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San Francisco Redevelopment agency
One south Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Escrow #160281030-NC

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FIFTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT

(Hunters Point Shipyard Phase 1)

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
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San Francisco Redevelopment Agency
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attention: Development Services

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Recorder's Stamp

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

This FIFTH AMENDMENT TO DISPOSITION AND DEVELOPMENT AGREEMENT (HUNTERS POINT SHIPYARD PHASE 1) (this "**Fifth Amendment**"), dated as of November 3, 2009 (the "**Fifth Amendment 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**") and HPS Development Co., LP, a Delaware limited partnership ("**Developer**"), with reference to the following facts and circumstances:

RECITALS

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 in the Official Records of the City and County of San Francisco (the "**Official Records**") on April 5, 2005 as Document No. 2005H932190 at Reel I861, Image 564 (the "**Original DDA**"), as amended by that certain First Amendment to Disposition and Development Agreement Hunters Point Shipyard Phase 1 dated as of April 4, 2005 and recorded in the Official Records on April 5, 2005 as Document No. 2005H932191 at Reel 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-I738449 (the "**Third Amendment**"), and as further amended by that certain Fourth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1) dated as of August 29, 2008 and recorded in the Official Records on March 24, 2009 as Document No. 2009-I738450 (the "**Fourth Amendment**", and together with the

Original DDA, the First Amendment, the Second Amendment and the Third Amendment, the "**DDA**").

B. Pursuant to the DDA, Developer is constructing Infrastructure on the Project Site, including on the Hillside and the Hilltop, in accordance with the Schedule of Performance for Infrastructure Development and the Schedule of Performance for Infrastructure and the Open Space Build-Out Schedule of Performance, each of which is attached to the DDA as Attachment 10 (collectively, the "**Schedule of Performance**") and is subject to extension pursuant to the provisions of the DDA, including those for Unavoidable Delay. Developer has made substantial progress in the construction of the Infrastructure, particularly on the Hilltop, and recently completed the subdivision of the Project Site (the "**Subdivision**"), thereby permitting Developer to sell portions of the Project Site to Vertical Developers for the purpose of constructing Vertical Improvements thereon.

C. In accordance with Article 15 of the DDA, Developer recently engaged a Land Broker and has been actively engaged in efforts to sell portions of the Project Site to Vertical Developers. While such marketing has not yet yielded viable offers, Developer anticipates that its Affiliates will develop Vertical Improvements on certain Lots on the Hilltop in the near term following Completion of the Infrastructure thereon. In furtherance thereof, Developer and its Affiliates are currently engaged in planning for such Vertical Improvements and on seeking approval for such Vertical Improvements in accordance with the procedures set forth in the Design Review and Document Approval Procedure for Vertical Improvements.

D. The Schedule of Performance was formulated by Developer and the Agency to reflect the scope of the Infrastructure and the anticipated market demand for Residential Projects constructed on the Project Site. Due to historic disruptions in the capital markets in 2008 and 2009, land values have dramatically declined, potential Vertical Developers have been unable to secure credit to acquire Lots and thereafter construct Vertical Improvements thereon, and the demand for newly constructed Units in the City has also dramatically declined.

E. Pursuant to the terms of the DDA, Gross Revenues from the sale of Lots are, after certain amounts are paid to Developer, to be shared by Developer and the Agency, with the Agency's proceeds being deposited in an account maintained by the Agency (the "**Community Benefits Fund**") and reinvested for the benefit of the BVHP Area in a manner consistent with Attachment 23 to the DDA. As a result of such economic disruptions, projected Gross Revenues, and thus projected distributions to the Community Benefits Fund, have dramatically declined.

F. In order to (i) ensure that the Community Benefits Fund may be funded for the benefit of the BVHP Area in the near term despite recent economic disruptions, (ii) encourage Developer to focus its efforts on the development of a vibrant community on the Hilltop, including the potential development of Vertical Improvements on portions thereof by Affiliates of Developer, (iii) match the Schedule of Performance to the anticipated market demand for Lots, (iv) incorporate into the Schedule of Performance the cumulative effects of Unavoidable Delays that have occurred prior to the Fifth Amendment Effective Date, (v) facilitate the efficient marketing and conveyance of Lots and (vi) make other conforming amendments, all for the purposes of achieving redevelopment within Phase 1 of the Shipyard and to further effectuate

the program of development contemplated by the Redevelopment Plan, the Agency and Developer wish to enter into this Fifth Amendment.

AGREEMENT

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

1. Community Benefits Fund Advance.

(a) Developer shall pay or cause to be paid to the Community Benefits Fund five hundred thousand dollars ($500,000) within thirty (30) days after each of the following dates (such payments, which total one million dollars ($1,000,000), shall be referred to herein, collectively, as "**Developer's Community Benefits Fund Advance**"):

(i) the date on which close of escrow occurs with respect to the first Lot (or Block, as the case may be) sold by Developer to a Vertical Developer in accordance with Article 15 of the DDA; and

(ii) the earlier to occur of: (A) the date on which both of the following events have occurred: (x) Certificates of Completion for all Infrastructure on the Hilltop, including with respect to the Open Space, have been recorded in accordance with the terms of the DDA and (y) the Director of the Department of Public Works of the City ("**DPW**") deems in accordance with the terms of the PIA (as defined below) that all of the Phase I Required Infrastructure (as defined in the PIA) on the Hilltop is complete (as evidenced by written notice thereof delivered in accordance with the terms of the PIA); and (B) the date which is thirty (30) months after the Fifth Amendment Effective Date.

(b) Developer's Community Benefits Fund Advance shall only be repaid (without interest thereon), if at all, in accordance with the provisions of Section 8(b)(iv) of this Fifth Amendment.

2. Major Phase Approval.

(a) Vertical Improvements shall be constructed in Major Phases as proposed by Developer (together with Vertical Developers, as applicable) pursuant to "**Major Phase Applications**", which applications shall be subject to approval by the Commission (each, a "**Major Phase Approval**"). A Major Phase Application shall include the items listed in clauses (i) through (iv) below:

(i) A report regarding compliance with the Schedule of Performance with respect to the subject Lots.

(ii) A Major Phase Housing Data Table and Project Housing Data Table, as required by Sections 3.6 and 3.7 of the Affordable Housing Program, including an estimate of the Inclusionary Units to be located within each Residential Project contained on the subject Lots; provided, however, that such estimate shall be in conformance with the provisions set forth in Section 6(b) of this Fifth Amendment.

(iii) For each Lot included in the Major Phase Application, either (a) a form of Vertical DDA that includes a date for commencement of construction which is relative to the date on which the Lot(s) applicable to the Vertical DDA are transferred pursuant to Article 15 of the DDA or (b) a final Vertical DDA executed by the Vertical Developer.

(iv) Either (a) Basic Concept Design documents consistent with the Design Review and Document Approval Procedure for Vertical Improvements or (b) preliminary basic concept design documents, including: (1) a written Statement of Program, including a general description of the proposed development, size and use of the facilities; (2) data charts that include the maximum number of dwelling units, building coverage and building height and bulk; (3) an illustrative site plan depicting site boundaries, building footprints (including neighboring buildings), existing roads, sidewalks, mid-block connections, public and private parks, existing streetscape improvements, view corridors and streetwalls; and (4) illustrative sketches of a Residential Project which may ultimately be constructed on such Lot(s). Nothing contained in clause (b) of this subsection (iv) shall be deemed to waive the requirement that a Residential Project comply with the terms of the Design Review and Document Approval Procedure for Vertical Improvements.

(b) Timing of Major Phase Applications. Developer shall use commercially reasonable efforts to submit a minimum of one (1) Major Phase Application every twenty four (24) months beginning as of the Fifth Amendment Effective Date.

