

SECOND AMENDMENT TO HUNTERS POINT SHIPYARD

PHASE 1 PUBLIC IMPROVEMENT AGREEMENT

This SECOND AMENDMENT TO THE HUNTERS POINT SHIPYARD PHASE 1 PUBLIC IMPROVEMENT AGREEMENT (this “**Second Amendment**”) is entered into as of _____, 20__ (the “**Effective Date**”) by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (the “**City**”), the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic (the “**Agency**”), and HPS DEVELOPMENT CO., LP, a Delaware limited partnership (“**Subdivider**”).

RECITALS

- A. In 2006, the Director conditionally approved the Tentative Map entitled “Tentative Subdivision Map for Tract No. 2004-1 Hunters Point Shipyard.” The Director’s Conditions of Approval, dated August 9, 2006 (the “**2006 Conditions of Approval**”) required the Subdivider to complete installation of certain public improvements.
- B. Prior to completing the public improvements required by the 2006 Conditions of Approval, Subdivider requested the City’s approval of two Final Maps (Map No. 4231 and Map No. 5255). The City, the Redevelopment Agency of the City and County of San Francisco (the “**Redevelopment Agency**”), and Subdivider entered into the Hunters Point Shipyard Phase 1 Public Improvement Agreement (the “**Original Agreement**”) to secure the completion of public improvements required by the 2006 Conditions of Approval subsequent to the approval and recording of the Final Maps.
- C. The City, the Redevelopment Agency, and Subdivider entered into a First Amendment of the Original Agreement dated October 14, 2011 to provide for the removal of the S-Curve from the Phase 1 Required infrastructure and release Security and Reversionary Security for the S-Curve.
- D. On February 1, 2012, the Redevelopment Agency was dissolved pursuant to California State Assembly Bill 26 (“**AB 26**”), which was amended in part by California State Assembly Bill No. 1484 (“**AB 1484**”) (together, AB 26 and AB 1484, as amended from time to time, are referred to as the “**Redevelopment Dissolution Law**”). Pursuant to the Redevelopment Dissolution Law, all of the assets and obligations of the Redevelopment Agency were transferred to the Agency.
- E. Final Map Tract No. 5255, which was filed for record on August 12, 2009 in Book CC of Survey Maps, at Pages 176-185, inclusive, in the office of the County Recorder of the City and County of San Francisco, created 131 development lots for up to 397 condominium units. This development configuration was never constructed, and on February 20, 2015, Subdivider submitted an application for a new Tentative Subdivision Map seeking to merge and re-subdivide 124 of the development lots created by Final Map Tract No. 5255 into 17 development lots authorized for up to 404

condominium units. This tentative map, which was assigned number 8573 (“**Tentative Map No. 8573**”), was conditionally approved by the Director through DPW Order No. 184785.

- F. Subdivider has requested approval of a final subdivision map in advance of its completion of the improvements required by the conditions of approval adopted pursuant to Tentative Map No. 8573 (“**2016 Conditions of Approval**”), which public improvements include modifications and enhancements to the public improvements required under the 2006 Conditions of Approval and described in the Original Agreement with respect to the area subdivided by Map No. 5255. Given these modifications, amendments to Exhibit A-1 are required.
- G. Pursuant to the Original Agreement, Security has been provided for Phase 1 Required Infrastructure within the Final Map Tract No. 5255 and Final Map Tract No. 4231 areas. Pursuant to this Second Amendment, the City will release security for Phase 1 Required Infrastructure within the Final Map Tract No. 5255 area, and Subdivider shall provide replacement security.
- H. Subdivider will offer the Phase 1 Required Infrastructure for Acceptance by the City, with the exception of parks and open space areas constructed on Agency Parcels (as defined below), which will be offered to the Agency for acceptance in a form acceptable to the Agency.
- I. In order to permit approval and recordation of the Final Map and to implement the 2016 Conditions of Approval, and to simultaneously satisfy the security provisions of the Code and Section 13.3(c)(iii) of the Phase 1 DDA, the City, the Agency and Subdivider desire to enter into this Second Amendment.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and the covenants, terms, conditions and restrictions contained herein, and without waiving any of the respective parties’ rights under the Phase 1 DDA, the City, the Agency and Subdivider hereby amend the Original Agreement, as hereinafter set forth:

- 1. Amended Sections and Exhibits.
 - a. Exhibit A-1 – Plans and Specifications. Exhibit A-1 to the Original Agreement is hereby replaced in its entirety by Exhibit A-1 attached hereto.
 - b. Section 1(a) – Completion of Phase 1 Required Infrastructure.

