

DUPLICATE

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

San Francisco Redevelopment Agency  
One South Van Ness Avenue, 5th Floor  
San Francisco, CA 94103  
Attention: Development Services

This document is exempt from payment of a recording fee pursuant to California Government Code Section 27383.

WE HEREBY CERTIFY THAT THIS IS FULL, TRUE AND CORRECT COPY OF THE ORIGINAL DOCUMENT AS THE SAME APPEARS IN THE OFFICE OF THE COUNTY RECORDER OF San Francisco COUNTY, STATE OF CALIFORNIA, RECORDED ON March 24, 2009 IN BOOK - OF OFFICIAL RECORDS AT PAGE - SERIAL NO. 2009-I 730450  
CHICAGO TITLE INSURANCE COMPANY  
By [Signature]

Recorder's Stamp

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

This FOURTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (Hunters Point Shipyard Phase 1) (this "**Fourth Amendment**") dated as of August 29, 2008 (the "**Effective Date**") 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**"), Lennar - BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("**Lennar BVHP**"), and HPS Development Co., LP, a Delaware limited partnership (the "**HPS Developer**"), with reference to the following facts and circumstances:

**RECITALS**

A. The Agency and Lennar BVHP entered into that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of December 2, 2003 (the "**Original DDA**") and recorded April 5, 2005 as Document No. 2005H932190 at Reel I861, Image 564 in the Official Records of San Francisco County (the "**Official Records**"), as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as Document No. 2005H932191 at Reel I861, Image 565 (the "**First Amendment**"), and as further amended by that certain Second Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of October 17, 2006 and recorded in the Official Records on October 26, 2006 as Document No. 2006I275571 at Reel J254, Image 429 (the "**Second Amendment**"), and as further amended by that certain Amendment to Attachment 10 (Schedule Of Performance For Infrastructure Development And Open Space "Build Out" Schedule Of Performance) to the Disposition And Development Agreement Hunters Point Shipyard Phase 1 dated as of August 5, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-I 730449 at Reel -, Image - (the "**Third Amendment**", and together with the Original DDA, the First Amendment and the Second Amendment, the "**Phase 1 Horizontal DDA**").

B. On August 19, 2008, the Agency Commission unanimously passed Resolution No. 26-2008 (the “**Agency Resolution**”) whereby the Agency Commission authorized the Agency Executive Director to enter into all documents and amendments necessary to permit the transfer and assignment of all rights and obligations under the Phase 1 Horizontal DDA to the HPS Developer, a subsidiary of a new joint venture (the “**Joint Venture**”) formed by affiliates of (i) Scala Real Estate Partners, LP, a limited partnership existing under the laws of the State of Texas as Falcon Capital Partners, L.P. (“**Scala**”), Hillwood Development Company, LLC, a Texas limited liability company (“**Hillwood**”), (iv) Estein Management Corporation, a Florida corporation (“**Estein**”), and (iv) Lennar BVHP.

C. Consistent with the Agency Resolution, (i) Lennar BVHP is assigning its right, title and interest in, to and under the Phase 1 Horizontal DDA (the “**Transfer**”) to the HPS Developer pursuant to an Assignment and Assignment Agreement approved by the Agency Executive Director (the “**Assignment and Assumption**”), and (ii) Lennar Corporation, a Delaware corporation (“**Lennar Corp.**”), will deliver to the Agency a duly executed guaranty of all of the Developer's obligations under the Phase 1 Horizontal DDA in a form approved by the Agency Executive Director (the “**Guaranty**”).

D. In furtherance of the Agency Resolution and to memorialize and accommodate the Transfer, the parties hereto desire to enter into this Fourth Amendment as set forth below.

