined by the
17 Director in accordance with this Code, but only to the extent consistent with the Plan, Plan Documents,
18 and the General Plan.

19 **SEC. 1636. UTILITIES.**

20 The Subdivider shall provide or cause to be provided a water system, connected to the San
21 Francisco Public Utilities Commission's water distribution system as well as all other required public
22 faculties as set forth in the Plan and Plan documents. The Subdivider shall also provide electric, gas
23 and communication services connected to the appropriate public utility's distribution system.

1 **SEC. 1637. BEAUTIFICATION.**

2 (a) Undergrounding of Utilities. All new utility lines shall be undergrounded as specified in
3 Article 18 of the Public Works Code.

4 (b) Street Trees and Landscaping. Trees planted along a public street, within the right-of-
5 way, and all landscaping within said right-of-way shall conform to the requirements of the Plan, Plan
6 Documents and Article 16 of the Public Works Code to the extent consistent therewith. In the case of all
7 newly constructed subdivisions, the Subdivider shall provide street trees and landscaping conforming
8 to the policies of the General Plan, Plan and Plan Documents. Provisions shall be made for
9 maintenance of said trees.

10 (c) Open Areas on Private Property. When required pursuant to the Plan and Plan
11 Documents, the Subdivider shall provide for the landscaping of open areas on private property and
12 provision shall be made for the maintenance thereof. Such open areas shall be restricted to such use in
13 accordance with the Plan and Plan Documents.

14 **SEC. 1638. PARKLAND DEDICATION.**

15 Park and open space improvements and dedications shall be provided as required by the Plan
16 and Plan Documents, and in conformance with the standards set forth therein and subject to the
17 approval of the Director.

18 **SEC. 1639. EASEMENTS.**

19 Easements for City utilities and City facilities, such as sanitary and drainage facilities, fire
20 protection facilities and City-owned street lighting facilities shall be for the use of such governmental
21 facilities, with the right of immediate access to the utilities and facilities by the City.

22 **SEC. 1640. MONUMENTS.**

23 (a) The location and installation of survey monuments shall conform to the standards in the
24 Subdivision Regulations. When such monuments are "tied" to the City or State monuments, for which
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1 coordinates of the California Coordinate System are available, the corresponding coordinates for such
2 monuments shall be determined and recorded.

3 (b) The location of survey monuments shall be shown on the Final Map. In the event all
4 survey monuments are not installed prior to filing of the Final Map or Parcel Map a monument bond
5 shall be filed at that time.

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1 **ARTICLE 6: IMPROVEMENT REQUIREMENTS**

2 Sec. 1645. General.

3 Sec. 1646. Improvement Plans.

4 Sec. 1647. Construction.

5 Sec. 1648. Failure to Complete Improvements Within Agreed Time.

6 Sec. 1649. Inspection and Testing Fees.

7 Sec. 1649.1. Revisions to Approved Plans.

8 Sec. 1651. Improvement Agreement.

9 Sec. 1651.1. Completion of Improvements.

10 Sec. 1651.2. Acceptance of Improvements.

11 **SEC. 1645. GENERAL.**

12 (a) The Subdivider shall provide for the construction and installation of all public
13 improvements in the subdivision in accordance with the Plan and Plan Documents. The term "public
14 improvements" shall mean all improvements required pursuant to Article 5 of this Code, the Plan and
15 Plan Documents, and any additional improvements for the benefit of the public required as a condition
16 of approval of a Tentative Map, consistent with the Plan and Plan Documents.

17 (b) Except for Transfer Maps that are governed by Sections 1612.1 and 1651.1(c), the
18 Subdivider shall enter into an improvement agreement pursuant to Section 1651 whenever required
19 public improvements have not been completed prior to the filing of the Final Map.

20 (c) Notwithstanding any provision of this Code or the Public Works Code to the contrary, a
21 Subdivider or applicant may request from the Director a street improvement permit to initiate the
22 construction of public improvements independent of or as part of the approval of a Transfer Map, Final
23 Map, or Parcel Map. Said permit shall comply with the applicable provisions of this Code, including,
24 but not limited to, Articles 5, 6, and 8 in regard to the submittals, design, review, approval,
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1 documentation, construction, security, and acceptance for said public improvements, including
2 associated improvement plans. In addition, all such permits shall comply with the provisions of Public
3 Works Code Sections 2.3.1 et seq., if such provisions are applicable to the work contemplated under the
4 permit. Fees for said permits shall be according to the Public Works Code Sections 2.1 et seq. unless
5 modified by the Plan or Plan Documents.

6 **SEC. 1646. IMPROVEMENT PLANS.**

7 (a) Following approval of the Tentative Map and prior to filing of the Final Map, the
8 Subdivider's engineer shall submit grading and construction plans for any required public
9 improvements to the Director for approval.

