

HUNTERS POINT SHIPYARD PHASE 1 PUBLIC IMPROVEMENT AGREEMENT

This HUNTERS POINT SHIPYARD PHASE 1 PUBLIC IMPROVEMENT AGREEMENT (this “**Agreement**”) is entered into as of July 21, 2009 (the “**Effective Date**”), by and between the CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation of the State of California (the “**City**”), 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 (“**Subdivider**”).

RECITALS

A. Except as specifically defined herein, capitalized terms shall have the meanings given in (i) the Hunters Point Shipyard Subdivision Code of the City (the “**Code**”), (ii) the Redevelopment Plan for the Hunters Point Shipyard Redevelopment Project, adopted by the Board of Supervisors of the City (as amended from time to time, the “**Plan**”), (iii) the Phase 1 DDA (as defined below), (iv) the Plans and Specifications (as defined below) and (v) the Acquisition Agreement between Subdivider and the Agency dated April 5, 2005 (as amended from time to time, the “**Acquisition Agreement**”).

B. On or about April 5, 2005, Subdivider acquired from the Agency, pursuant to that certain Disposition and Development Agreement (the “**Original DDA**”) between the Agency and Subdivider, dated as of December 2, 2003, recorded in the Official Records of the City and County of San Francisco (the “**Official Records**”), certain real property described therein and commonly known as Phase 1 (the “**Property**”). The Original DDA was subsequently amended by that certain (collectively, together with the Original DDA and as amended from time to time, the “**Phase 1 DDA**”): (i) First Amendment to Disposition and Development Agreement, dated as of April 4, 2005, recorded in the Official Records; (ii) Second Amendment to Disposition and Development Agreement, dated as of October 17, 2006, recorded in the Official Records; (iii) Amendment to Attachment 10 (Schedule of Performance for Infrastructure Development and Open Space “Build Out” Schedule of Performance), dated as of August 5, 2008, recorded in the Official Records; and (iv) Fourth Amendment to Disposition and Development Agreement (Hunters Point Shipyard Phase 1), dated as of August 29, 2008, recorded in the Official Records.

C. Subdivider and the Agency are engaged in subdividing, and Subdivider is developing, the Property. A tentative map, entitled “Tentative Subdivision Map for Tract No. 2004-1 Hunters Point Shipyard”, for the proposed subdivision of the Property was approved by the Director of the Department of Public Works (the “**Director**”), acting as the Advisory Agency, subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated October 9, 2005. An amended tentative map, entitled “Tentative Subdivision Map for Tract No. 2004-1 Hunters Point Shipyard” (the “**Tentative Map**”) was approved by the Director, subject to certain requirements and conditions contained in the Director’s Conditions of Approval dated August 9, 2006 (the “**Conditions of Approval**”). The Tentative Map supersedes the original tentative map approval.

D. Pursuant to the Plan, the Code, any applicable Plans and Specifications relating to the filing, approval, and recordation of subdivision maps and the Conditions of Approval, Subdivider submitted to the City, for approval and recordation, final maps for the Property, entitled: “Final Map Tract No. 4231 for Hunters Point Shipyard” and “Final Map Tract No. 5255 for Hunters Point Shipyard” (each a “**Final Map**” and collectively the “**Final Maps**”) which, upon approval by the City, will be filed in the Official Records.

E. Subdivider has requested that the Final Maps be approved prior to the completion of construction and installation of the public improvements required by the Conditions of Approval of the Tentative Map and which are part of or appurtenant to the Property. Such public improvements are more particularly described in those certain improvement plans identified in Exhibit A-1 (as such plans are revised from time to time, the “**Plans and Specifications**”). The Plans and Specifications provide for the construction, installation and completion of the public improvements identified therein (the “**Phase 1 Required Infrastructure**”), and include the specifications and details of such public improvements. The term “**Phase 1 Required Infrastructure**” also includes the Interim Facilities more specifically identified in Exhibit A-2 (the “**Interim Facilities**”) and the Future Facilities more specifically identified in Exhibit A-3 (the “**Future Facilities**”). The estimated costs of completing the Phase 1 Required Infrastructure are described on Exhibits A-1, A-2 and A-3 hereto (the “**Estimated Costs**”). Copies of the Plans and Specifications are on file with the San Francisco Department of Public Works (“**DPW**”).

F. The Code provides that before a final subdivision map or parcel map is approved by the City, Subdivider shall have either (i) installed and completed all of the public improvements required by the City and detailed in the plans and specifications approved by the Director, or (ii) entered into an agreement with the City to install and complete, free of liens, all of such public improvements within a definite period of time and provided improvement securities to secure satisfactory performance of such agreement.