#### AGREEMENT

**ACCORDINGLY**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency, Lennar BVHP and HPS Developer agree as follows:

1. DDA Amendment. The Phase 1 Horizontal DDA shall be amended as follows:
  - a. all references to Lennar BVHP in the Phase 1 Horizontal DDA, the Community Benefits Agreement, the Open Space Master Plan, the Interim Lease and any other related documents, including those attached to the Phase 1 Horizontal DDA or incorporated therein by reference (collectively, the “**DDA Agreements**”), shall be deemed to mean the HPS Developer as if the HPS Developer were the original party to the DDA Agreements;
  - b. the definition of “Guarantor” under the Phase 1 Horizontal DDA and the Community Benefits Agreement shall be deemed to mean only “Lennar Corporation, a Delaware corporation”;
  - c. the following shall be deemed added to the end of Section 13.3(c) of the Phase 1 Horizontal DDA:

“Notwithstanding the foregoing, the Agency’s right to exercise the remedy contained in this Section 13.3(c): (i) shall be limited to an Event of Default occurring under Section 13.2(d), (i), (j) or (k); (ii) shall not exist until such time that the Agency has delivered written notice (the “**Reversionary Cure Notice**”)



to each of Scala, Hillwood and Estein, at the address for notices set forth below, or their successors in interest as holders of partnership interests in the Joint Venture for whom the Agency has been provided an address, detailing the facts and circumstances of such Event of Default and provide all such persons with a concurrent period of sixty (60) days from the delivery of such notice to commence to cure, or cause Developer to cure, such Event of Default; and the Agency may not exercise the right to direct the Title Company to record the Reversionary Quitclaim Deed for so long as such Developer or persons commence the cure within sixty (60) days as specified above and continue to diligently prosecute the cure of such Event of Default without interruption to completion (provided that the Agency may exercise such right if the Event of Default is not cured within one hundred eighty (180) days following the date on which the Reversionary Cure Notice was sent by the Agency); and (iii) shall automatically and without further documentation terminate and the Agency shall instruct the Title Company to return the Reversionary Quitclaim Deed to Developer following the earlier to occur of (x) Completion of the Infrastructure in accordance with this Agreement or (y) receipt by the Agency of an irrevocable standby letter of credit, payment and performance bonds or other similar instruments from an issuer and in a form acceptable to the Agency, as determined by the Executive Director in his sole discretion, in an amount equal to at least two times the remaining cost of completing the Horizontal Improvements.”.

2. Replacement Guaranties. The Agency hereby agrees to terminate the Guaranty and release Lennar Corp. thereunder in the event that (i) a new guaranty or guaranties are provided by one or more affiliates of the partners in the Joint Venture (the “**Replacement Guaranties**”); (ii) the Replacement Guaranties are in form and substance substantially the same as the Guaranty, as approved by the Agency Executive Director in his or her sole discretion; (iii) the guarantors under the Replacement Guaranties each meet the total net worth requirement set forth in the Guaranty; provided, the Agency Executive Director shall have the authority to approve a maximum of two (2) Replacement Guaranties which contain a lower net worth requirement so long as the total net worth requirement of all of the guarantors under the Replacement Guaranties, in the aggregate, is equal to or greater than Four Hundred Million Dollars (\$400,000,000); (iv) the Agency Executive Director determines in his or her sole discretion that the Replacement Guaranties sufficiently protect the interests of the Agency in ensuring the timely performance of all current, past and future obligations under the Phase 1 Horizontal DDA; and (v) there is no Event of Default, nor has any event, act or omission occurred that, after giving effect to any applicable notice and cure periods, could become an Event of Default.
3. Representations and Warranties. Lennar BVHP represents and warrants, for the benefit of the Agency, that there is no Event of Default by Lennar BVHP, nor has any event, act or omission occurred that, after giving effect to any applicable notice and cure periods, could become an Event of Default by Lennar BVHP. All of Lennar BVHP's representations and warranties in the Phase 1 Horizontal DDA remain true and correct as of the Effective Date, and the HPS Developer makes all of the same representations and warranties (modified so as to replace Lennar BVHP with the HPS Developer) relating to

valid existence, due authorization, execution and delivery, and enforceability, to the Agency as of the Effective Date.