10 (b) Improvement plans including grading plans and an erosion control plan, as appropriate,
11 shall be prepared under the direction of a qualified and duly licensed professional civil engineer
12 registered in the State of California.

13 (c) Improvement plans shall conform to the Subdivision Regulations regarding format, size
14 and contents.

15 (d) Any specifications supplementing the Standard Specifications shall be considered a part
16 of the improvement plans.

17 (e) The improvement plans shall reflect the public improvement required under the Hunters
18 Point Phase 1 Infrastructure Development Plan ("Phase 1 Infrastructure Plan"), as set forth in the
19 Plan and Plan Documents for Phase 1. The Phase 1 Infrastructure Plan may be amended or modified
20 only by a written instrument executed by City and Agency, with the written consent of the Developer
21 Representative, as defined in Hunters Point Shipyard Interagency Cooperation Agreement for Phase 1.
22 The Developer Representative's consent shall not be unreasonably withheld, conditioned or delayed.

23 (1) The Mayor or his or her designee and the Director (or any successor City officer
24 as designated by law) shall have the authority to consent to any non-material amendments or other

1 modifications to the Phase I Infrastructure Plan, after consultation with the directors of any affected
2 City Agencies. For purposes hereof, "non-material changes" shall mean any change which does not
3 materially increase the costs or liabilities of the City, or does not materially decrease the time periods
4 required for review or approval by any City agency of permits, approvals, agreements and entitlements
5 in connection with the implementation of the Plan and Plan Documents.

6 (2) Material amendments to the Phase I Infrastructure Plan that would materially
7 alter the obligations of the City agencies or principal benefits as provided in this Section shall require
8 the approval of the Board of Supervisors, by resolution.

9 (f) The Director shall act upon and review improvement plans within the time periods
10 specified in Section 66456.2 of the SMA; provided, however, that no improvement plans submission
11 shall be deemed complete for filing until the subdivider has obtained approval of the improvement
12 plans pursuant to Article 31 of the Health Code. The Director shall send a copy of the improvement
13 plans to the Agency for its review. The Director's review of the improvement plans shall conform with
14 the Plan and Plan Documents. This time limit may be extended by mutual agreement.

15 **SEC. 1647. CONSTRUCTION.**

16 (a) No construction of public improvements shall commence until improvement plans have
17 been approved by the Director and appropriate City permits have been issued. Prior to issuance of any
18 such permits, the City shall obtain easements from the Subdivider or third parties to allow for the City
19 to complete construction of public improvements on private property should the Subdivider fail to do so
20 and to allow for public use, if necessary, prior to City acceptance of such public improvements. Also,
21 prior issuance of any such permits, the City shall obtain an irrevocable offer of dedication of private
22 property in fee title from the Subdivider or third parties where said property is designated for use as
23 future public right-of-way in the Plan and Plan Documents. The City, at is option, shall obtain an
24 irrevocable offer of dedication of private property in fee title from Subdivider or third parties where

1 public improvements will be constructed on said property. In addition, City also shall obtain from
2 Subdivider an irrevocable offer of dedication of any public improvements constructed pursuant to the
3 Plan, Plan Documents, and this Code.

4 (b) Construction of public improvements that are to be accepted by the City as public
5 improvements or for public maintenance and liability purposes shall be subject to inspection by the
6 Director. The Subdivider is responsible for paying the applicable engineering inspection fee as
7 specified in the Public Works Code.

8 (c) Any work done by the Subdivider prior to issuance of appropriate City permits or
9 approval of improvement plans, including changes thereto, or without the inspection and testing
10 required by the Director is subject to rejection. Such work shall be deemed to have been done at the
11 risk and peril of the Subdivider.

12 (d) The design and layout of all required improvements, both on-site and off-site, private
13 and public, shall conform to the Plan, Plan Documents, the applicable provisions of City regulations
14 and Tentative Map conditions consistent therewith.

15 (e) Installation of Underground Facilities. All underground facilities including sanitary and
16 drainage facilities and excepting survey monuments installed in streets, alleys or pedestrian ways shall
17 be constructed, by the Subdivider and inspected and approved by the Director, prior to the surfacing of
18 such street, alley or pedestrian way. Service connections for all underground utilities and sewers shall
19 be laid to such length as will in the Director's opinion obviate disturbing the street, alley, or pedestrian
20 way improvements when service connections are completed to properties in the subdivision.

21 **SEC. 1648. FAILURE TO COMPLETE IMPROVEMENTS WITHIN AGREED TIME.**

22 The improvement agreement shall include provisions consistent with the Plan and Plan
23 Documents and this Code regarding extensions of time and remedies when improvements are not
24 completed within the agreed time.