G. In order to permit the approval and recordation of the Final Maps by the City (including the dedications contained therein), to implement the 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 Agreement.

AGREEMENT

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which are hereby acknowledged, Subdivider, the Agency and the City agree as follows:

1. Subdivider’s Obligations.

(a) Completion of Phase 1 Required Infrastructure. Subdivider shall, in good and workmanlike manner, furnish all necessary materials and complete construction of the Phase 1 Required Infrastructure in accordance with the performance schedule(s) set forth in Attachment 10 to the Phase 1 DDA; provided, however, that the periods of time provided in this condition may be extended in accordance with Section 3(b) hereof.

(b) Delivery of As-Built Plans. Within three (3) months after Acceptance of the Phase 1 Required Infrastructure, or portion thereof, Subdivider shall furnish to DPW and, if requested, the City Department of Building Inspection, as-built plans for such Phase 1 Required Infrastructure, or portion thereof, in both electronic (in a reasonably current version of AutoCAD) and mylar formats and any reports required in connection with such Phase 1 Required Infrastructure, or portion thereof, by the Plans and Specifications.

2. Improvement Security.

(a) Security. Pursuant to the Code, in order to secure satisfactory performance of the construction or installation of all of the Phase 1 Required Infrastructure and to guarantee payment for the labor, materials, equipment and services required in connection therewith, Subdivider has furnished and delivered the following to the Director (collectively, the “**Security**”): (i) performance bonds substantially in the form attached as Exhibit B-1 hereto in an amount equal to the Estimated Costs (the “**Performance Bonds**”) and (ii) performance bonds substantially in the form attached as Exhibit B-2 hereto in an amount equal to the Estimated Costs (the “**Labor and Materials Bonds**”). In addition to the Security, in full satisfaction of Section 13.3(c)(iii) of the Phase 1 DDA, Subdivider has furnished and delivered to the Director for the benefit of the Agency additional Performance Bonds and Labor and Materials Bonds, each in an amount equal to the Estimated Costs (collectively, the “**Reversionary Security**”). The amount of the Security and the Reversionary Security may be reduced pursuant to Section 4 hereof.

(b) Other Acceptable Security. In lieu of providing the Security or the Reversionary Security described in Section 2(a), Subdivider may, subject to the approval of the Director, provide a deposit or other security as described in Section 66499 of the Government Code (such deposit or other security shall also be considered “**Security**” or “**Reversionary Security**”, as applicable).

(c) Use of Security by DPW. If the Phase 1 Required Infrastructure is not completed within the time periods specified in Section 1(a) and such period is not extended by the City as provided under this Agreement, or Subdivider has not satisfactorily corrected all deficiencies during the Warranty Period (as such term is defined in Section 7 below), then the Security may, by request of the Director and the subsequent resolution of the Board of Supervisors of the City, be used by the City for completion of the Phase 1 Required Infrastructure.

(d) Use of Security and Reversionary Security by the Agency. If Subdivider has committed an Event of Default under Section 13.2(d), (i), (j) or (k) of the Phase 1 DDA, then the Security and the Reversionary Security may, by request of the Executive Director of the Agency (the “**Executive Director**”) and the subsequent resolution of the Agency Commission, be used by the Agency for completion of the Phase 1 Required Infrastructure.

3. Construction of Phase 1 Required Infrastructure.

(a) Permits and Fees. Subdivider shall not perform any work subject to this Agreement until all required permits have been obtained for the portion of work involved, and all applicable fees, including inspection and testing fees, have been paid.

(b) Extensions.

(i) Requested Extensions. Subdivider may request extensions of the time periods specified in Section 1(a) by submission of a request(s) to the Director. A request shall be in writing, state adequate evidence to justify the extension, and shall be made not less than thirty (30) days prior to expiration of this Agreement. The Director shall in good faith attempt to determine within such time whether an extension of time shall be granted. The Director's failure to respond within the time specified shall, however, not constitute either a grant or denial of the requested extension. The periods of time for performance under this Agreement shall be automatically extended for the period during which a request for an extension is pending a determination by the Director. The Director shall not unreasonably withhold, condition or delay a request for an extension. The Director may reasonably condition an extension subject to the terms of this Agreement and the conditions provided in the Code, including execution of an extension agreement.

(ii) Permit Processing. The periods of time for performance under this Agreement shall be automatically extended for the period of time associated with permit processing, including, without limitation, permit processing by and obtaining permits and approvals from all agencies with jurisdiction over the Phase 1 Required Infrastructure.