(c) Timing of Sale of Lots. Developer shall use commercially reasonable efforts to transfer each Lot to a Vertical Developer in accordance with the provisions of Article 15 of the DDA within twelve (12) months after the Major Phase Approval applicable to such Lot.

(d) Execution and Delivery of Vertical DDA Following a Major Phase Approval. To the extent not previously executed, at closing of the purchase and sale of a Lot pursuant to Article 15 of the DDA, the Executive Director (on behalf of the Agency) and the Vertical Developer shall execute, deliver and, immediately following the grant deed, record a Vertical DDA for such Lot. Such Vertical DDA shall include (i) a detailed schedule of performance, (ii) a definitive number of Inclusionary Units to be located within each Residential Project contained on the subject Lot (which number shall be in conformance with the provisions set forth in Section 6(b) of this Fifth Amendment) and (iii) to the extent not previously obtained, an obligation to comply with the applicable provisions of the Design Review and Document Approval Procedure for Vertical Improvements. Prior to executing such Vertical DDA, the Executive Director shall reasonably determine that (1) the Vertical Developer thereunder is a Community Builder, a Qualified Buyer or an Affiliate of Developer and (2) such Vertical DDA contains no material changes to the form of Vertical DDA approved for such Lot pursuant to the Major Phase Approval related thereto.

(e) Expiration of Major Phase Approval. If a Vertical DDA with respect to a Lot subject to a Major Phase Approval has not been executed and delivered by the parties thereto prior to the date which is twelve (12) months after the date of such Major Phase Approval, then, unless extended for a period not to exceed six (6) months by the reasonable written approval of the Executive Director, a new Major Phase Application for such Lot shall be submitted, and a

Major Phase Approval received, prior to executing and delivering a Vertical DDA with respect to such Lot.

3. Transfer of Lots.

(a) Sections 15.1 through 15.6 and the introductory paragraph of Article 15 of the DDA are hereby deleted in their entirety and the following is substituted in lieu thereof:

> "The Parties contemplate that the Lots will be sold to Affiliates of Developer, Community Builders and Qualified Buyers who will thereafter construct Vertical Improvements on such Lots. Developer and the Agency each has an interest relating to the purchase price for the Lots and to the identity, characteristics and qualifications of the buyers of the Lots. The following conditions apply to all Lot sales.
>
> 15.1 **Fair Market Value; Purchase and Sale Agreement**
>
> (a) Unless both Parties mutually agree otherwise, in their respective sole discretion, each Lot will be sold for no less than its Fair Market Value.
>
> (b) The initial form of purchase and sale agreement delivered by Developer to a prospective buyer shall be the form mutually agreed upon by Developer and the Agency; provided, however, that any subsequent revisions to such form prior to the date of execution thereof, if any, shall be in the sole and absolute discretion of Developer so long as such revisions (i) are not materially adverse to the Agency and (ii) are not materially inconsistent with the DDA or the Vertical DDA applicable to the Lot(s) subject to such purchase and sale agreement. A purchase and sale agreement meeting these conditions is referred to herein as a "**Purchase and Sale Agreement**".
>
> 15.2 **Lot Appraisal**
>
> (a) After issuance of a Certificate of Completion for a particular Lot or series of Lots (or prior thereto if the Vertical Developer has sufficient access to undertake vertical improvements), if Developer wishes to sell the Lot or series of Lots it shall first initiate a "**Lot Appraisal**" with respect thereto to be performed by a Land Appraiser selected pursuant to Section 15.2(c) below. Developer will deliver to the Land Appraiser appraisal instructions mutually agreed upon by the Parties to prepare a written Lot Appraisal which determines the Fair Market Value of the subject Lots (on an individual basis and not as a bulk sale) and deliver such Lot Appraisal, together with comparables supporting the Land Appraiser's conclusion, to the Agency and Developer within thirty (30) days after request therefor. Such instructions shall provide that the Lot Appraisal may be used by and relied upon by Developer, its Affiliates and the Agency. In determining the "**Fair Market Value**", the Land Appraiser shall determine the cash purchase price that a willing buyer would pay to a willing seller at the time of sale, neither

being under a compulsion to buy or sell and both being fully aware of the relevant facts, including:

(i) the Infrastructure serving the subject Lot(s) upon Completion thereof;

(ii) the attributes (including views, if any) and the location within Phase 1 of the subject Lot(s);

(iii) the status of Phase 1 as a master planned community in an urban setting;

(iv) the benefits and obligations related to the Lots or a Vertical Developer thereof under (x) the form of Vertical DDA, including without limitation the requirements related to Inclusionary Housing and the schedule of performance for Vertical Improvements set forth therein and (y) the Community Benefits Agreement; and

(v) the carrying costs required if Vertical Improvements on the Lots are not able to be developed promptly after the purchase closes because of market conditions, including the inability to obtain commercially reasonable financing for the construction of Vertical Improvements on the subject Lot(s) (subject to the buyer's compliance with the schedule of performance for Vertical Improvements set forth in the Vertical DDA).

The cost of the Lot Appraisal will be borne by Developer. Unless otherwise agreed in writing by the Parties, the Land Appraiser's determination of Fair Market Value of a Lot will be conclusive on both Parties; provided however, that (1) Developer and the Agency may at any time agree in writing to initiate a replacement Lot Appraisal for such Lot and (2) if a Purchase and Sale Agreement for a Lot contained in a Lot Appraisal has not been executed and delivered by a date that is: (x) more than three (3) months and less than nine (9) months from the date of the applicable Lot Appraisal, then at any time during such period Developer may initiate a replacement Lot Appraisal for such Lot; or (y) nine (9) months or more from the date of the applicable Lot Appraisal, then as a condition to a sale of the Lot pursuant to Section 15.3, 15.4 or 15.5, Developer shall first initiate a replacement Lot Appraisal for such Lot. Any such replacement Lot Appraisal shall be made using the same procedure described above for the initial Lot Appraisal.

(b) If at any time there are no Land Appraisers on the List of Land Appraisers, there are no Land Appraisers on the List of Land Appraisers willing or able to prepare a Lot Appraisal, or Developer or the Agency wishes to augment such list, then the Agency and Developer shall, upon ten (10) days' written notice by either of them, attempt in good faith to agree to augment such List of Land Appraisers. If they are unable to do so within such ten (10) day period, Developer may send the Agency a list of three (3) Land Appraisers, in which case the Agency shall deliver to Developer, within five (5) days after its receipt of Developer's list, a list

of three (3) Land Appraisers or its written agreement to add one (1) or more of the Land Appraisers on Developer's list to the List of Land Appraisers. If there is no prompt agreement at this point on a Land Appraiser to add to the List of Land Appraisers, each of the Agency and Developer shall strike two (2) names from the other party's list and they shall promptly deliver a written request to the Presiding Judge of the Superior Court of the City and County of San Francisco to select the Land Appraiser from the two names remaining, and his or her decision (or that of his or her designee) will conclusively determine the Land Appraiser to be added to the List of Land Appraisers. If the Presiding Judge (or his or her designee) does not determine the Land Appraiser to be added to the List of Land Appraisers within fifteen (15) days after Developer's receipt of the Agency's list, then the Parties shall meet within five (5) days and at such meeting, if the parties still do not agree, then the Land Appraiser shall be selected by the flip of a coin, with the Agency calling "heads" or "tails". If the Agency wins the coin flip, the remaining Land Appraiser on the Agency's list shall be added to the List of Land Appraisers; if not, the remaining Land Appraiser on Developer's list shall be shall be added to the List of Land Appraisers.