4. Release. In connection with this Fourth Amendment, Lennar BVHP and the HPS Developer each fully waive and release any and all claims and causes of actions of whatever kind or nature, whether known or unknown, against the Agency and the City and County of San Francisco relating to the Phase 1 Horizontal DDA as of the Effective Date. In connection with the foregoing release, Lennar BVHP and the HPS Developer each expressly waive the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

Lennar BVHP: KB      HPS Developer: KB

5. Notices. A notice or communication under the Phase 1 Horizontal DDA to the HPS Developer shall be made in accordance with the requirements of the Phase 1 Horizontal DDA, and effective as set forth in the Phase 1 Horizontal DDA, addressed as follows:

To the HPS Developer:

HPS Development Co., LP  
c/o Lennar Urban  
49 Stevenson Street, Suite 600  
San Francisco, California 94105  
Attn: Kofi Bonner  
Facsimile: (415) 995-1778

And to:

Paul, Hastings, Janofsky & Walker LLP  
55 Second Street, 24th Floor  
San Francisco, California 94105  
Attn: Charles V. Thornton, Esq.  
Facsimile: (415) 856-7101

6. Miscellaneous.

- a. This Fourth Amendment constitutes a part of the Phase 1 Horizontal DDA and any reference to the Phase 1 Horizontal DDA shall be deemed to include a reference to such Phase 1 Horizontal DDA as amended by this Fourth Amendment.



- b. As amended by this Fourth Amendment, all terms, covenants, conditions and provisions of the Phase 1 Horizontal DDA shall remain in full force and effect.
- c. This Fourth Amendment shall be binding upon and inure to the benefit of the permitted successors and assigns of the Agency and Lennar BVHP, subject to the limitations set forth in the Phase 1 Horizontal DDA, as applicable.
- d. This Fourth Amendment may be executed in any number of counterparts, all of which, together, shall constitute the original agreement.
- e. Nothing in this Fourth Amendment shall constitute a waiver or relinquishment of any rights of the Agency under the Phase 1 Horizontal DDA.
- f. This Fourth Amendment shall be governed by and construed in accordance with the laws of the State of California. The parties agree that all actions or proceedings arising directly or indirectly under this Fourth Amendment shall be litigated in courts located within the County of San Francisco, State of California.
- g. This Fourth Amendment (together with the referenced or incorporated agreements) contains all the representations and the entire agreement between the parties with respect to the subject matter of this Fourth Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Fourth Amendment. No prior drafts of this Fourth Amendment or changes from those drafts to the executed version of this Fourth Amendment shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other person and no court or other body shall consider those drafts in interpreting this Fourth Amendment.
- h. The Parties shall execute and deliver all documents, agreements and instruments reasonably necessary or reasonably required in furtherance of this Fourth Amendment, including any and all certifications, forms and materials as may be reasonably necessary to evidence compliance with the DDA Agreements, including, but not limited to, forms needed to satisfy the nondiscrimination and equal benefits provisions of the DDA Agreements.
- i. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Phase 1 Horizontal DDA.

**[ REMAINDER OF PAGE INTENTIONALLY LEFT BLANK ]**


IN WITNESS WHEREOF, the Agency has caused this Fourth Amendment to be duly executed on its behalf, and Lennar BVHP and the HPS Developer have signed or caused this Fourth Amendment to be signed by duly authorized persons, all as of the date first above written.

**AGENCY:**

Authorized by Agency Resolution No. 86-2008  
adopted August 19, 2008

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

Approved as to Form:

By:   
Name: James B. Morales  
Title: Agency General Counsel

By:   
Name: Fred Blackwell  
Title: Executive Director

**LENNAR BVHP:**

LENNAR – BVHP, LLC,  
a California limited liability company

By: Lennar Southland I, Inc.,  
a California corporation,  
its Managing Member

By:   
Name: Kofi S. Bonner aka Kofi Bonner  
Title: Vice President

**HPS DEVELOPER:**

HPS Development Co., LP,  
a Delaware limited partnership,

By: CP/HPS Development Co. GP, LLC,  
a Delaware limited liability company,  
its General Partner