(iii) Unavoidable Delay. The periods of time for performance under this Agreement shall be automatically extended for Unavoidable Delay (as defined in the Phase 1 DDA).

(iv) Extensions Generally. The provisions in this Section 3(b) are in addition to and not a limitation of any other provision for extensions in this Agreement, the Phase 1 DDA or in the Plans and Specifications. No extension approved hereunder shall relieve the surety's liability under the Security or the Reversionary Security. A party requesting or claiming an extension of time for performance pursuant to this Section 3(b) must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, to remove the cause of the delay or to develop a reasonable alternative means of performance.

(c) Revisions to Plans and Specifications. Requests by Subdivider for revisions, modifications or amendments to the approved Plans and Specifications (each, a "**Plan Revision**") shall be submitted in writing to the Director (or the Director's designee and, if requested by the Executive Director, to the Agency). Within ten (10) business days of receipt by the Director (or the Director's designee), the Director (or the Director's designee) shall in writing either (i) approve such proposed Plan Revision or (ii) deny such

proposed Plan Revision and state the reasons for such denial and the actions, if any, that the Director (or the Director's designee) in good faith believes can be taken to obtain later approval. The Director (or the Director's designee) shall approve proposed Plan Revisions which are substantially consistent with the Plans and Specifications, the Final Maps and the Phase 1 DDA. Construction of any proposed Plan Revision shall not commence without prior approval pursuant to this Section 3(c).

(i) Notwithstanding the foregoing, prior approval by the Director (or the Director's designee) of Plan Revisions and supplemental agreements with contractors (commonly referred to as "change orders") shall only be required for such Plan Revisions and change orders which (1) in any way materially alter the quality or character or expected future maintenance costs of the Phase 1 Required Infrastructure, (2) involve an amount equal to or greater than Two Hundred Thousand Dollars (\$200,000), (3) would result in aggregate change orders in excess of the budgeted contingency for construction costs; or (4) either change a line item by more than ten percent (10%) of the line item, transfer line items in excess of ten percent (10%) of the lesser revenue as shown in the then Approved Budget (as that term is defined in Attachment 25 of the Phase 1 DDA).

(ii) If the proposed Plan Revision includes a change which will require a material change to the Infrastructure Plan set forth in Attachment 9 of the Phase 1 DDA (the "**Infrastructure Plan**"), Subdivider shall not proceed with such affected portion of the work without the prior written authorization (or conditional authorization) from the Director (or the Director's designee). In such case, the Director shall in good faith attempt to consult with the Agency, the Agency Commission and/or the Board of Supervisors of the City, if required, and determine, within ten (10) business days of receipt of the proposed Plan Revision, whether to approve, conditionally approve or deny, in writing, the proposed Plan Revision. The Director's failure to respond within the time specified above, however, shall not constitute either an approval or denial of the application, provided that the Director shall respond in good faith within a reasonable time thereafter. The Director may, in the exercise of the Director's reasonable discretion, suspend performance of the affected portion of the work pending approval of the proposed Plan Revision, or may allow the Plan Revision to be performed by Subdivider, at Subdivider's own risk, pending final review and approval of the proposed Plan Revision, subject to such conditions as the Director may reasonably determine are appropriate. Any such conditional authorization to proceed with the proposed Plan Revision may include, without limitation, ensuring that (1) adequate security is still available (2) adequate other acceptable security has been provided or separate security is deemed unnecessary by the Director, or (3) additional security is provided, if the Security has been otherwise released, for both the proposed Plan Revision and, if deemed reasonable and appropriate by the Director, for any subsequent modification (or removal) of the proposed Plan Revision that may be required by a subsequent action, if any is necessary, approving, denying or modifying the proposed Plan Revision.

(iii) Any Infrastructure Plan amendments or other related documentation required because of a Plan Revision shall be processed with reasonable

promptness. Infrastructure Plan amendments may be processed separately or joined with other proposed amendments.

(iv) Plan Revisions shall be accompanied by drawings and specifications and other related documents showing the proposed Plan Revision so as to adequately describe the proposed change and the cost and affect thereof.

4. Release of Security and Reversionary Security. The Security and the Reversionary Security, as applicable, shall be released to Subdivider, or its successors in interest, or reduced, as follows:

(a) Release of Security.