1 **SEC. 1649. INSPECTION AND TESTING FEES [RESERVED]**

2 (a) ~~The actual costs of inspecting the construction of improvements under~~
3 ~~Section 1647(b) of this Code shall be paid by the Subdivider.~~

4 (b) ~~The actual costs of testing the materials incorporated in the improvements under~~
5 ~~Section 1647(b) of this Code shall be paid by the Subdivider.~~

6 **SEC. 1649.1 REVISION TO APPROVED PLANS.**

7 (a) Requests by the Subdivider for revisions to the approved improvement plans shall be
8 submitted in writing to the Director and shall be accompanied by drawings showing the proposed
9 revision. If the revision is acceptable to the Director and the Agency and consistent with the Plan, Plan
10 Documents and Tentative Map, the Director shall initial the revised plans. Construction of any
11 proposed revision shall not commence until revised plans have been received and approved by the
12 Director.

13 **SEC. 1651. IMPROVEMENT AGREEMENT.**

14 (a) General. This Section shall only apply to public improvements that have not been
15 completed or conditions that have not been fulfilled prior to filing a Parcel or Final Map. An
16 agreement (the "improvement agreement") shall be approved by the Director, approved as to form by
17 the City Attorney, and executed by the Director on behalf of the City. The improvement agreement shall
18 be consistent with the Plan and Plan Documents and shall provide for:

19 (1) Construction of all public improvements required pursuant to the Plan, Plan
20 Documents, this Code, and conditions imposed on the Tentative Map or Parcel Map consistent
21 therewith, including any required off-site improvements, within the time specified by Section 1651.1;

22 (2) Satisfaction of conditions precedent to the transfer of title to the City of all land and
23 improvements required to be dedicated to or acquired by the City, if the City elects to defer transfer of
24 title until after the public improvements have been completed consistent with the Plan and Plan
25

1 Documents, including any approved title exceptions as defined therein, which are or shall be specified
2 herein;

3 (3) Payment of inspection fees in accordance with applicable City regulations, consistent
4 with the Plan and Plan Documents;

5 (4) Improvement security as required by Section 1670;

6 (5) Maintenance and repair of any defects or failures of the required public improvements,
7 and to the extent feasible removing their causes, prior to acceptance of the public improvements by the
8 City or Agency;

9 (6) Release and indemnification of the City from all liability incurred in connection with the
10 construction of public improvements and payment of all reasonable attorneys' fees that the City may
11 incur because of any legal action or other proceeding arising from the construction, except release and
12 indemnification disallowed under the SMA or any other State or federal law pursuant to the procedures
13 provided in the SMA;

14 (7) Payment by Subdivider of all costs and reasonable expenses and fees, including
15 attorneys' fees, incurred in enforcing the obligations of the improvement agreement;

16 (8) Any other deposits, reimbursements, fees or conditions as required by City regulations
17 consistent with Plan and Plan Documents, and as may be required by the Director;

18 (9) Any other provisions required by the City as reasonably necessary to effectuate the
19 purposes and provisions of the SMA and this Code in accordance with the Plan and Plan Documents.

20 (b) Any improvement agreement, contract or act required or authorized by the SMA or this
21 Chapter for which security is required, shall be secured in accordance with Section 66499 et seq. of the
22 SMA and Article 8 of this Division.

1 **SEC. 1651.1 COMPLETION OF IMPROVEMENTS.**

2 (a) With the exception of Transfer Maps, which are governed by Sections 1612.1 and
3 1651.1(c) hereof, the public improvements for subdivisions of five or more parcels which are not
4 otherwise required to be completed prior to recordation of a Final Map, shall be completed by the
5 Subdivider within the time specified in an improvement agreement which is consistent with the Plan
6 and Plan Documents.

7 (b) With the exception of Transfer Maps, which are governed by Sections 1612.1 and
8 1651.1(c) hereof, the completion of public improvements for subdivisions of four or fewer parcels
9 which are not otherwise required to be completed prior to recordation of a Parcel Map or Final Map
10 may be deferred until a permit or other grant of approval for the development of any parcel within the
11 subdivision is applied for, unless the completion of the public improvements is found to be necessary
12 for public health or safety or for the orderly development of the surrounding area, in which case the
13 improvement agreement shall specify a time for completion. If any required public improvements are
14 not completed at the time of recordation of a Parcel Map or Final Map for four or fewer parcels, an
15 improvement agreement is required pursuant to Section 1651. This finding shall be made by the
16 Director, after consultation with appropriate City agencies. The specified date for completion of the
17 public improvements, when required, shall be stated in the improvement agreement. Public
18 improvements shall be completed in accordance with the improvement agreement.