(c) At least ten (10) days prior to initiating a Lot Appraisal pursuant to Section 15.2(a), Developer shall deliver written notice of the identity of the Land Appraiser selected by Developer from the List of Land Appraisers; provided that no Land Appraiser will be the Land Appraiser for more than three (3) consecutive Lot sales (for purposes of this restriction, a sale of more than one (1) Lot in a single transaction or series of transactions to a single purchaser or group of affiliated purchasers shall count as one (1) Lot sale).

15.3 **Affiliate Sale**

If an Affiliate of Developer desires to purchase a Lot for which a Lot Appraisal has been obtained, then Developer and such Affiliate may deliver written notice thereof to the Agency, including an executed Purchase and Sale Agreement between Developer and such Affiliate which provides for a sale of the Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot as determined by the Lot Appraisal applicable thereto, payable in full to seller at closing.

15.4 **Third-Party Sale**

(a) If (i) an Affiliate of Developer has not elected to purchase a Lot (not including Community Builder Lots) for which a Lot Appraisal has been obtained within ninety (90) days of the date of such Lot Appraisal or (ii) Developer wishes to market a Lot (not including Community Builder Lots), then Developer shall promptly initiate a marketing program for such Lot through a Land Broker selected by Developer from the List of Land Brokers. Developer will retain such Land Broker through a commercial form of listing agreement negotiated by Land Broker and Developer (the "**Land Brokerage Agreement**"). The "**Marketing Period**" during which the Lot will be actively marketed will be six (6) months. If

during the Marketing Period a Qualified Buyer offers to buy the Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing, then Developer will use commercially reasonable efforts to enter into a Purchase and Sale Agreement with the Qualified Buyer with respect to such Lot(s) in a form mutually acceptable to Developer and the Qualified Buyer. If (i) no Qualified Buyer offers to buy the Lot during the Marketing Period for at least Fair Market Value, (ii) Developer and the Qualified Buyer, if any, cannot agree on the Purchase and Sale Agreement or (iii) any such Qualified Buyer defaults under the Purchase and Sale Agreement and does not cure such default in accordance with the terms of the Purchase and Sale Agreement, then such Lot will not be sold to the Qualified Buyer, if any, and will instead be available for purchase by an Affiliate of Developer pursuant to Section 15.3 or another Qualified Buyer pursuant to Section 15.4; provided, however, that if Developer elects to pursue specific performance against the defaulting Qualified Buyer, then Developer will initiate and diligently prosecute an action for specific performance, but may settle the same in its sole and absolute discretion.

(b) If at any time there are no Land Brokers on the List of Land Brokers, there are no Land Brokers on the List of Land Brokers willing or able to market the Lot, or Developer or the Agency wishes to augment such list, then the Agency and Developer shall, upon ten (10) days' written notice by either of them, attempt in good faith to agree to augment such List of Land Brokers. If they are unable to do so within such ten (10) day period, Developer may send to the Agency a list of three (3) Land Brokers, in which case the Agency shall deliver to Developer, within five (5) days after its receipt of Developer's list, a list of three (3) Land Brokers or its written agreement to add one (1) or more of the Land Brokers on Developer's list to the List of Land Brokers. If there is no prompt agreement at this point on a Land Broker to add to the List of Land Brokers, each of the Agency and Developer shall strike two (2) names from the other party's list and they shall promptly deliver a written request to the Presiding Judge of the Superior Court of the City and County of San Francisco to select the Land Broker from the two names remaining, and his or her decision (or that of his or her designee) will conclusively determine the Land Broker to be added to the List of Land Brokers. If the Presiding Judge (or his or her designee) does not determine the Land Broker to be added to the List of Land Brokers within fifteen (15) days after Developer's receipt of the Agency's list, then the Parties shall meet within five (5) days and at such meeting, if the parties still do not agree, then the Land Broker shall be selected by the flip of a coin, with the Agency calling "heads" or "tails". If the Agency wins the coin flip, the remaining Land Broker on the Agency's list shall be added to the List of Land Brokers; if not, the remaining Land Broker on Developer's list shall be shall be added to the List of Land Brokers.

(c) At least ten (10) days prior to engaging a Land Broker pursuant to Section 15.4(a), Developer shall deliver written notice of the identity of the Land Broker selected by Developer from the List of Land Brokers. Furthermore, Developer

shall deliver an executed copy of the Land Brokerage Agreement to the Agency within ten (10) days of the execution and delivery thereof.

15.5 **Community Builder Lots**

(a) Within thirty (30) days of the date of a Lot Appraisal for a Community Builder Lot (the "**Community Builder Election Period**"), the Community Builder assigned thereto shall elect to participate in the Community Builder Program pursuant to one of the models of participation provided for in the Community Benefits Agreement by providing written notice of its selected model of participation to Developer and the Agency. For a period of sixty (60) days following receipt of such notice by Developer (the "**Community Builder Negotiation Period**"), Developer shall negotiate in good faith with the applicable Community Builder to enter into the agreements applicable to such model of participation and a Purchase and Sale Agreement in a form mutually acceptable to Developer and the Community Builder which provides for a sale of the Community Builder Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing (collectively, the "**Community Builder Agreements**").

(b) If (i) the assigned Community Builder does not elect to participate in the Community Builder Program during the Community Builder Election Period in accordance with Section 15.5(a), (ii) Developer, the Community Builder and, as applicable, an Affiliate of Developer or a Qualified Buyer are unable to execute and deliver the Community Builder Agreements within the Community Builder Negotiation Period despite Developer's good faith efforts or (iii) the purchaser under the Purchase and Sale Agreement defaults thereunder and does not cure such default in accordance with the terms of the Purchase and Sale Agreement, then such Lot will not be sold as a Community Builder Lot and the Agency may thereafter elect to purchase the Community Builder Lot by delivering written notice to Developer within one hundred eighty (180) days after the expiration of the later to occur of (x) the Community Builder Election Period and (y) the Community Builder Negotiation Period (if any) (the "**Agency Election Period**"). If Developer elects to pursue specific performance against the buyer under the Purchase and Sale Agreement, then Developer will initiate and diligently prosecute an action for specific performance, but may settle the same in its sole and absolute discretion. Any such purchase by the Agency shall be pursuant to a Purchase and Sale Agreement between Developer and the Agency which provides for a sale of the Community Builder Lot "as is", "where is" and for a purchase price at least equal to the Fair Market Value of the Lot, payable in full to seller at closing, or on other terms mutually satisfactory to Developer and the Agency. If the Agency does not elect to purchase the Community Builder Lot within the Agency Election Period, or the Agency and Developer are unable, despite their respective good faith efforts, to enter into a Purchase and Sale Agreement within thirty (30) days after the Agency notifies Developer of its election to purchase the Community Builder Lot, then the Community Builder Lot will no longer be

considered a Community Builder Lot and may be offered for sale in accordance with Section 15.4.

(c) Certain obligations of Developer with respect to the Community Builder Lots are set forth in the Community Benefits Agreement.

15.6 **New DDA**

Except as expressly provided otherwise in this Agreement, no Transferee shall be liable for an Event of Default by Developer or another Transferee in the performance of its respective obligations under this Agreement, and Developer shall not be liable for the default by any Transferee in the performance of its obligations under such Vertical DDA."

4. Schedule of Performance. Attachment 10 of the DDA is hereby deleted in its entirety and the document attached hereto as Exhibit A is substituted in lieu thereof.

5. Contributions Related to HOA Dues for Inclusionary Units. Capitalized terms used in this Section 5 but not otherwise defined in the DDA shall have the meanings ascribed to them in the Master CC&Rs.

(a) 50% AMI Inclusionary For-Sale Units. Pursuant to the terms of section 6.8.6 of the Master CC&Rs, the Agency may, for a period not to exceed ten (10) years from the date of the sale to an Owner of the first Unit sold in Phase 1 and subject to availability of funds, pay to the Master Association or any Subassociation any discrepancy in Assessments between Market Rate Units and Required BMR Units resulting from the limitations on Assessments imposed by section 6.8 with respect to Inclusionary For-Sale Units targeting 50% of AMI. Neither Developer nor any Vertical Developer shall at any time be required to fund any such discrepancy (if any).