(i) One Year Warranty Bond. Upon the Director's determination of completion of the Phase 1 Required Infrastructure in accordance with Section 5(a), the Security shall be reduced to ten percent (10%) of the original amount thereof for the purpose of warranting repair of any defect in the applicable portion of the Phase 1 Required Infrastructure which occurs within the Warranty Period (as defined below); provided, however, if any claims by any contractor, subcontractor or person furnishing labor, materials or equipment to Subdivider have been filed against the City or the Agency, then the Security applicable to such Phase 1 Required Infrastructure shall be reduced to an amount equal to the greater of (i) the amount of all such claims filed or (ii) ten percent (10%) of the original amount.

(ii) Partial Release of Security. Notwithstanding the release provisions in Section 4(a), upon the Director's determination of completion of a portion of the Phase 1 Required Infrastructure in accordance with Section 5(a), the Security applicable to such Phase 1 Required Infrastructure shall be reduced to an amount determined by the Director that is not less than the greater of (i) the amount required to guarantee the completion of the remaining portion of the Phase 1 Required Infrastructure and any other obligation imposed by the Subdivision Map Act, the Code, this Agreement, the Phase 1 DDA or any other agreement relating to the completion of the Phase 1 Required Infrastructure or (ii) ten percent (10%) of the original amount of the Security.

(iii) Release of Remaining Security. The remaining Security shall be released when all of the following have occurred:

(A) One (1) year following the date of Acceptance (as defined in Section 5(b)) of the Phase 1 Required Infrastructure, or portion thereof, by the Board of Supervisors, or, with respect to street trees and park trees, following the expiration of the Warranty Period, or, with respect to any specific claim of defects or deficiency in the Phase 1 Required Infrastructure, one (1) year following the date that any such deficiency which the Director identified in the Phase 1 Required Infrastructure in accordance with Section 4(a) has been corrected or waived in writing; and

(B) the Clerk of the Board of Supervisors (or the Clerk's designee) certifies that no claims by any contractor, subcontractor or person furnishing labor, materials or equipment for the Phase 1 Required Infrastructure have

been filed against the City or the Agency within the Warranty Period, all such claims have been satisfied, withdrawn, or otherwise secured by bond or other security approved by the Director (or the Director's designee).

(b) Release of Reversionary Security. Upon the Director's determination of completion in accordance with Section 5(a) of the Phase 1 Required Infrastructure, or portion thereof, the Executive Director shall promptly request that the Director release the Reversionary Security applicable to such Phase 1 Required Infrastructure, or portion thereof, and the Director shall promptly comply with such request.

5. Completion and Acceptance.

(a) Director's Inspection. Promptly upon request from Subdivider for a completion determination, the Director shall reasonably determine whether the Phase 1 Required Infrastructure, or portion thereof, is ready for its intended use and is completed in substantial conformity with the Plans and Specifications and applicable City Regulations (as that term is defined in the Acquisition Agreement). If the Director determines that such Phase 1 Required Infrastructure (or portion thereof) reasonably satisfies such requirements, then the Phase 1 Required Infrastructure (or portion thereof) shall be deemed complete and the Director shall promptly provide notice thereof to Subdivider and the Agency. If the Director determines that such Phase 1 Required Infrastructure (or portion thereof) does not reasonably satisfy such requirements, then the Director shall promptly provide notice thereof including identifying with particularity the reasons therefor.

(b) Acceptance. "**Acceptance**" by the City of the Phase 1 Required Infrastructure, or portion thereof, for public use and maintenance shall be deemed to have occurred when:

(i) the Director has certified to the Board of Supervisors that the Phase 1 Required Infrastructure, or portion thereof, has been deemed complete in accordance with Section 5(a); and

(ii) the Board of Supervisors accepts the Phase 1 Required Infrastructure, or portion thereof, for public use and maintenance, in accordance with the provisions of San Francisco Administrative Code Section 1.52.

(c) Acceptance and Dedications. The Final Maps 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 dedication and Acceptance of Phase 1 Required

Infrastructure by (i) providing necessary maps, legal descriptions and plats for street openings, 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; (ii) executing easement agreements consistent with the Conditions of Approval for the Tentative Map; and (iii) providing easement agreement documents consistent with the Conditions of Approval of the Tentative Map 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.

6. Maintenance of Phase 1 Required Infrastructure.

(a) Maintenance Prior to Acceptance. Prior to Acceptance, Subdivider shall be responsible for the maintenance and repair of the Phase 1 Required Infrastructure.

(b) Maintenance Following Acceptance. Following Acceptance, the City shall assume the responsibility of operating and maintaining the Phase 1 Required Infrastructure, or portion thereof. Without limiting the generality of the foregoing, nothing in this Agreement shall be construed to mean that Subdivider is responsible under the Security or the Reversionary Security following Acceptance for the repair, replacement, restoration, or maintenance of Phase 1 Required Infrastructure damaged by the actions of third parties, including, without limitation, the owners or developers of adjacent projects, their agents, employees, contractors, subcontractors, invitees or licensees, and no actions by any such parties shall affect Subdivider's responsibilities or the release of the Security and/or the Reversionary Security.