Section 1(a) is hereby deleted and replaced with the following:

Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete construction of all Phase 1 Required Infrastructure no later than two (2) years from the Effective Date, with the exception of the Pocket

Parks (as identified in the Phase 1 DDA) located within the boundaries of Final Map Tract No. 5255, which shall each be completed no later than twenty-four (24) months after the issuance of the first Building Permit for adjacent Vertical Development (as those terms are defined in the Phase 1 DDA); provided, however, that the periods of time in this condition may be extended in accordance with Section 3(b) hereof.

c. Section 5(c) – Acceptance and Dedications.

Section 5(c) is hereby deleted and replaced with the following as Sections 5(c)(i) and 5(c)(ii):

- (i) Final Map Tract Nos. 4231 and 5255 include certain offers of dedication as more particularly set forth therein. The Board of Supervisors shall accept, conditionally accept or reject such offers of dedication, and shall also accept, conditionally accept or reject for public right of way and utility purposes the related City fee parcels and Phase 1 Required Infrastructure (or portions thereof) which are not included in such previous offers of dedication, by ordinance or other appropriate action upon the Director's determination in accordance with Section 5(a) of completion of the Phase 1 Required Infrastructure, or portion thereof. Subdivider will coordinate with the City and assist in the City's process for the offers of dedication and Acceptance of Phase 1 Required Infrastructure by (1) providing necessary maps, legal descriptions, and plats for street openings, offers of easements and/or dedications for right-of-way or utility purposes and for relinquishment of existing rights of access and utilities associates with on-site and off-site development; (2) executing easement agreements consistent with the Conditions of Approval for the Tentative Map; and (3) providing easement agreement documents consistent with the 2016 Conditions of Approval and the completion and Acceptance of the Phase 1 Required Infrastructure, including, as applicable, easements for emergency vehicle access and emergency exiting, public easements for those uses described in the master declarations and the declaration of restrictions, and public service easements for access by the City and for public utilities.
- (ii) Offers of dedication on the Final Maps do not include parks or open space on parcels owned by the Agency ("**Agency Parcels**"). The City, the Agency, and Subdivider agree that: (a) notwithstanding anything herein to the contrary, Subdivider shall offer parks and open space improvements on Agency Parcels to the Agency for Acceptance, in a form acceptable to the Agency; (b) Agency Parcels, both prior and subsequent to Subdivider's completion of parks and open space improvements thereon shall be owned by the Agency; and (c) Notwithstanding the foregoing, Subdivider may request Certificates of Completion for said parks and open space improvements pursuant to Section 4.4 of the Phase 1 DDA.

d. Section 8(c) – Major Encroachment Permit(s).

Section 8(c) is hereby deleted and replaced with the following:

With the exception of the Subdrains System (as defined in Attachment 1 hereto), all encroachments within any public Right-of-Way within the Property shall be permitted through the applicable encroachment permit issued to Subdivider, which encroachment permit may be, in Subdivider's sole discretion and in all events subject to applicable law, assigned to the Master Homeowners Association ("**Master HOA**") for purposes of maintenance of said encroachments consistent with the Master Declaration of Covenants, Conditions and Restrictions and Grant and Reservation of Easements of Hunters Point shipyard Phase One (Document No. 2009-I815408-00, "**Master CC&Rs**"). Any required encroachment permit shall be obtained prior to the earlier of acceptance of public street improvements or occupancy of any building (TCO or CFCO).

e. Section 8(e) – Subdrains.

Section 8 is hereby amended to include the following as a new Section 8(e):

Subdrains constructed to date are shown on as-built drawings prepared by ENGEO dated May 2009 that are included as Exhibit C to the Master CC&Rs and are hereafter referred to as the "Subdrains System." Prior to the earlier of acceptance of public street improvements or occupancy of any building (TCO or CFCO), Subdivider shall provide an amended offer of dedication for Lots 132-137 of Final Map Tract No. 5255 that includes the following requirements:

- (i) No portion of the Subdrains System within Lots 132 to 137, inclusive, as shown on Final Map Tract No. 5255, will be accepted by the City for public use and maintenance. Subdivider shall retain, by reservation in its amended offer of dedication, an easement for maintenance, repair, replacement, and reconstruction of the Subdrains System.
- (ii) Notwithstanding Subdivider's easement, prior City approval is needed for any adjustment or modification of the Subdrains System, either temporary or permanent, to the extent that such adjustment or modification occurs prior to dedication of streets overlaying the Subdrains System. Said adjustment or modification of the Subdrains System shall be shown on revised and approved Improvement Plans and attached to Sub-Association CC&Rs (as defined below) subject to review and approval by the City. City approved as-built drawings for the Subdrains System as it may be modified shall also be added to the Sub-Association CC&RS at the completion of construction.
- (iii) The City shall not be responsible for potential damages to the Subdrains System caused by City utility work or street maintenance within the public right-of-way except as may be caused solely by City's willful misconduct

or gross negligence, provided that the City takes reasonable precautions to avoid damage to the Subdrains System when performing utility work or street maintenance.

f. Section 8(f) – Sub-Association CC&Rs, Homeowners Association Documents, and Reservations.