19 (c) No public improvements shall be required to be completed in connection with Transfer
20 Maps. For all other subdivisions, only on-site public improvements and those off-site public
21 improvements necessary to provide connections to the on-site improvements and those public
22 improvements required by the Plan or Plan Documents shall be required.

23 (d) Completion dates may be extended by the Director according to the following
24 procedures:

1 (1) The Subdivider must request an extension in writing, stating adequate evidence to justify
2 the extension, by letter to the Director. The request shall be made not less than 30 days prior to
3 expiration of the improvement agreement. The Director may grant such extensions, subject to the terms
4 of the improvement agreement.

5 (2) The Director may condition approval of an extension agreement upon the following:

6 (i) Revised improvement construction estimates to reflect current improvement costs as
7 approved by the Director;

8 (ii) Increase of improvement securities in accordance with revised construction estimates;

9 (iii) Inspection fees may be increased to reflect current construction costs but shall not be
10 subject to any decrease or refund; and

11 (iv) Conditions that the Director deems necessary to assure the timely completion of public
12 improvements.

13 (3) If authorized by the Director, the Subdivider shall enter into an improvement agreement
14 extension ("extension agreement") with the City. The extension agreement shall be approved by the
15 Director and the City Attorney, and executed by the Director, the Subdivider.

16 (4) The costs incurred by the City in reviewing and processing the extension agreement
17 shall be paid by the Subdivider at actual cost.

18 (e) Should the Subdivider fail to complete the public improvements - within the specified
19 time, or correct all deficiencies within the time specified for completion, the City may, by resolution of
20 the Board of Supervisors and at its option, cause any or all uncompleted public improvements to be
21 completed and all uncorrected deficiencies to be corrected, and the Subdivider and parties executing
22 the security or securities shall be firmly bound for the payment of all necessary costs.

23 (f) As-Built Plans. Upon completion of the public improvements, the Subdivider shall
24 submit to the Director a reproducible set of as-built improvement plans.

1 **SEC. 1651.2 ACCEPTANCE OF IMPROVEMENTS.**

2 (a) General. With respect to all subdivisions, when any deficiencies in the required public
3 improvements have been corrected, as-built improvement plans submitted, and the City Engineer, upon
4 written request from the Subdivider, issues a Notice of Completion, the completed public improvements
5 shall be considered by the Director for acceptance.

6 (b) Acceptance. If the public improvements have been completed to the satisfaction of the
7 Director and are ready for their intended use, the Director shall provide the Board of Supervisors with
8 a written certificate to that effect, and the public improvements may be accepted by the Board of
9 Supervisors, by ordinance, subject to the provisions of San Francisco Administrative Code
10 Section 1.52. Acceptance of the improvements shall imply only that the improvements have been
11 completed satisfactorily, are ready for their intended use, and that public improvements have been
12 accepted for public use.

1 **ARTICLE 7: FINAL MAPS AND PARCEL MAPS**

2 Sec. 1655. Time Limit for Submittal.

3 Sec. 1655.1. Final Maps Showing Only Portions of Tentative Map.

4 Sec. 1656. Final Map.

5 Sec. 1657. Certificates and Statements on Final Map.

6 Sec. 1659. Parcel Map.

7 Sec. 1660. Check Prints.

8 Sec. 1661. Map Check.

9 Sec. 1662. Filing.

10 Sec. 1663. Submittal to Board.

11 Sec. 1664. Recordation.

12 Sec. 1665. Correction and Amendments of Map.

13 **SEC. 1655. TIME LIMIT FOR SUBMITTAL.**

14 Within 36 months after the approval of the Tentative Map application or preliminary Parcel
15 Map application, unless such time has been extended upon approval of the Tentative Map or pursuant
16 to Government Code Section 66452.6, the Final Map or Parcel Map shall be filed with the Director.

17 **SEC. 1655.1 FINAL MAPS SHOWING ONLY PORTIONS OF TENTATIVE MAP.**

18 (a) General. Multiple final maps relating to an approved or conditionally approved Tentative
19 Map may be filed prior to the expiration of the Tentative Map if, in addition to all other requirements of
20 this Code pertaining to Final Maps, a Subdivider files a notice pursuant to Section 1622(d)(1)(vi) or,
21 after filing of the Tentative Map, the Subdivider and Director (after consulting with the Agency) concur
22 in the filing of multiple Final Maps. A Subdivider filing multiple Final Maps must obtain approval of
23 the Director pursuant to Subsection (b) of this Section in order to obtain the certificate required by
24 Section 1657.