7. Warranty and Indemnity.

(a) Warranty. Acceptance of Phase 1 Required Infrastructure, or portion thereof, by the City shall not constitute a waiver of defects by the City or the Agency. Subdivider covenants that all Phase 1 Required Infrastructure constructed or installed by Subdivider shall be free from defects in material or workmanship and shall perform satisfactorily for a period of one (1) year following the completion of the Phase 1 Required Infrastructure (or portion thereof) (the "**Warranty Period**"). During the Warranty Period, Subdivider shall, as necessary, and upon receipt of a request in writing from the Director that the work be done, correct, repair or replace any defects in the Phase 1 Required Infrastructure at its own expense. During the Warranty Period, should Subdivider fail to act with reasonable promptness to make such correction, repair or replacement, or should an emergency require that correction, repair or replacement be made before Subdivider can be notified (or prior to Subdivider's ability to respond after notice), City may, at its option, provided that notice thereof is provided to Subdivider, make the necessary correction, repair or replacement or otherwise perform the necessary work and Subdivider shall reimburse the City for the actual cost thereof.

(b) Indemnity. Pursuant to Section 17.1 of the Phase 1 DDA, the Agency and the City have been indemnified and held harmless from and against certain Losses (as defined in the Phase 1 DDA) arising out of, among other things, construction of the Infrastructure and agreements entered into by Subdivider in connection with its performance thereunder.

(c) City and Agency Liability. Neither the City nor the Agency shall be an insurer or surety for the design or construction of the Phase 1 Required Infrastructure pursuant to the Plans and Specifications, nor shall any officer or employee thereof be liable or responsible for any accident, loss, or damage happening or occurring during the construction of the Phase 1 Required Infrastructure as specified in this Agreement, except as may arise due to the willful misconduct or omissions or the active negligence of the City or the Agency.

8. Other Items.

(a) Private Roadway Funding Mechanisms. All private roadways shown on the Final Maps shall be constructed by the Vertical Developer (as defined in the Phase 1 DDA) of the applicable Lot (as defined in the Phase 1 DDA) and shall be operated and maintained pursuant to the terms of the Vertical DDA (as defined in the Phase 1 DDA) applicable to such Lot.

(b) Storm Drain V-Ditch Maintenance Responsibility. All storm drain V-ditches indicated in the as-built drawings for those certain plans titled “Hunters Point Shipyard Development Project, Parcel A’ Grading and Retaining Walls” shall be maintained by the Agency and funding for such maintenance shall be provided by the Community Facility District.

(c) Major Encroachment Permit. All irrigation system conduits crossing streets indicated in the “Hunters Point Shipyard Development Project, Parcel A’ Infrastructure” plans described in Exhibit A-1 shall be owned and maintained by the to-be-formed home owners association(s) created in connection with the vertical development of the property shown on the Final Maps. Any portion of such irrigation system that encroaches upon City property by crossing the public roadway will be permitted pursuant to Subdivider’s application for and processing of a major encroachment permit through DPW.

(d) Post-Construction Stormwater Management Facility. In connection with the future build-out of infrastructure for Parcel B’, Subdivider will construct a permanent collection and treatment facility (the “**Permanent Storm Water Treatment Facility**”) for treatment of post-construction storm water runoff from the Property. The Permanent Storm Water Treatment Facility will be constructed within Parcel B’ or a location otherwise approved. In combination with other storm water treatment facilities within the Property, the Permanent Storm Water Treatment Facility shall provide a level a treatment for storm water runoff from the Property that is required under the City’s Storm Water Management Plan, dated January 2004, or as may be subsequently revised or replaced to satisfy the requirements for coverage of the City’s

separate storm sewer system under that certain General Permit for the Discharge of Storm Water from Small Municipal Separate Storm Sewer Systems WQO No. 2003-0005-DWQ (“**MS4 Permit**”) issued by the State Water Resources Control Board, as determined by the SFPUC in coordination with the Regional Water Quality Control Board. Subdivider shall maintain and keep the interim post-construction storm water treatment facilities described in Exhibit A-2 operational until the Permanent Storm Water Treatment Facility is operational and Accepted by the City.