Section 8 is amended to include a new section 8(f) as follows:

Prior to the earlier of Subdivider’s request for acceptance of public improvements within the Final Map Tract No. 5255 area or the Final Map Tract No. 8573 area, or Subdivider’s request for the first certificate of occupancy for any residential unit in the Final Map Tract No. 8573 area, Subdivider shall provide “**Sub-Association CC&Rs**”, which are covenants conditions and restrictions pertaining solely to vertical development within the Map No. 8573 area, and governing homeowners association documents required by the Davis-Sterling Act and prepared for vertical development within the Map No. 8573 area (“**HOA Documents**”) to the Director and the Agency for review to confirm that the Sub-Association CC&Rs reflect the following criteria:

- (i) Subdivider shall include a provision in the Sub-Association CC&Rs regarding the Subdrains System that is substantially consistent with Attachment 1 hereto, which shall be added as Exhibit C to the Original Agreement.
- (ii) Any modifications to the Subdrains System shall be depicted in approved Improvement Plans appended to the Sub-Association CC&Rs. After completion of said modifications, Subdivider shall append updated as-built drawings as an exhibit to the Sub-Association CC&Rs.
- (iii) Private storm drain and retaining wall easements shall be granted by Subdivider to the Master HOA or to a subsidiary homeowners association consistent with the Master CC&Rs.
- (iv) Any other necessary non-exclusive easements shall be described in the Sub-Association CC&Rs or HOA Documents.

g. Section 9(d)(i) – Notices.

- (i) A notice or communication under the Original Agreement, the First Amendment, or this Second Amendment by any party to the other (or by or to the Director) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

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

Director of Public Works
City and County of San Francisco
30 Van Ness Avenue, Suite 4200
San Francisco, CA 94102
Attention: Infrastructure Task Force Manager
Telefacsimile: (415) 581-2569

Office of Community Investment and Infrastructure
One South Van Ness, 5th Floor
San Francisco, CA 94103
Attention: Hunters Point Shipyard Phase 1 Project Manager
Reference: Hunters Point Shipyard Phase 1 Project
Telefacsimile: (415) 749-7585

With copies to:

Office of the City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attention: John Malamut
Reference: Hunters Point Shipyard Phase 1 Project
Telefacsimile: (415) 554-4757

Office of Community Investment and Infrastructure
One South Van Ness, 5th Floor
San Francisco, CA 94103
Attention: General Counsel
Reference: Hunters Point Shipyard Phase 1 Project
Telefacsimile: (415) 749-2525

- (B) And in the case of a notice or communication to Subdivider at:

HPS Development Co., LP
c/o Lennar
One Sansome Street, Suite 3750
San Francisco, CA 94104
Attention: Ryan Hauck
Telefacsimile: (415) 247-2939

With copies to:

Perkins Coie LLP
505 Howard Street, Suite 1000
San Francisco, CA 94105
Attention: Matthew S. Gray
Telefacsimile: (415) 344-7082

Paul Hastings LLP
55 Second Street, Suite 2400
San Francisco, CA 94105
Attention: David Hamsher
Telefacsimile: (415) 856-7123

2. Miscellaneous Provisions.

- a. Improvement Security. Subdivider previously provided security to secure the completion of Phase 1 Required Infrastructure within the Map No. 5255 boundary (“**Initial Security**”). The improvement plans corresponding with this security have been superseded by those plans specified in the revised Exhibit A-1 attached hereto. Therefore, Subdivider shall provide replacement security to the City in the form of bonds substantially similar to Exhibits B-1 and B-2 to the Original Agreement to secure the completion of the Phase 1 Required Infrastructure described in Exhibit A-1 attached hereto. Upon Subdivider’s delivery of such replacement security to the City, the City shall release the Initial Security.
- b. Continuing Effect. Except as otherwise expressly amended in Section 1 of this Second Amendment, all of the terms and conditions of the Original Agreement and the First Amendment remain in full force and effect.
- c. Incorporation. This Second Amendment constitutes part of the Original Agreement and First Amendment and any reference to the Original Agreement shall be deemed to include a reference to the Original Agreement as amended by the First Amendment and this Second Amendment.
- d. Other Definitions. All capitalized terms used but not defined herein shall have the meanings assigned thereto in the Original Agreement or First Amendment.
- e. Counterparts. This Second Amendment may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute one and the same document, binding on all parties hereto notwithstanding that each of the parties hereto may have signed different counterparts. Delivery of this Second Amendment may be effectuated by hand delivery, mail, overnight courier or electronic communication (including by PDF sent by electronic mail, facsimile, or similar means of electronic communication). Any electronic signatures shall have the same legal effect as manual signatures.