By:   
Name: Kofi Bonner  
Its: Authorized Representative

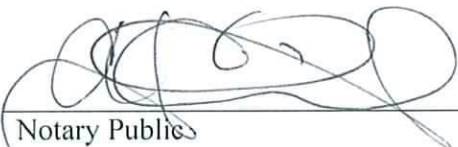


STATE OF CALIFORNIA )  
 ) ss  
COUNTY OF SAN FRANCISCO )

On January 20, 2009, before me, Amanda Joell Arsenith, Notary Public, personally appeared Kofi Bonner, who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public



(Seal)



## RESOLUTION NO. 86-2008

*Adopted August 19, 2008*

**AUTHORIZING THE EXECUTIVE DIRECTOR TO TAKE CERTAIN ACTIONS RELATED TO LENNAR'S SATISFACTION OF THE "PARTNER REQUIREMENT" UNDER THE PHASE 2 ENA BY BRINGING ON ADDITIONAL PARTNERS WITH EXPERIENCE AND FINANCIAL CAPABILITIES BENEFICIAL TO THE DEVELOPMENT OF PHASE 2 OF THE HUNTERS POINT SHIPYARD AND CANDLESTICK POINT AND ASSIGNING AND AMENDING CERTAIN RIGHTS AND OBLIGATIONS UNDER THE PHASE 1 DDA AND THE PHASE 2 ENA TO SUCH ADDITIONAL PARTNERS; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA**

### BASIS FOR RESOLUTION

1. On December 2, 2003, the Redevelopment Agency of the City and County of San Francisco (the "Agency") and Lennar - BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Lennar BVHP" or the "Developer"), entered into that certain Disposition and Development Agreement Hunters Point Shipyard Phase 1 (as amended, the "Phase 1 DDA").
2. The members of Lennar BVHP include an affiliate of (i) Lennar Corporation (together with its other subsidiaries and affiliates, as relevant, "Lennar") and (ii) LNR Property Corporation ("LNR").
3. On May 1, 2007, the Agency and Lennar entered into that certain Second Amended and Restated Exclusive Negotiations and Planning Agreement, covering Phase 2 of the Hunters Point Shipyard and Candlestick Point (the "Phase 2 ENA").
4. The Phase 2 ENA requires Lennar to bring on additional partners with expertise in retail, infrastructure and/or Research & Development/Biotech, as well as additional equity partners with the financial capacity to ensure that the development of the Integrated Project Site (as defined in the ENA) can expeditiously proceed through all predevelopment and development phases notwithstanding fluctuations in the marketplace (together, the "Partner Requirement", as more particularly described in the Phase 2 ENA) and to form one or more new joint ventures with such new partners.
5. In satisfaction of the Partner Requirement under the Phase 2 ENA, Lennar has already identified Kimco Developers, Inc. ("Kimco") and MACTEC Development Corporation ("MACTEC") as key strategic partners in the areas of retail and infrastructure respectively, and has identified as equity partners (i) Scala Real Estate Partners, LP, (ii) Hillwood and (iii) Estein and Associates USA, Ltd. (collectively, the "New Equity Partners") and intends to enter into one or more joint ventures with such New Equity Partners for the purpose of satisfying the Partner Requirement under the Phase 2 ENA (the "Joint Venture").