9. Miscellaneous.

(a) Final Map Recordation. The City, in accordance with the Code, shall record the Final Maps with the County Clerk in the Official Records of the City and County of San Francisco. The City shall notify Subdivider of the time of recordation of the Final Maps. In the event either Final Map is not recorded, this Agreement shall be null and void.

(b) Independent Contractor. In performing its obligations under this Agreement, Subdivider is not an agent or employee of the City or the Agency.

(c) Attorneys’ Fees. Should either party hereto institute any action or proceeding in court or other dispute resolution mechanism (“**DRM**”) to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys’ fees for the services rendered to the prevailing party in such action or proceeding. Attorneys’ fees under this Section 9(c) include attorneys’ fees on any appeal, and, in addition, a party entitled to attorneys’ fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

For purposes of this Agreement, reasonable fees of any in-house counsel for the Agency, the City or Subdivider shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the City’s or Subdivider’s in-house counsel’s services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City, or, in the case of Subdivider’s in-house counsel, as employed by the outside counsel for Subdivider.

(d) Notices.

(i) A notice or communication under this Agreement 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:

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
Attn: Hunters Point Shipyard Phase 1 Project Manager
Telefacsimile: (415) 581-2569

San Francisco Redevelopment Agency
One South Van Ness, 5th Floor
San Francisco, CA 94103
Attn: Hunters Point Shipyard Phase 1 Project Manager
Reference: Hunters Point Shipyard Phase 1 Project
Telefacsimile: (415) 749-7585

With copies to:

Office of the Mayor
Office of Economic and Work Force Development
City and County of San Francisco
City Hall, Room 448
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Michael Cohen
Reference: Hunters Point Phase 1 Project
Telefacsimile: (415) 554-4058

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

San Francisco Redevelopment Agency
One South Van Ness, 5th Floor
San Francisco, CA 94103
Attn: General Counsel
Reference: Hunters Point Shipyard Phase 1 Project
Telefacsimile: (415) 749-7585

And in the case of a notice or communication to Subdivider at:

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

With copies to:

Sheppard, Mullin, Richter & Hampton LLP
Four Embarcadero Center, 17th Floor
San Francisco, CA 94111-4109
Attn: Robert A. Thompson
Telefacsimile: (415) 434-3947

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

For the convenience of the parties, copies of notice may also be given by telefacsimile.

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

(A) the section of this Agreement pursuant to which the notice is given and the action or response required, if any;

(B) if applicable, the period of time within which the recipient of the notice must respond thereto;

(C) if approval is being requested, shall be clearly marked "Request for Approval under the Hunters Point Shipyard Phase 1 Public Improvement Agreement"; and

(D) if a notice of disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(ii) Any mailing address or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile.

(iii) Any notice or request for review, consent or other determination or action by the Director that could be subject to deemed approval under any provision of this Agreement shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: “HUNTERS POINT SHIPYARD INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN THE REQUEST BEING DEEMED APPROVED.”

(e) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto, and upon such transfer, Subdivider shall be released from its obligations hereunder upon providing written evidence of a proper Assignment and Assumption Agreement. Any such assignment shall be in writing, shall clearly identify the scope of the rights and/or obligations assigned and shall be subject to the reasonable approval of the Director.

(f) Interagency Cooperation Letter Agreement. The City shall cooperate with Subdivider consistent with the terms of the Interagency Cooperation Letter Agreement dated February 11, 2005, including, without limitation, in obtaining applicable approvals required for the construction of the Phase 1 Required Infrastructure. The City shall use reasonable efforts to obtain the compliance by the Agency and affected City departments with the provisions of the Interagency Cooperation Letter Agreement as they affect the inspection and Acceptance by the City of Phase 1 Required Infrastructure.

(g) Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party’s right to insist upon and demand strict compliance by the other party with the terms of this Agreement thereafter.

(h) Parties in Interest. Nothing in this Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the parties hereto any rights, remedies or claims under or by reason of this Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Agreement contained by or on behalf of the Agency, the City or Subdivider shall be for the sole and exclusive benefit of such parties.

(i) Amendment. This Agreement may be amended, from time to time, by written supplement or amendment hereto and executed by the City, the Agency and Subdivider. The Director is authorized to approve and execute on behalf of the City any amendment that the Director determines is in the City’s best interests and does not materially increase the City’s obligations or materially diminish the City’s rights under this Agreement. The Executive Director is authorized to approve and execute on behalf of the Agency any amendment that the Executive Director determines is in the Agency’s best interests and is consistent with the terms of the Phase 1 DDA and the implementation thereof.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

(k) Interpretation of Agreement. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of Subdivider, the Agency or the City pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Captions used in this Agreement are for convenience or reference only and shall not affect the interpretation or meaning of this Agreement. This Agreement shall in no way be construed to limit or replace any other obligations or liabilities which the parties may have under the Plan, the Plans and Specifications, the Phase 1 DDA, any permit to enter or any other agreement entered into in accordance therewith.