- f. Confirmation of Original Agreement and the First Amendment. As modified hereby, the Original Agreement and the First Amendment remain in full force and effect. In the event of any conflict between the provisions of the Second Amendment and the Original Agreement or the First Amendment, this Second Amendment shall prevail.

[Signatures on next page.]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date set forth above

SUBDIVIDER:

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: Ryan Haddock
Title: VP

CITY:

Approved as to Form:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California

By: _____
Name: _____
Title: Deputy City Attorney

By: _____
Name: _____
Title: _____

AGENCY:

Approved as to Form:
James Morales, General Counsel

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

By: _____
Aaron Foxworthy
Deputy General Counsel

By: _____
Nadia Sesay
Executive Director

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

ALL-PURPOSE ACKNOWLEDGMENT NOTARY FOR CALIFORNIA

STATE OF CALIFORNIA)
CITY OF SAN RAMON)
COUNTY OF CONTRA COSTA)

On Nov. 29, 2019, before me, *SHERYL JUAN*,
Date Name and Title of Officer (e.g. "Jane Doe, Notary Public")

personally appeared *Ryan Hauck*,
Name of Signer(s)

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.
Sheryl Juan
Signature of Notary Public



EXHIBIT A-1

Infrastructure per Plans and Specifications

1. Improvement Plans and Specifications prepared by DMJM Harris entitled "Hunters Point Shipyard Development Project, Parcel A' Infrastructure – Wet Utility Permit Set" dated August 3, 2007 and approved by or on behalf of the Director, on August 14, 2007.

Original Estimated Total Cost (2009): \$8,449,070.00

Estimated Hilltop Cost: \$6,122,461.45

Estimated Hillside Cost: \$2,326,608.55

2. Improvement Plans and Specifications prepared by DMJM Harris entitled "Hunters Point Shipyard Development Project, Parcel A' Infrastructure – Joint Trench Permit" dated July 31, 2008 and approved by or on behalf of the Director, on July 31, 2008.

Original Estimated Total Cost (2009): \$ 3,451,177.36

Estimated Hilltop Cost: \$2,328,897.10

Estimated Hillside Cost: \$1,122,280.27

3. Improvement Plans and Specifications prepared by DMJM Harris entitled "Hunters Point Shipyard Development Project, Parcel A' Infrastructure – Infrastructure Permit" dated September 22, 2008 and approved by or on behalf of the Director, on September 24, 2008.

Original Estimated Total Cost (2009): \$ 7,027,246.98

Estimated Hilltop Cost: \$5,314,827.43

Estimated Hillside Cost: \$1,712,419.54

4. Improvement Plans and Specifications prepared by BKF entitled "Hunters Point Shipyard Development Project, Parcel A' Infrastructure – Comprehensive Hillside IB 19" dated Nov 30, 2015. Revised Hillside Total Cost will supersede Original Hillside Total Cost per recent material & labor costs and scope updates.

Original Previous Estimated Hillside Total Cost (2009): \$5,161,308.36

Revised Estimated Hillside Total Cost (2016): \$10,316,429.20

ATTACHMENT 1

(Form of CC&R Provision Regarding Subdrains System)

Numerous properties within this Subproject, including private parcels and park open spaces, as well as public rights-of-way, are served by a subjacent system of subdrains, sandtraps and cleanouts installed throughout the entirety of HPS Phase One in 2009 to facilitate drainage and ensure slope stability (the "Subdrains System"). A diagram of the Subdrains System is included as Exhibit C to the Master Declaration. Each Owner, by acquiring title to any portion of this Subproject, acknowledges and understands the following:

- a) The Subdrains System underlie private parcels, parks and open spaces, and public rights-of-way throughout HPS Phase One.
- b) All Properties within the Subproject are subject to the flow of subsurface waters through the Subdrains System.
- c) All Properties within the Subproject are part of the HPS Phase One Master Association. Properties are assessed special taxes through the CFD, which funds maintenance of public park and open space areas. As such, the CFD will be responsible for maintaining that portion of the Subdrains System within the parks and open space, and the Master Association shall be responsible for maintaining the remainder of the Subdrains System.
- d) The City is not a party to the Master Declaration and has assumed no maintenance obligations or liability as a result of that declaration or this Subproject Declaration.
- e) The City is intended to be a third-party beneficiary of all covenants of this [Article/Section __] of the Sub-Association CC&Rs with the right to consent to any modification or revocation hereof and the right and authority, at its sole option, to enforce the provisions of this [Article/Section __] hereof.