(b) 80% AMI Inclusionary For-Sale Units. Pursuant to the terms of section 6.8.6 of the Master CC&Rs, the Agency may, for a period not to exceed ten (10) years from the date of the sale to an Owner of the first Unit sold in Phase 1 and subject to availability of funds, pay to the Master Association or any Subassociation any discrepancy in Assessments between Market Rate Units and Required BMR Units resulting from the limitations on Assessments imposed by section 6.8 with respect to Inclusionary For-Sale Units targeting 80% of AMI (an "**80% HOA Shortfall**"). Except as set forth in the immediately following sentence, neither Developer nor any Vertical Developer shall at any time be required to fund any such discrepancy (if any). Developer shall make a contribution of two hundred seventeen thousand five hundred dollars ($217,500), payable to the Agency, on the date which is thirty (30) days after the sale to an Owner of the first Unit sold in Phase 1, which contribution, and any interest earned thereon, shall be used by the Agency solely in connection with an 80% HOA Shortfall.

6. Updated Land Use Plan; Distribution of Inclusionary Units; Residential Density Transfer.

(a) Updated Land Use Plan. Schedule B to Attachment 2 of the DDA is hereby deleted in its entirety and the document attached as Exhibit B hereto is substituted in lieu thereof.

(b) Distribution of Inclusionary Units. Developer shall have the right to determine the number of Inclusionary Units to be located in each Residential Project at any time prior to the date on which the Vertical DDA related to such Residential Project is executed and delivered by the parties thereto, so long as the following minimum requirements are met: (i) at least fifteen percent (15%) of the aggregate number of all Residential Units in Phase 1 constructed or scheduled to be constructed on all Lots are Inclusionary Units as of the following dates: (x) the date on which the Lot on which the (1) 300th, (2) 600th, (3) 900th and (4) 1200th Residential Unit will be constructed is transferred by Developer pursuant to Article 15 of the DDA and (y) the date on which the last Lot is transferred by Developer pursuant to Article 15 of the DDA; and (ii) the number of Inclusionary Units within each Residential Project shall be no less than ten percent (10%) and no greater than twenty percent (20%); provided, however, that the Commission may, upon the written request of Developer, reduce or increase the percentage contained in clause (ii). For purposes of calculating the number of Inclusionary Units, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

(c) Residential Density. Vertical Improvements constructed on each Lot shall be subject to the densities permitted by the Amended Design for Development for Vertical Improvements.

7. Use of Agency Lots. The Agency may, upon Developer's reasonable written request, execute a lease pursuant to which Developer or its Affiliates shall be entitled to enter and access the Agency Parcels, or portions thereof; provided, however, that such lease shall be in a form reasonably acceptable to the Executive Director which provides for reasonable insurance coverages for the Agency, and prior to execution and delivery thereof the Executive Director reasonably finds that the uses or portions thereof permitted thereunder (i) are in accordance with the purposes of the DDA, (ii) will confer a community benefit and (iii) will not materially inhibit the intended use of the Agency Parcels.

8. Distribution of Net Proceeds.

(a) The provisions of this Section 8 shall supersede in their entirety Sections 3.3 and 4 (regarding distributions) and Sections 5.2 and 5.4 (regarding the payment of interest) of Attachment 25 to the DDA.

(b) Distributions from the Land Proceeds Account shall be made in the following order of priority:

(i) First, to pay required debt service on the Mello-Roos Bonds;

(ii) Second, to the extent necessary, to fully replenish the Mello-Roos Reserve;

(iii) Third, to Developer until Developer receives from the Land Proceeds Account an amount equal to the sum of (1) all of the Approved Expenses incurred by Developer, (2) all of Developer's Outstanding Qualified Pre-Agreement Costs, (3) Reimbursable Mandatory Developer Advances and (4) a twenty-two and one half percent

(22.5%) cumulative unleveraged internal rate of return on all of the amounts described in clauses (1) – (3) of this subsection (iii), compounded quarterly;

(iv) Fourth, one hundred percent (100%) to the Community Benefits Fund until the amount distributed pursuant to this clause (iv) equals the Voluntary Agency Advances *less* an amount equal to Developer's Community Benefits Fund Advance; and

(v) Fifth, fifty percent (50%) to Developer and fifty percent (50%) to the Community Benefits Fund.

(c) For purposes of determining the amounts contained in Section 8(b)(iii) above, "Developer" shall include Developer and Developer's predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company.

9. Voluntary Agency Advances.

(a) As of the Fifth Amendment Effective Date. As of the Fifth Amendment Effective Date, the Agency acknowledges and agrees that it has not contributed any Voluntary Agency Advances except for in connection with EDA Grant #1, which the Agency used to reimburse Developer for costs incurred by Developer (including Developer's predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company) for Phase 1 which qualified for reimbursement under such grant. Such reimbursement shall be considered a Voluntary Agency Advance.

(b) Following the Fifth Amendment Effective Date. Promptly following the Fifth Amendment Effective Date and upon receipt of proceeds from EPA Grant #2, the Agency shall reimburse Developer for costs incurred by Developer (including Developer's predecessor-in-interest, Lennar – BVHP, LLC, a California limited liability company) for Phase 1 which qualify for reimbursement under such grant. Such reimbursement shall be considered a Voluntary Agency Advance.

(c) Notwithstanding the provisions of Section 5.4 of Attachment 25 to the DDA, Voluntary Agency Advances, including but not limited to those contained in subsections (a) and (b) of this Section 9, shall not accrue interest.

10. Project Budgets.

(a) Update of Project Budgets. Notwithstanding the provisions of Section 6 of Attachment 25 to the DDA, Developer shall update the Project Budget as of the beginning of each fiscal year of Developer (the "**Fiscal Year**") in order to reflect its determination of the anticipated Approved Expenses and Gross Revenues for the upcoming Fiscal Year and projections through the end of the horizontal development as well as the Approved Expenses, Gross Revenues and Reimbursable Mandatory Developer Advances from the prior Fiscal Years. Each annual update shall be delivered to the Agency no later than the beginning of the third month of such year. Developer shall also have the right in its discretion to update any Project Budget during the Fiscal Year to which it relates from time to time and, if it does so, it shall promptly deliver a copy of such update to the Agency together with reasonable information supporting the update.

(b) Cost and Budget Disputes. The Agency and Developer each acknowledge and agree that as of the Fifth Amendment Effective Date neither Party is aware of any facts or circumstances which constitute a dispute as to Hard Costs or Soft Costs in any Project Budget submitted to date. Furthermore, the Agency and Developer each acknowledge and agree that as of the Fifth Amendment Effective Date neither Party is aware of any Budget Disputes.

11. Subdivision. In connection with the Subdivision, Developer, the Agency and the City entered into that certain Hunters Point Shipyard Phase 1 Public Improvement Agreement dated as of July 21, 2009 (as amended from time to time, the "**PIA**"), a copy of which is on file with the Agency and may be examined during regular business hours by the public at the Agency's office. Following Completion Infrastructure Construction, or portions thereof, the Agency shall cooperate with Developer to secure (i) the release of all Security issued to DPW under the PIA and (ii) Acceptance (as defined in the PIA) by the City of the Infrastructure.

12. Conforming Amendments.

(a) Definitions.

(i) The following defined terms in Section 1.1 of the DDA are hereby amended to read in full as follows:

"**Community Benefits Agreement**" means that certain Community Benefits Agreement (Hunters Point Shipyard Phase 1) entered into by Developer (as successor-in-interest to Lennar – BVHP, LLC, a California limited liability company), dated as of April 4, 2005, as amended from time to time.