1 (b) The Director shall approve a Final Map which is in compliance with the conditions of the
2 Tentative Map, but which shows only a portion of the Tentative Map, unless any one of the following
3 conditions occurs:

4 (1) The Director finds:

5 (i) That it will not be feasible from an engineering standpoint to construct the public
6 improvements required for the areas shown on the Final Map or the Final Map is inconsistent with the
7 SMA; or

8 (ii) That construction of the public improvements shown in the proposed Final Map would
9 not provide adequate access to the area shown on the Final Map unless additional street or easement
10 dedications, or public improvements as shown on the General Plan or in the Plan or Plan Documents,
11 are provided, or other reasonable conditions, not in conflict with the Plan or Plan Documents, are
12 imposed.

13 (2) The Director, or in the event of a hearing by the Agency pursuant to Subsection (d) below,
14 the Agency finds that development of the uses authorized within the Final Map area at that time would
15 not promote orderly development consistent with the General Plan, Plan and Plan Documents unless
16 additional street or easement dedications, or public improvements as shown on the Tentative Map are
17 provided, or other reasonable conditions, not in conflict with the Plan or Plan Documents, are
18 imposed.

19 (c) The Director shall make a determination pursuant to Subsection (b) within 40 days
20 following submittal of the Final Map or Parcel Map.

21 (d) If the Director refuses to approve for recording a Final Map showing only a portion of a
22 Tentative Map, the Director shall provide the applicant with written findings in support of the
23 determination. The Director's refusal to approve a phased Final Map may be appealed to the Agency,
24 and then, if necessary, to the Board, for a determination of whether the Phased Final Map is consistent
25

1 with the SMA, the Tentative Map, the Plan and Plan Documents, provided, however, that any decision
2 by the Agency regarding consistency with the Plan shall be final.

3 **SEC. 1656. FINAL MAP.**

4 (a) The Final Map shall consist of the title sheets and map sheets.

5 (b) The title sheets shall contain the following data:

6 (1) The title, consisting of the name of the subdivision and the location;

7 (2) A general description of all the property being subdivided by references to recorded
8 deeds or to recorded maps;

9 (3) Certificates, affidavits and acknowledgments; and

10 (4) General information including a key map when there is more than one map sheet.

11 (c) The map sheets shall contain the following data, in sufficient detail so that the sale,
12 transfer and description of real property may be accomplished by reference to the Final Map and that
13 all public improvements, properties and easements may be determined as to location, extent and
14 condition:

15 (1) Title;

16 (2) Explanatory and description notes; and

17 (3) Map.

18 (d) The Final Map shall conform to the requirements of Chapter 2, Article 2 of SMA and to
19 the Subdivision Regulations regarding detailed format and contents.

20 **SEC. 1657. CERTIFICATES AND STATEMENTS ON FINAL MAP.**

21 (a) In addition to the certificates required by SMA, the following certificates shall be on the
22 Final Map.

23 (1) City Attorney's certificate;

24 (2) Advisory Agency's certificate;

1 (3) Certificate of Improvement Agreement. Whenever the conditional approval of the
2 application packet includes conditions which are to be met after the recordation of the Final Map, a
3 certificate signed by the Director evidencing that an improvement agreement has been entered into
4 between the Subdivider and the City shall be required; and

5 (4) Certificate of Approval of Multiple Final Maps. Where the Final Map shows only a
6 portion of the Tentative Map, then a certificate signed by the Director pursuant to Section 1655.2 shall
7 be required.

8 (b) The Director may require other notes, restrictions, references or requirements to be
9 indicated on a Final Map.

10 **SEC. 1658. PARCEL MAP.**

11 (a) The requirements of Subsection (c) of Section 1656 of this Code shall apply to Parcel
12 Maps.

13 (b) The Parcel Map shall conform to the requirements of Chapter 2, Article 3 of SMA and to
14 the Subdivision Regulations regarding detailed format and contents.

15 (c) The Director may require other notes, restrictions, references or requirements to be
16 indicated on a Parcel Map.

17 **SEC. 1659. CHECK PRINTS.**

18 (a) Prior to filing of the Final Map or Parcel Map, the Subdivider shall submit to the
19 Director:

20 (1) Prints of the Final Map sheets or the Parcel Map sheets;

21 (2) A preliminary title report;

22 (3) Traverse sheets, showing the mathematical closure of the exterior boundaries around
23 the subdivision, of each lot boundary in the subdivision, and of boundaries of easements and of
24 dedicated rights-of-way.

1 (4) A written statement indicating how each Tentative Map condition has been satisfied.

2 **SEC. 1660. MAP CHECK.**

3 (a) The Director shall check the prints of the Final Map or the Parcel Map to determine if it
4 substantially conforms to the approved Tentative Map, this Code and SMA.

5 (b) Within 14 days after submittal, the Director shall return a set of the submitted prints,
6 noting therein any required corrections, to the Subdivider's engineer.