6. A summary of the relevant qualifications and financial capabilities of Kimco, MACTEC, and the New Equity Partners has been included in the Commission Memorandum accompanying this Resolution.
7. Subject to the Executive Director's review and approval of final partnership and financial documentation related to the New Equity Partners and documentation related to the transfer of obligations to the new joint venture, the Executive Director has determined that the New Equity Partners, together with Kimco and MACTEC, will satisfy the Partner Requirement under the Phase 2 ENA.
8. In addition to satisfying the Partner Requirement under the Phase 2 ENA, Lennar intends to reconstitute Lennar BVHP as a subsidiary of the Joint Venture and, among other things, replace LNR with the New Equity Partners.
9. Certain amendments to the Phase 1 DDA, Phase 2 ENA and other legal documentation will be required to transfer rights and obligations under the Phase 1 DDA and the Phase 2 ENA as contemplated under the new joint venture.
10. Agency authorization of actions by the Executive Director related to Lennar's satisfaction of the Partner Requirement in the Phase 2 ENA does not constitute a project, pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15378(b)(5), and does not result in any physical change in the environment.
11. On February 8, 2000, the Agency Commission (and the San Francisco Planning Commission) certified a Final Environmental Impact Report (the "Final EIR") for the acquisition and reuse of the Shipyard as contemplated in the Hunters Point Shipyard Redevelopment Plan, and adopted findings pursuant to CEQA. Subsequent to the certification of the Final EIR, refinements were made to the Shipyard development program resulting in Addendum No. 1 to the Final EIR published on November 19, 2003 and Addendum No. 2 to the Final EIR published on July 13, 2006. The addenda concluded, based on the findings of the Final EIR, that the proposed refinements would not create any significant environmental impacts not already studied in the Final EIR and that the conclusions reached in Final EIR remained valid.
12. The proposed changes assigning and amending certain rights and obligations in the Phase 1 DDA would not result in any significant effect that has not already been analyzed in the Final EIR and addenda. There will be no significant environmental effect caused by the change that has not already been analyzed in the Final EIR and addenda.

## **RESOLUTION**

**ACCORDINGLY, IT IS RESOLVED** by the Redevelopment Agency of the City and County of San Francisco that, subject to the Executive Director's review and approval of final partnership and financial documentation related to the New Equity Partners and the Joint Venture, the Agency Commission authorizes the Executive Director to enter into all



documents and amendments necessary to transfer and assign rights and obligations under the Phase 1 DDA and the Phase 2 ENA to project specific subsidiaries of the Joint Venture consistent with this Resolution, including but not limited to revising the transfer provisions in the ENA to conform to the Joint Venture and to permit certain transfers of interest among the Joint Venture members provided the Executive Director determines, in his sole discretion and after due diligence that such documents and amendments sufficiently protect the interests of the Agency in ensuring the timely performance of all obligations under the Phase 1 DDA and the Phase 2 ENA, including, without limitation:

(i) terminating and releasing LNR's obligations as a co-guarantor under the Phase 1 DDA and under the Phase 2 ENA, provided that (a) Lennar replaces such guaranties with guaranties containing the same substantive terms as are currently contained in the Phase 1 DDA guaranty and the Phase 2 ENA guaranty, respectively, and (b) Lennar meets the total net worth requirement set forth in the Phase 1 DDA guaranty;

(ii) setting the date for satisfaction of the Phase 2 ENA Milestone for completion of the Term Sheet at November 30, 2008 and for completion of the Transaction Documents at 14 months following endorsement of the Term Sheet; and

(iii) amending the Phase 1 DDA to provide that the Developer's rights under Section 13.3(c) of the Phase 1 DDA to receive the return of the Reversionary Quitclaim Deed upon recordation of a final Certificate of Completion certifying that the Horizontal Improvements are complete may additionally be satisfied if Developer provides the Agency with an irrevocable standby letter of credit, payment and performance bonds or other similar instruments from an issuer and in a form acceptable to the Agency, in an amount equal to at least two times the remaining cost of completing the Horizontal Improvements, as determined by the Executive Director in his sole discretion and that the Agency's rights under such section shall apply only to an Event of Default pertaining to Infrastructure construction for which the New Equity Partners have been given an opportunity to cure; and be it

**FURTHER RESOLVED**, that this Commission authorizes the Executive Director and Agency staff to take such additional actions, as may be necessary or appropriate to implement this Resolution, including the execution of such additional documents and instruments as may be necessary or appropriate to further the intent of this Resolution and that are consistent with the Phase 1 DDA and the Phase 2 ENA, as amended by this Resolution.

**APPROVED AS TO FORM:**



*for*  
James B. Morales  
Agency General Counsel