"**Community Builder**" has the meaning set forth in the Community Benefits Agreement.

"**Community Builder Program**" has the meaning set forth in the Community Benefits Agreement.

"**Community Builder Lots**" means those Lots identified on the Land Use Plan as Community Builder Lots. Subject to Section 15.5(b), Lots containing at least thirty percent (30%) of the Total Vertical Developer Residential Units (rounded up to the nearest whole number) shall at all times be designated as Community Builder Lots.

"**Complete Open Space Construction**" has the meaning set forth in Attachment 10.

"**Fair Market Value**" has the meaning set forth in Section 15.2(a).

"**Marketing Period**" has the meaning set forth in Section 15.4(a).

(ii) The following defined terms are hereby added to Section 1.1 of the DDA:

"**Block**" means the segmentation of the Project Site into separate Lots, or groups of Lots, as depicted on the Land Use Plan. As of the Fifth Amendment Effective Date, Parcel A-1 (the "**Hilltop**") has been divided into twelve (12) separate Blocks and Parcel A-2 (the "**Hillside**") has been divided into fifteen (15) separate Blocks.

"**Land Appraiser**" means the land appraiser selected pursuant to Section 15.2(a).

"**Land Broker**" means the land broker selected pursuant to Section 15.4(a).

"**Land Brokerage Agreement**" has the meaning set forth in Section 15.4(a).

"**List of Land Appraisers**" means the list attached hereto as Attachment 35, as such attachment may be revised from time to time by the written agreement of Developer and the Agency and pursuant to the provisions of Section 15.2(b) hereof.

"**List of Land Brokers**" means the list attached hereto as Attachment 36, as such attachment may be revised from time to time by the written agreement of Developer and the Agency and pursuant to the provisions of Section 15.4(b) hereof.

"**Lot Appraisal**" has the meaning set forth in Section 15.2(a).

"**Major Phase**" means a development segment comprising one (1) or more Blocks or portions thereof containing one (1) or more Residential Projects.

"**Master CC&Rs**" means that certain Master Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements of Hunters Point Shipyard Phase One, made by Developer, as declarant, and the Agency, as consenting owner, dated as of August 12, 2009 and recorded in the Official Records on August 12, 2009 as Document No. 2009-I815408-00 at Reel J954, Image 0597, as amended from time to time.

(iii) The following defined terms are hereby deleted from Section 1.1 of the DDA:

(1) Affiliate Purchase and Sale Agreement;

(2) Appraiser;

(3) Broker;

(4) Community Builder Purchase and Sale Agreement;

(5) Complete Appraisal;

(6) Minimum Purchase Price;

(7) Real Estate Brokerage Agreement;

(8) Restricted Use Appraisal; and

(9) Third-Party Purchase and Sale Agreement.

(iv) The following defined terms in Section 1 of Attachment 25 to the DDA are hereby amended to read in full as follows:

"**Project Budget**" means the Preliminary Budget and any subsequent Budgets delivered in accordance with the terms hereof.

(b) Each reference contained in the DDA (including in Attachment 25 thereto) to (i) "Approved Budget" is hereby deleted in its entirety and "Project Budget" is substituted in lieu thereof, (ii) "Appraiser" is hereby deleted in its entirety and "Land Appraiser" is substituted in lieu thereof, (iii) "Broker" is hereby deleted in its entirety and "Land Broker" is substituted in lieu thereof and (iv) "Real Estate Brokerage Agreement" is hereby deleted in its entirety and "Land Brokerage Agreement" is substituted in lieu thereof.

(c) Sections 2.2 and 2.3 of the DDA are hereby amended to replace the references to "Section 15.5" with "Section 15.6".

(d) In Section 3.2(ii) of Exhibit B of Attachment 24 to the DDA, references to "Minimum Purchase Price" are hereby replaced with "Fair Market Value."

(e) The definition of "Major Phase" in Section 2 of Attachment 22 to the DDA and in Attachment F to Attachment 27 to the DDA is hereby deleted in its entirety and the following is substituted in lieu thereof:

"**Major Phase**" means a development segment comprising one (1) or more Blocks or portions thereof containing one (1) or more Residential Projects.

(f) The document attached hereto as Exhibit C is hereby inserted into the DDA as Attachment 35 thereto.

(g) The document attached hereto as Exhibit D is hereby inserted into the DDA as Attachment 36 thereto.

13. Form of Vertical DDA and Purchase Agreement. The First Amendment included an initial form of Vertical DDA and purchase sale agreement, each of which was attached to the DDA as Attachment 27 thereto. In order to update such agreements to reflect the terms and provisions of the DDA which have been amended since the date of the First Amendment,

confirm the applicability of the relevant provisions of such agreements and conform such agreements to reflect the development of Phase 1 anticipated by the Parties, the Parties agree that promptly following the Fifth Amendment Effective Date they will work together in good faith to prepare and mutually agree upon (i) "the initial form of purchase and sale agreement" referred to in Section 15.1(b) of the DDA and (ii) the form of Vertical DDA to be used in connection with the first Major Phase Application to be submitted after the Fifth Amendment Effective Date. In formulating such updated agreements, the Parties shall use such agreements as contained in Attachment 27 to the DDA as the initial basis of their efforts. In order to be effective, the Vertical DDA updated pursuant to this Section 13 shall require the approval of the Commission, which approval may be given simultaneously with the first Major Phase Approval of a Major Phase Application which includes such updated Vertical DDA.

14. Miscellaneous.

(a) Incorporation. This Fifth Amendment constitutes a part of the DDA and any reference to the DDA shall be deemed to include a reference to the DDA as amended by this Fifth Amendment.

(b) Ratification. To the extent of any inconsistency between this Fifth Amendment and the DDA (including, without limitation, any attachments or exhibits thereto), the provisions contained in this Fifth Amendment shall control. As amended by this Fifth Amendment, all terms, covenants, conditions and provisions of the DDA shall remain in full force and effect.

(c) Definitions. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the DDA.

(d) Successors and Assigns. This Fifth Amendment shall be binding upon and inure to the benefit of the successors and assigns of the Agency and Developer, subject to the limitations set forth in the DDA.

(e) Counterparts. This Fifth Amendment may be executed in any number of counterparts (including by fax, PDF or other electronic means), each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

(f) Governing Law; Venue. This Fifth 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 Fifth Amendment shall be litigated in courts located within the County of San Francisco, State of California.

(g) Integration. This Fifth Amendment (together with the referenced or incorporated agreements) contains the entire agreement between the parties with respect to the subject matter of this Fifth Amendment. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Fifth Amendment. No prior drafts of this Fifth Amendment or changes from those drafts to the executed version of this Fifth 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 Fifth Amendment.

(h) Further Assurances. The Agency Executive Director and Developer shall execute and deliver all documents, amendments, agreements and instruments reasonably necessary or reasonably required in furtherance of this Fifth Amendment, including as required in connection with the Community Benefits Agreement, the Open Space Master Plan, the Interim Lease, other documents and agreements attached to the DDA or incorporated therein by reference, and other documents reasonably related to the foregoing.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On Nov. 10, 2009, before me, Sou Fan H. Wong, Notary Public, personally appeared Amy Lee, 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.

Sou Fan H. Wong

Notary Public

SOU FAN H. WONG
Commission # 1782827
Notary Public - California
San Francisco County
My Comm. Expires Dec 1, 2011

(Seal)

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On **November 11, 2009**, before me, **Emilie Alcantara, 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.