7 **SEC. 1661. FILING.**

8 (a) After the check prints have been approved by the Director, the Subdivider shall file with
9 the Director:

10 (1) The Final Map or Parcel Map, corrected to its final form, together with the copies
11 specified in the Subdivision Regulations;

12 (2) The bonds or other security and approved improvement agreement;

13 (3) When applicable, deeds conveying all streets in the subdivision to the City and deeds
14 granting easements for sewers, drains and pedestrian walkways which are not dedicated on the map;

15 (4) Evidence of title;

16 (5) The recording fee and evidence that all fees required by this Code have been paid; and

17 (6) The corrected Preliminary Soil Report, when required.

18 **SEC. 1662. SUBMITTAL TO BOARD.**

19 (a) After obtaining the required certificates on the Final Map, or on the Parcel Map when
20 dedications are included therein, the County Surveyor shall submit said map and the other documents
21 to the Director.

22 (b) After determining that all requirements of SMA and this Code have been met, the
23 Director shall endorse the Final Map or Parcel Map and file the same, together with the other
24 documents, with the Clerk.

1 **SEC. 1663. RECORDATION.**

2 (a) After approval of a Final Map or Parcel Map by the Board, the Clerk, or his or her
3 designee, shall file said map with the Recorder.

4 (b) After signing a Parcel Map, when no dedications are included therein, the Director shall
5 file said map with the Recorder.

6 (c) No Final Map or Parcel Map for a subdivision governed by this Code shall be recorded
7 unless said Map has been approved by the Director or by the Board as required herein.

8 **SEC. 1664. CORRECTION AND AMENDMENTS OF MAP.**

9 (a) Requirements. After a Final or Parcel Map's recorded in the office of the Recorder, it
10 may be amended administratively, without public hearing, by a Certificate of Correction as to
11 Subparagraphs (1) to (6) below, and by an amending map and public hearing as to Subparagraph (7)
12 below:

13 (1) To correct an error in any course or distance shown thereon;

14 (2) To show any course or distance that was omitted therefrom;

15 (3) To correct an error in the description of the real property shown on the map;

16 (4) To indicate monuments set after the death, disability or retirement from practice of the
17 engineer or surveyor charged with responsibility for setting monuments;

18 (5) To show the proper location or character of any monument which has been changed in
19 location or character, or originally was shown at the wrong location or incorrectly as to its character;

20 (6) To correct any other type of map error or omission as approved by the Director, which
21 does not affect any property right. Errors and omissions may include, but not be limited to, lots and
22 numbers, acreage, street names and identification of adjacent record maps. Error does not include
23 changes in courses or distances from which an error is not ascertainable from the data shown on the
24 Final or Parcel Map;

1 (7) To make modifications when there are changes which make any or all of the conditions
2 of the Map no longer appropriate or necessary and when the modifications do not impose any
3 additional burden on the present fee owner of the property, and if the modifications do not alter any
4 right, title or interest in the real property reflected on the recorded map, and the Director finds that the
5 map as modified conforms to the provisions of Section 66474 of the SMA. Such modification shall
6 require an amending map and shall be set for public hearing by the Director according to the
7 procedures established for a hearing on the Tentative Map. The Director shall confine the hearing to
8 consideration of, and action on, the proposed modification.

9 (b) Form and Contents. The amending map or certificate of correction shall be prepared
10 and stamped by a registered civil engineer or licensed land surveyor. The form and contents of the
11 amending map shall conform to the requirements for a Final Map, or a Parcel Map as provided in this
12 Code and the SMA. The certificate of corrections shall set forth in detail the corrections made and
13 show the names of the present fee owners of the property affected by the correction.

14 (c) Submittal and Approval by Director. The amending map or certificate of correction,
15 complete as to final form, shall be submitted to the Director for review and approval. The Director
16 shall examine the amending map or certificate of correction, and if the only changes made are those in
17 Subsection (a), this fact shall be certified on the amending map or certificate of correction.

18 (d) Filing with Recorder. The amending map or certificate of correction certified by the
19 Director shall be filed in the office of the Recorder in which the original map was filed. Upon such
20 filing, the Recorder shall index the names of the fee owners and the appropriate subdivision
21 designation shown on the amending map or certificate of correction in the general index and map index
22 respectively. The original map shall be deemed to have been conclusively so corrected, and shall
23 impart constructive notice of all the corrections in the same manner as though upon the original map.

1 ~~(e) Fee. The fee for checking, processing and recording the amended map or~~
2 ~~certificate of correction shall be as provided in Section 1615.~~

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1 **ARTICLE 8: SECURITY, BONDS, TAXES**

2 Sec. 1670. Security for Improvements.

3 Sec. 1671. Monument Bonds.

4 Sec. 1672. Payment of Taxes and Liens.

5 **SEC. 1670. SECURITY FOR IMPROVEMENTS.**

6 (a) The requirements of this Section apply to all improvement agreements.