10. Insurance. At all times prior to Acceptance of the Phase 1 Required Infrastructure, Subdivider shall comply with the insurance requirements set forth in the Phase 1 DDA and as otherwise required by applicable City Regulations. Subdivider shall furnish to the Agency and the City, from time to time upon request by the Agency or the City's Risk Manager, a certificate of insurance (and/or, upon request by the Agency or the City's Risk Manager, a complete copy of any policy) regarding each insurance policy required to be maintained by Subdivider under the Phase 1 DDA and as otherwise required by applicable City Regulations.


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IN WITNESS WHEREOF, Subdivider, the City and Agency have executed this Agreement as of the Effective Date.

Subdivider:

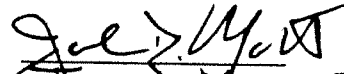
HPS DEVELOPMENT CO., LP,
a Delaware limited partnership

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

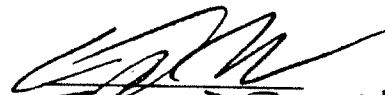
By: 
Name: Kofi Bonner
Its: Authorized Representative

City:

Approved as to Form:

By: 
Name: JOHN D. MALAMUT
Title: Deputy City Attorney

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

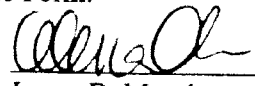
By: 
Name: CHARLES D. KETSKIN
Title: Director of Public Works

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

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.

Estimated Cost: \$ 8,449,070.00

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.

Estimated Cost: \$ 3,451,177.36

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.

Estimated Cost: \$ 7,027,246.98

EXHIBIT A-2

Interim Facilities

4. Maintenance of Interim Subdrain Pump Stations pursuant to Improvement Plans and Specifications prepared by DMJM Harris entitled "Hunters Point Shipyard Redevelopment Project Hillside Temporary Pump Station" dated May 24, 2007 and "Hunters Point Shipyard Redevelopment Project Hilltop Temporary Pump Station" dated May 27, 2007 and approved by the City of San Francisco Department of Building Inspection and as may be set forth in an easement agreement between Subdivider and the Agency.

Estimated Cost: \$10,000

2. Maintenance of temporary Donahue Storm Drain and the existing 8" water line for Navy service as depicted on drawings by _____ dated _____ until permanent facilities are completed and accepted by the City.

Estimated Cost: \$40,000

3. Installation and maintenance of fossil filters at storm water inlets in Parcel A (more specifically, the Hilltop Parcel within Parcel A). Work shall also include the removal of said filters where necessary when the Permanent Storm Water Treatment Facility is installed and operational.

Estimated Cost: \$35,000

EXHIBIT A-3

Future Facilities

1. Open Space Improvements pursuant to that certain Open Space Schematic Design Package Approved by the Agency Commission on October 7, 2007 (Resolution No. III-2007), but subject to staff review and approval of the subsequent submittal and construction permit.

Estimated Cost: \$4,002,556.00

2. The Community Facilities Parcels on Parcel 55E, along Galvez Avenue to have improvements pursuant to certain plan "Conceptual Design, Galvez Avenue Improvements" dated April 16, 2007 prepared by Winzler and Kelly. Also provide for permanent utilities for IAM and Building 110 and Building 101, including but not limited to Attachment 23 of the DDA, sec. 1.2.

Estimated Cost: \$1,566,605.00

3. Conceptual S-Curve roadway and utility improvements pursuant to that certain KCA Engineers plan dated as of February 19, 2008.

Estimated Cost: \$3,370,000.00

4. Pocket Parks as shown to be constructed with vertical development phase and maintained until Acceptance by the City pursuant to that certain Phase 1 DDA.

Estimated Cost: \$1,231,316.00

5. Subdivider to cooperate with the Agency in the placement of driveways and utilities in conjunction with the Agency developments in accordance with the Agency reply to HPS Development's July 23, 2007 letter to the Agency.

Estimated Cost: Not Applicable

6. Permanent Storm Water Treatment Facility in accordance with Section 8(d) of the Agreement and as generally shown on drawing by ENGEO dated November 21, 2006.