EMILIE ALCANTARA
Commission # 1799271
Notary Public - California
San Francisco County
My Comm. Expires May 27, 2012

Notary Public

(Seal)

EXHIBIT A

Schedule of Performance

[Attached]

ATTACHMENT 10

Schedule of Performance for Infrastructure Development

For purposes of this Schedule of Performance for Infrastructure Development, the following initially capitalized terms shall have the meanings set forth below:

"Deferred Infrastructure Items" are composed of the following five items: (1) 2" asphalt concrete wearing surface, (2) plantings, (3) irrigation heads, (4) street furniture, and (5) driveways and sidewalks.

"Complete Infrastructure Construction" means Complete Construction of the Infrastructure but not including the Deferred Infrastructure Items.

Activity	Schedule
Blocks 49, 50, 51	
Complete Infrastructure Construction	November 30, 2009
Deferred Infrastructure Items	90 days after substantial completion of vertical construction with respect to adjacency
Blocks 53, 54	
Complete Infrastructure Construction	December 31, 2009
Deferred Infrastructure Items	90 days after substantial completion of Vertical Improvements with respect to adjacency
Blocks 1, 56, 57	
Complete Infrastructure Construction	January 31, 2010
Deferred Infrastructure Items	90 days after substantial completion of vertical construction with respect to adjacency
Blocks 52, 55E, 55W, Community Facilities Parcels along Galvez	
Complete Infrastructure Construction	February 28, 2010
Deferred Infrastructure Items	90 days after substantial completion of vertical construction with respect to adjacency
Block 48	
Complete Infrastructure Construction	November 30, 2011
Deferred Infrastructure Items	90 days after substantial completion of vertical construction with respect to adjacency

ATTACHMENT 10

Open Space Build-Out Schedule of Performance

For purposes of this Open Space Build-Out Schedule of Performance, the following initially capitalized terms shall have the meanings set forth below:

"**Complete Open Space Construction**" means Complete Construction of all open space component items contemplated in the Open Space Master Plan.

As of the date of this Open Space Build-Out Schedule of Performance for Infrastructure Development, the Open Space Master Plan is being developed in accordance with the Design Review and Document Approval Procedure for Infrastructure Development. Items of work will be established when the final Construction Documents for the work are permitted.

Activity	Schedule
Innes Court Park	4 months after first occupancy of first Unit on the Hilltop.
a) Hillpoint Park, b) Hilltop ADA Path (from Galvez to Hudson) c) Hilltop Open Space, and d) Galvez Steps	4 months after first occupancy of first Unit on the Hilltop.
Two Pocket Parks for Block 55E	8 months after first occupancy of first Unit on Block 55E.
Parcel G	8 months after first occupancy of first Unit on Block 55E.
Pocket Park for Blocks 50 and 49	8 months after first occupancy of first Unit on Block 50 and Block 49.
Three Pocket Parks for Block 55W	8 months after first occupancy of first Unit on Block 55W.
Pocket Parks Along Navy Road	
Park 1	8 months after first occupancy of first Unit on Lots 39 through 53.
Park 2	8 months after first occupancy of first Unit on Lots 54 through 69.
Park 3	8 months after first occupancy of first Unit on Lots 1 through 18.
Pocket Parks Along Oakdale	
Park 1	8 months after first occupancy of first Unit on Lots 70 through 83.
Park 2	8 months after first occupancy of first Unit on Lots 84 through 92.
Park 3	8 months after first occupancy of first Unit on Lots 93 through 109.
Park 4	8 months after first occupancy of first Unit on Lots 110 through 115.
Park 5	8 months after first occupancy of first Unit on Lots 116 through 131.
a) Central Park, b) Hillside ADA Paths, and c) Hillside Open Space	4 months after first occupancy of first Unit on the Hillside.

IN WITNESS WHEREOF, the Agency and Developer have each caused this Fifth Amendment to be duly executed on its behalf as of the Fifth Amendment Effective Date.

AGENCY:

Authorized by Agency Resolution No. _____ adopted November 3, 2009

Approved as to Form:

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

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

By: _____
Name: _____
Title: _____

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

IN WITNESS WHEREOF, the Agency and Developer have each caused this Fifth Amendment to be duly executed on its behalf as of the Fifth Amendment Effective Date.

AGENCY:

Authorized by Agency Resolution No. 125-2009, adopted November 3, 2009

Approved as to Form:

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

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

By: _____
Name: Amy Lee
Title: Deputy Executive Director
Finance and Administration

DEVELOPER:

HPS DEVELOPMENT CO., LP,
a Delaware limited partnership,

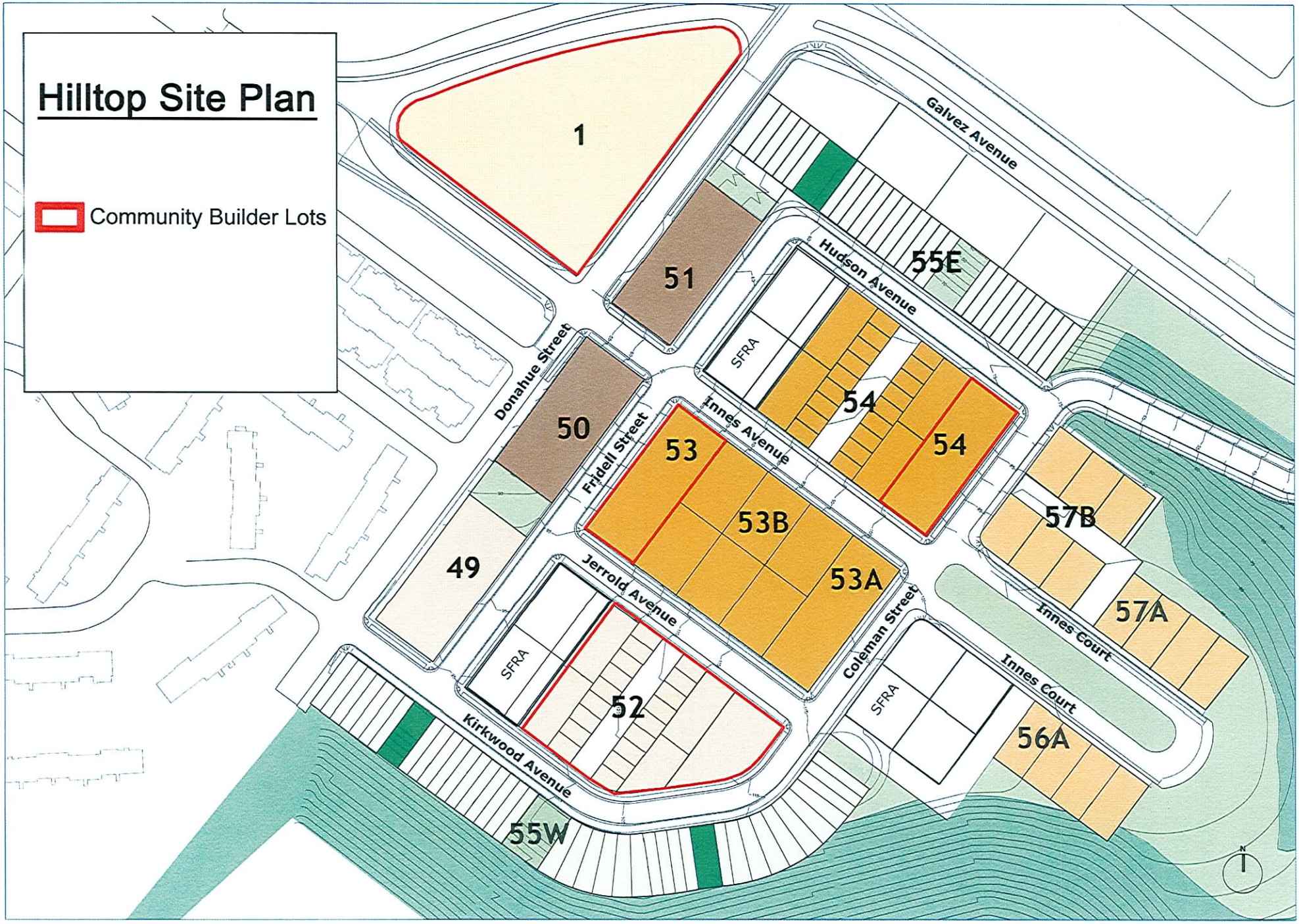
By: CP/HPS Development Co. GP, LLC,
a Delaware limited liability company,
its General Partner