7 (b) No Final Map or Parcel Map shall be signed by the Director or recorded until all
8 improvement securities required by this Article in the form prescribed by the City pursuant to
9 Government Code Section 66499 et seq., have been received and approved.

10 (c) A performance bond or other acceptable security as provided in Section 66499 of the
11 Government Code in the amount of 100 percent of the estimated cost of completion of the construction,
12 as determined by the Director, or installation of all public improvements, as determined by the
13 Director, shall be required of all subdivisions to secure satisfactory performance of those obligations.
14 As a guarantee of payment for the labor, materials, equipment and services required, a payment bond
15 or other acceptable security shall be required for 50 percent of the estimated cost of completion of
16 unfinished public improvements as determined by the Director. For purposes of the preceding
17 sentences, the "estimated cost of completion" shall include all costs of remediating any hazardous
18 materials as necessary to permit completion of the required public improvements, unless those costs
19 are otherwise secured as provided in the Plan and Plan Documents.

20 (d) The security shall be released or reduced upon completion of construction as follows:

21 (1) The security shall be reduced to 10 percent of the original amount for the purpose of
22 guaranteeing repair of any defect in the improvements which occurs within one year of when: (i) the
23 public improvements have been completed to the satisfaction of the Director; and (ii) the Clerk of the
24 Board of Supervisors certifies that no claims by any contractor, subcontractor or person furnishing

1 labor, materials or equipment for the required public improvements have been filed against the City
2 prior to or within a 100-day period following completion of the public improvements.

3 (2) If any claims by any contractor, subcontractor or person furnishing labor, materials or
4 equipment to the Subdivider have been filed against the City, then the performance security shall only
5 be reduced to an amount equal to the amount of all such claims filed or to 10 percent of the original
6 amount whichever is greater.

7 (3) The security may be reduced in conjunction with completion of a portion of the public
8 improvements to the satisfaction of the Director, to an amount determined by the Director; however, in
9 no event shall the amount of the security be reduced below the greater of (i) the amount required to
10 guarantee the completion of the remaining portion of public improvements and any other obligation
11 imposed by the SMA, this Code or the improvement agreement; or (ii) below 10 percent of the original
12 amount of the security.

13 (4) The security shall be released when all of the following have occurred:

14 (i) One year has passed since the date of acceptance by the Board of Supervisors, or one
15 year has passed since the date that all deficiencies that the Director identifies in the required public
16 improvements have been corrected or waived in writing; and

17 (ii) If any claims identified in Subsection (d)(1)(ii) have been filed against the City, all such
18 claims have been satisfied or withdrawn, or otherwise secured.

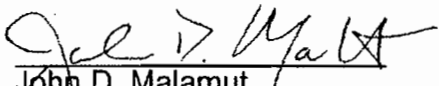
19 **SEC. 1671. MONUMENT BONDS.**

20 As a guarantee of good faith to furnish and install the required survey monuments and to pay
21 the Subdivider's engineer or surveyor for said work, the Subdivider shall furnish a corporate surety
22 bond or other acceptable security for an amount equal to 100 percent of the estimated cost of such
23 work. Such work shall consist of satisfactorily furnishing and installing the said survey monuments and
24 of accurately fixing exact survey points thereon.

1 **SEC. 1672. PAYMENT OF TAXES AND LIENS.**

2 Prior to recordation of a Final Map or Parcel Map, the Subdivider shall comply with all
3 applicable provisions governing taxes and assessments as set forth in Sections 66492, 66493 and 66494
4 of the SMA and any amendments thereto.

5
6 APPROVED AS TO FORM:
7 DENNIS J. HERRERA, City Attorney

8 By: 
9 John D. Malamut
Deputy City Attorney

10 RECOMMENDED:
11 DEPARTMENT OF PUBLIC WORKS

12
13 By: 
14 Edwin M. Lee
Director of Public Works



City and County of San Francisco

City Hall
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102-4689

Tails

Ordinance

File Number: 041544

Date Passed:

Ordinance amending the San Francisco Subdivision Code by adding the Hunters Point Shipyard Subdivision Code, Division 3, Article 1-8, Sections 1600 et seq. and making environmental findings.