Estimated Cost: \$1,156,938.00

7. Galvez Steps as generally shown on drawing by CMG Landscape Architects dated December 21, 2006.

Estimated Cost: \$567,212.15

EXHIBIT B-1

**Form: Faithful Performance Bond
Hunters Point Shipyard Phase 1 Required Infrastructure**

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and **HPS Development Co., LP** (hereafter designated as "**Principal**") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Hunters Point Shipyard Phase 1 Public Improvement Agreement, dated _____, 200_, and identified as Phase 1 Required Infrastructure; and

Whereas, Principal is required under the terms of the agreement to furnish a bond for the faithful performance of the agreement;

Now, therefore, we, Principal and _____, as Surety ("**Surety**"), are held and firmly bound unto the **City and County of San Francisco** (hereafter called "**City of San Francisco**") in the penal sum of _____ Dollars (\$_____) lawful money of the United States, for the payment of which we bind ourselves, our heirs, successors, executors, and administrators, jointly and severally, firmly by these presents.

The condition of this obligation is such that the obligation shall become null and void if the above-bounded Principal, his or its heirs, executors, administrators, successors, or assigns, shall in all things stand to, abide by, well and truly keep, and perform the covenants, conditions, and provisions in the agreement and any alteration thereof made as therein provided, on his or their part, to be kept and performed at the time and in the manner therein specified, and in all respects according to his or their true intent and meaning, and shall indemnify and save harmless the City of San Francisco, its officers, agents, and employees, as therein stipulated; otherwise, this obligation shall be and remain in full force and effect.

As part of the obligation secured hereby and in addition to the face amount specified, costs and reasonable expenses and fees shall be included, including reasonable attorneys' fees, incurred by the City of San Francisco in successfully enforcing the obligation, all to be taxed as costs and included in any judgment rendered.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement, the work to be performed thereunder, or the specifications accompanying the agreement shall in any way affect its obligations on this bond. The Surety hereby waives notice of any such change, extension of time, alteration, or addition to the terms of the agreement, the work, or the specifications.

In witness whereof, this instrument has been duly executed by Principal and Surety on _____, 200____.

“PRINCIPAL”

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: _____
Title: _____

“SURETY”

By: _____

Its: _____

Address: _____

Telephone: _____

Facsimile: _____

EXHIBIT B-2

**Form: Labor and Material Bond
Hunters Point Shipyard Phase 1 Required Infrastructure**

Whereas, the Board of Supervisors of the City and County of San Francisco, State of California, and **HPS Development Co., LP** (hereafter designated as "**Principal**") have entered into an agreement whereby Principal agrees to install and complete certain designated public improvements, which agreement, entitled Hunters Point Shipyard Phase 1 Public Improvement Agreement, dated _____, 200_, and identified as Hunters Point Phase 1 Required Infrastructure is hereby referred to and made a part hereof; and

Whereas, under the terms of the agreement, Principal is required before entering upon the performance of the work to file a good and sufficient payment bond with the City and County of San Francisco to secure the claims to which reference is made in Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code of the State of California;

Now, therefore, we, the Principal and the undersigned as corporate Surety ("**Surety**"), are held and firmly bound unto the **City and County of San Francisco** and all contractors, subcontractors, laborers, material men, and other persons employed in the performance of the agreement and referred to in Title 15 of the Civil Code in the sum of _____ Dollars (\$_____), for materials furnished or labor thereon of any kind, or for amounts due under the Unemployment Insurance Act with respect to such work or labor, that Surety will pay the same in an amount not exceeding the amount set forth. If suit is brought on this bond, Surety will pay, in addition to the face amount thereof, costs and reasonable expenses and fees, including reasonable attorneys' fees, incurred by the City and County of San Francisco, in successfully enforcing the obligation, to be awarded and fixed by the Court, to be taxed as costs, and to be included in the judgment rendered.

It is hereby expressly stipulated and agreed that this bond shall inure to the benefit of any and all persons, companies, and corporations entitled to file claims under Title 15 (commencing with section 3082) of Part 4 of Division 3 of the Civil Code, so as to give a right of action to them or their assigns in any suit brought upon this bond.

If the condition of this bond is fully performed, then this obligation shall become null and void; otherwise, it shall be and remain in full force and effect.

The Surety hereby stipulates and agrees that no change, extension of time, alteration, or addition to the terms of the agreement or the specifications accompanying the agreement shall in any manner affect its obligations on this bond. The Surety hereby waives notice of any such change, extension, alteration, or addition.

In witness whereof, this instrument has been duly executed by Principal and Surety on _____, 200_.

“PRINCIPAL”

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: _____
Title: _____

“SURETY”

By: _____

Its: _____

Address: _____

Telephone: _____

Facsimile: _____