By: _____
Name: Kofi Bonner
Its: Authorized Representative

EXHIBIT B

Land Use Plan

[Attached]


Hilltop Site Plan
Community Builder Lots
1
51
50
49
53
53B
53A
54
54
52
55E
55W
57B
57A
56A
SFRA
SFRA
SFRA
Galvez Avenue
Hudson Avenue
Donahue Street
Fridell Street
Innes Avenue
Jerrold Avenue
Coleman Street
Innes Court
Innes Court
Kirkwood Avenue
N

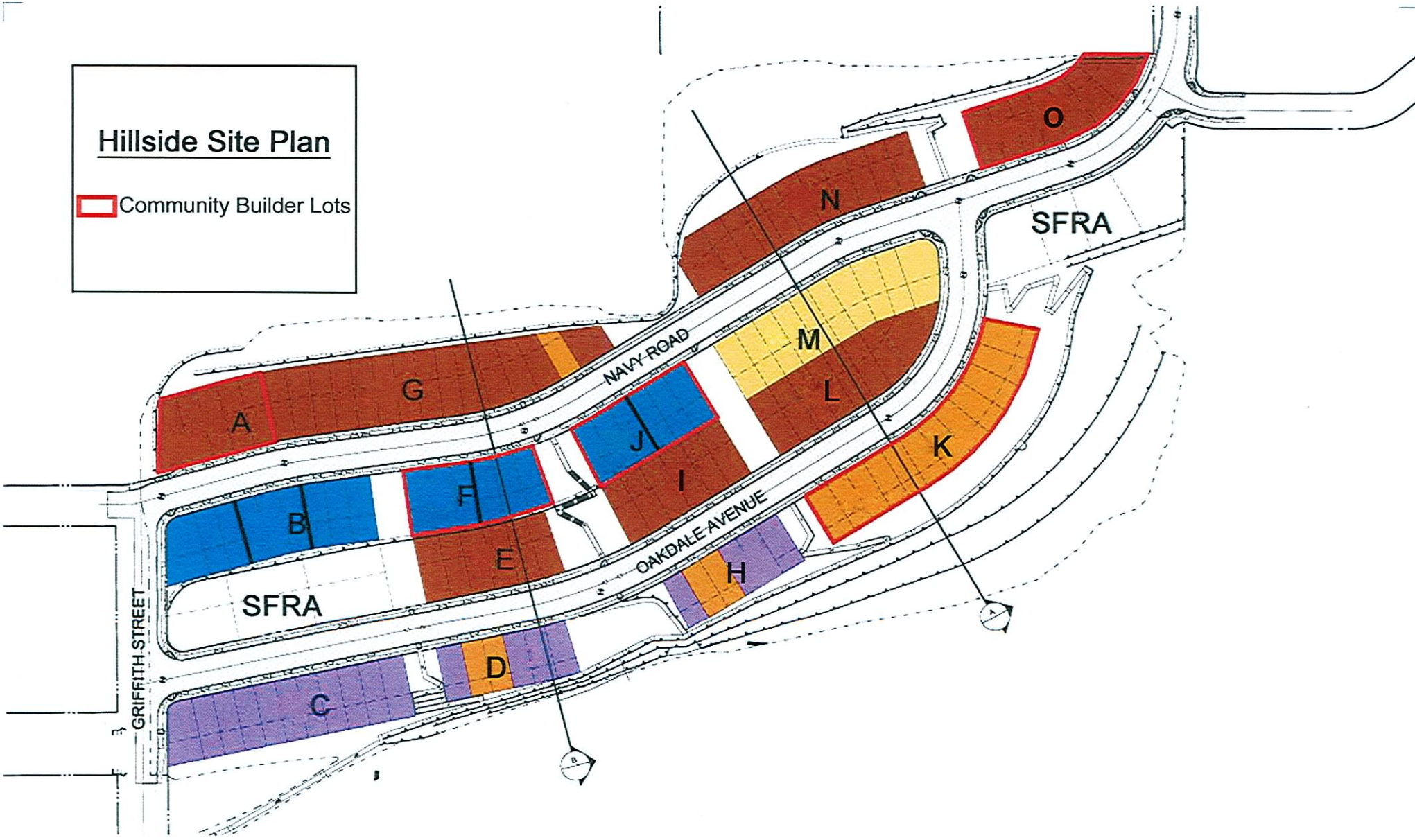

Hillside Site Plan
Community Builder Lots
A
B
C
D
E
F
G
H
I
J
K
L
M
N
O
SFRA
SFRA
NAVY ROAD
OAKDALE AVENUE
GRIFFITH STREET

EXHIBIT C

List of Land Appraisers

[Attached]

ATTACHMENT 35

List of Land Appraisers

John R. Kaeuper & Company 212 Sutter St. Suite 200 San Francisco, California 94108	J.W. Tom & Associates Real Estate Appraisal and Consultation 39 Colby Street San Francisco, California 94134
Carneghi-Blum & Partners, Inc. 595 Market Street, Suite 2230 San Francisco, California 94105	Baum and Associates 307 Deertrail Lane Mill Valley, California 94941
Mansbach Associates, Inc. 582 Market Street, Suite 217 San Francisco, California 94104	Clifford Associates 268 Bush Street, Suite 2300 San Francisco, California 94104
Hamilton, Ricci & Associates, Inc. 930 Montgomery Street, Suite 400 San Francisco, California 94133	Charles L. Theus 2625 Alcatraz Avenue (PMB 515) Berkeley, California 94705
Joseph J. Blake & Associates, Inc. 2300 Clayton Road, Suite 1300 Concord, California 94520	CB Richard Ellis Valuation & Advisory Services 350 Sansome Street, Suite 840 San Francisco, California 94104
O'Reilly Appraisal 2140 Great Highway San Francisco, California 94116	Integra Realty Resources 101 Montgomery Street, Suite 1800 San Francisco, California 94104

EXHIBIT D

List of Land Brokers

[Attached]

ATTACHMENT 36

List of Land Brokers

CB Richard Ellis 101 California Street, 44th Floor San Francisco, California 94111	Grubb & Ellis 1 Bush Street San Francisco, California 94104
The CAC Group 255 California Street, Suite 200 San Francisco, California 94111	Cushman & Wakefield 1 Maritime Plaza, Suite 900 San Francisco, California 94111
Eastdil Secured 101 California Street, Suite 2950 San Francisco, California 94111	Colliers International 50 California Street San Francisco, California 94111
Zephyr Real Estate 1542 20th Street San Francisco, California 94107	McGuire Real Estate 2001 Lombard San Francisco, California 94123
Jones Lang LaSalle One Front Street, Suite 1200 San Francisco, California 94111	Arroyo & Coates 500 Washington Street, Suite 700 San Francisco, California 94111
Coldwell Banker San Francisco, California	Century 21 San Francisco, California

RESOLUTION NO. 125-2009

Adopted November 3, 2009

AUTHORIZING A FIFTH AMENDMENT TO THE HUNTERS POINT SHIPYARD PHASE 1 DISPOSITION AND DEVELOPMENT AGREEMENT AND A FIRST AMENDMENT TO THE COMMUNITY BENEFITS AGREEMENT BETWEEN THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO AND HPS DEVELOPMENT CO., L.P.; HUNTERS POINT SHIPYARD REDEVELOPMENT PROJECT AREA

BASIS FOR RESOLUTION

1. On December 2, 2003, the Agency Commission ("Commission") approved the Hunters Point Shipyard Phase 1 Disposition and Development Agreement (as amended, "DDA") between the Redevelopment Agency of the City and County of San Francisco ("Agency") and Lennar-BVHP, LLC, now known as HPS Development Co., L.P. ("Lennar" or "Developer").