December 7, 2004 Board of Supervisors — PASSED ON FIRST READING

Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

Noes: 2 - Daly, Gonzalez

December 14, 2004 Board of Supervisors — FINALLY PASSED

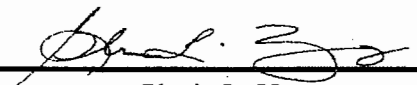
Ayes: 9 - Alioto-Pier, Ammiano, Dufty, Elsbernd, Ma, Maxwell, McGoldrick,
Peskin, Sandoval

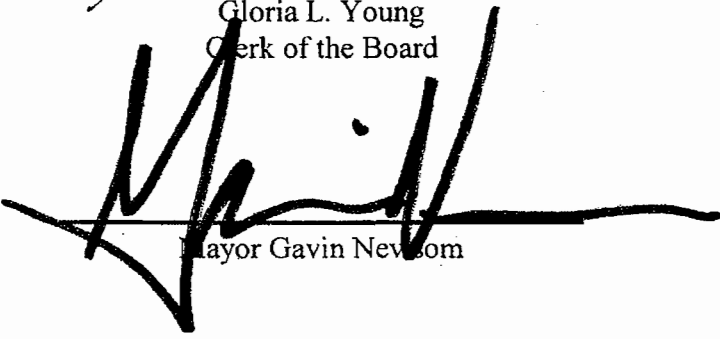
Noes: 2 - Daly, Gonzalez

File No. 041544

I hereby certify that the foregoing Ordinance
was **FINALLY PASSED** on December 14,
2004 by the Board of Supervisors of the City
and County of San Francisco.

12/24/04
Date Approved


Gloria L. Young
Clerk of the Board


Mayor Gavin Newsom

M

Exhibit M

List of Attachments

ATTACHMENTS

1. Legal Description of Phase 1 and of the Project Site (which excludes the Agency Parcels)
2. Map of Project Site and of Agency Parcels, showing Agency Housing Parcels and Community Facilities Parcels

Schedule A - Map showing SLC Land, including Pre-Exchange SLC Land and Post-Exchange SLC Land

Schedule B - Land Use Plan
3. Quitclaim Deed from Agency to Developer
4. Short Term License Agreement (Agency Parcels)
5. Redevelopment Area Declaration of Restrictions
6. Reversionary Quitclaim Deed
7. Insurance (includes environmental insurance)
8. Guaranty
9. Infrastructure Plan

Exhibit A Demolition and Deconstruction

Exhibit B Grading and Landslide Repair

Exhibit C Infrastructure Within the Rights of Way (including streets and utilities)

Exhibit D Public Open Space
10. Schedule of Performance for Infrastructure Development
11. EIR Mitigation Measures
12. Plan for Environmental Investigation and Remediation During Development at Hunters Point Shipyard
13. Prevailing Wage Requirements
14. Form of Card Check Agreement
15. Minimum Compensation Policy

16. Health Care Accountability Policy
17. Equal Benefits Policy
18. Form of Engineer's/Architect's Certificate Re Compliance of Design with Laws re Access
19. Form of Engineer's/Architect's Inspection Certificate
20. Form of Engineer's/Architect's Certificate Re Compliance of Construction with Laws re Access
21. Form of Certificate of Completion
22. Affordable Housing Program
 - Exhibit A Distribution of Affordable Housing Units
 - Exhibit B Declaration of Rental Use Restriction
 - Exhibit C Declaration of Restrictions for For-Rent Affordable Housing Units
 - Exhibit D Declaration of Restrictions for For-Sale Affordable Housing Units
 - Exhibit E Memorandum of Option
 - Exhibit F Release of Option Rights
 - Exhibit G Major Phase Housing Data Table
 - Exhibit H Project Housing Data Table
 - Exhibit I Marketing and Operating Obligations
23. Community Ownership, Financing and Benefits Policies and Procedures
24. Equal Opportunity Program and Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace)
 - Exhibit A Equal Opportunity Program
 - Rider 1 Construction Work Force
 - Rider 2 Equal Opportunity for Women and Minority Owned Business Enterprises
 - Rider 3 Permanent Work Force of Developer and Retail Tenants

Rider 4 First Source Referral Hiring and Job Training

- Exhibit B Additional Business, Employment, Construction Assistance/Opportunities and Community Benefits Program (including African Marketplace)
- 25. Financing and Revenue Sharing Plan
 - Exhibit A Preliminary Budget and Project Pro Forma
 - Exhibit B Description of Qualified Predevelopment Costs
 - Exhibit C Description of Qualified Pre-Agreement Costs
 - Exhibit D Tables: Agency Land Return/Developer Equity Return Formulas and Examples
- 26. Option: Alternative Financing and Revenue Sharing Plan with Accelerated Compensation for Land Value
- 27. Disposition and Development Agreement for Vertical Improvements
- 28. Transportation Management Plan
- 29. Interim Lease
- 30. Environmental Ordinances (Including Article 31)
- 31. Open Space Build-Out Schedule of Performance
- 32. Design Review and Document Approval Procedure for Infrastructure Development
- 33. Design Review and Document Approval Procedure for Vertical Improvements
- 34. Subdivision Map Ordinance and Regulations