2. The DDA obligates Lennar to construct the infrastructure necessary to support the vertical development of 1,498 residential units in the Phase 1 development and 26 acres of open space and parks at the former Hunters Point Naval Shipyard ("Shipyard"). At least 15 percent of Lennar's 1,280 units will be affordable and the Agency will cause to be constructed 218 units at deeper levels of affordability. Lennar has also entered into a Community Benefits Agreement ("Community Benefits Agreement") with the Agency to provide training, assistance, and contracting opportunities to community residents and organizations, and to offer 30 percent of the units to be constructed in the first phase of development of the Shipyard to developers and contractors based in the Bayview Hunters Point community ("Community Builders").

3. The key features of the Phase 1 development include:

   a) Construction of new horizontal infrastructure improvements (utilities, streets grid system and streetscape improvements) and the delivery of finished lots for vertical development;

   b) The creation of entitlements for approximately 1,498 residential units (218 of which will be Agency-sponsored affordable housing units), including a robust affordable housing program which requires 15 percent of the total number of Developer units to be affordable;

   c) Approximately 10,000 square feet of development, including job-generating retail;

   d) Construction of 26 acres of open space and parks;

e) Provision of six acres of land set aside for development of community facilities (1.2 acres in Phase 1 and 4.8 acres in the Phase 2 portion of the Shipyard's development), the mix of uses of which are presently being determined through a community-based planning process;

f) Implementation of a Community Benefits Agreement benefiting community residents, community-based organizations and businesses through job training, hiring, contracting and development opportunities;

g) Provision of facilities for current artist tenants;

h) Participation in the Agency's Equal Opportunity Program affording opportunities to minority and woman-owned business enterprises;

i) Provision of substantial financial guarantees by the Developer, including a letter of credit securing the entire amount of the Mello-Roos bonds used to partially fund public infrastructure; and

j) Reinvestment of the Agency's portion of land sales net revenue from the Shipyard into the Shipyard Legacy Fund to be managed by the Quasi-Public Entity ("QPE") for the benefit of the Bayview Hunters Point ("BVHP") community in accordance with the DDA's Attachment 23 and the Shipyard Legacy Fund Report.

4. In Spring 2005, Lennar commenced deconstruction and demolition activities on Parcel A as the first step in the construction of the horizontal improvements. Lennar completed mass grading of Parcel A in 2007, and to date, Lennar has completed nearly 75 percent of the Hilltop's infrastructure. Lennar has also recorded the final map for both the Hilltop and the Hillside, and recently completed the subdivision of Parcel A for the Phase 1 project. Lennar is actively marketing portions of the Shipyard to developers for vertical construction.

5. Although the Shipyard's DDA has been amended since its approval in December 2003, the development program remains substantially the same. On January 18, 2005, by Resolution No. 3-2005, the Commission authorized a first amendment to the DDA ("First Amendment"). The First Amendment recognized the satisfied closing conditions required in the DDA, and authorized the Agency to transfer the non-public portions of Parcel A to Lennar and execute an Interagency Cooperation Agreement between the Agency and the City and County of San Francisco to ensure coordination and cooperation amongst all City departments and commissions with jurisdiction over the project.

6. On October 17, 2006, by Resolution No. 141-2006, the Commission authorized a second amendment to the DDA ("Second Amendment"). The Second Amendment adjusted the project's for-sale and for-rent housing development ratio and schedule of performance to respond to the housing market conditions and the U.S. Department of the Navy's delayed Parcel B remediation schedule (thus removing Parcel B from the Phase 1 development).

7. On August 5, 2008, by Resolution No. 84-2008, the Commission authorized a third amendment to the DDA, which adjusted the project's schedule of performance to reflect the cumulative effects of project construction delays and better coordinate the completion of the horizontal construction with that of the vertical construction.

8. On August 19, 2008, by Resolution No. 86-2008, the Commission authorized a fourth amendment to the DDA, which enabled the Agency to approve new financial partners, assign and amend certain DDA rights and obligations to the new venture, and clarified the Agency and Lennar's rights and obligations in completing the Shipyard's infrastructure construction.

9. The downturn in the nation's economy, combined with the immediate pressures on the banking industry and availability of credit, are continuing to have an effect on development. In response, developer spending on new construction has dropped dramatically. According to the United States Census Bureau - Department of Commerce, the nation's total construction spending on new residential development has decreased 32 percent from June 2006 to June 2009. Construction cost increases have slowed as a result of the construction slowdown; however, development costs in San Francisco remain extremely high, and many new projects may not be financially feasible under current market conditions. With this imbalance, equity and construction financing entities have been taking an extremely cautious approach to committing financing to projects.

10. In light of the historically significant disruptions and declines in values and activity in the housing, financial and credit markets, and in order to maintain project momentum and facilitate vertical construction, the Agency and Lennar are now proposing several changes to the DDA through a fifth amendment to the DDA ("Fifth Amendment"). The goals of the Fifth Amendment discussions are to update the DDA so that the project can maintain momentum, facilitate vertical construction, and make common sense changes that clarify the DDA, while maintaining benefits to the BVHP community.

11. The Fifth Amendment will enable the Agency and Lennar to respond to the current market conditions, streamline the land delivery and sales process, and activate housing development, including opportunities for Community Builders. In addition, through this Fifth Amendment, Lennar will provide for a $1 million advance (in two $500,000 payments) to the Shipyard Legacy Fund or Community Benefits Fund, which will be managed by the QPE in accordance with the DDA's Attachment 23 and the Shipyard Legacy Fund Report.

12. The Agency and Lennar informed the Mayor's Hunters Point Shipyard Citizens Advisory Committee ("CAC") on the details and impacts of the Fifth Amendment (and the associated First Amendment to the Community Benefits Agreement) during its meetings in July, September, and October 2009. At these meetings, Agency staff conducted an in-depth review and discussion of the document. The CAC approved the Fifth Amendment at a final public hearing on October 19, 2009.

13. Commission authorization of the Fifth Amendment is not a project as defined by the California Environmental Quality Act Guidelines Section 15378(b)(5). The proposed changes under the Fifth Amendment are related to how the Agency administers the DDA. Such administrative activities of the Agency will not independently result in a physical change in the environment.

RESOLUTION

ACCORDINGLY, IT IS RESOLVED by the Redevelopment Agency of the City and County of San Francisco that (i) it has reviewed and considered the Shipyard Final Environmental Impact Report, the First Addendum, and Second Addendum and hereby adopts the environmental findings set forth herein; and (ii) the Executive Director is authorized (a) to execute a Fifth Amendment to the Hunters Point Shipyard Phase 1 Disposition and Development Agreement, substantially in the form lodged with the Agency General Counsel; and (b) to execute all documents, amendments, agreements and instruments reasonably necessary or required to implement the Fifth Amendment to the DDA to further the goals of the Hunters Point Shipyard Redevelopment Plan and the Hunters Point Shipyard Phase 1 Disposition and Development Agreement, including the execution of a First Amendment to the Community Benefits Agreement, substantially in the form lodged with the Agency General Counsel.

APPROVED AS TO FORM:

for James B. Morales
Agency General Counsel