

**COMMUNITY BENEFITS AGREEMENT**

**HUNTERS POINT SHIPYARD  
PHASE 1**

**between**

**LENNAR-BVHP, LLC,**

**and**

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

**Dated: April 4, 2005**

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## **COMMUNITY BENEFITS AGREEMENT**

### **HUNTERS POINT SHIPYARD** **PHASE 1**

THIS COMMUNITY BENEFITS AGREEMENT (this "Agreement"), dated as of April 4, 2005, is entered into by and between the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, exercising its functions and powers organized and existing under the Community Redevelopment Law of the State of California (together with any successor public agency designated by or pursuant to law, the "Agency"), and LENNAR-BVHP, LLC, a California limited liability company doing business as Lennar/BVHP Partners ("Lennar/BVHP"). Agency and Lennar/BVHP are each a "Party" and collectively are the "Parties". Lennar/BVHP's obligations under this Agreement arise from its obligations under that certain Disposition and Development Agreement dated as of December 2, 2003, and entered into by and between the Agency and Lennar/BVHP (the "DDA").

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

A. Section 6.6(c)(8)(k) of the DDA requires that Lennar/BVHP enter into an agreement appropriate to implement the Additional Business, Employment, Construction Assistance/Opportunities and Community Benefit Program set forth in Attachment 24B to the DDA.

B. Developer and Agency agree that this Agreement satisfies the requirement of Section 6.6(c)(8)(k) of the DDA.

NOW, THEREFORE, in consideration of the mutual terms and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree to the terms set forth herein.

#### **SECTION 1. DEFINED TERMS.**

Capitalized terms not separately defined herein shall have the same meaning provided in the DDA.

#### **SECTION 2. TERM OF AGREEMENT.**

**2.1. Relationship Between Terms and Conditions Applicable to Lennar/BVHP and Vertical Developers.** Lennar/BVHP is responsible and shall remain responsible for the satisfaction of its obligations under this Agreement for the duration of Phase 1, or as otherwise provided herein. Some obligations under this Agreement also apply to certain Vertical Developers, as will be further described below, and this Agreement shall be incorporated by reference into all Vertical DDAs. Lennar/BVHP shall include in all purchase agreements for Lots with Vertical Developers ("Purchase Agreements"), a closing condition that each Vertical Developer shall execute an agreement substantially in the form of Exhibit M in which such Vertical Developer assumes its obligations under this Agreement (the "Assumption Agreement"). Lennar/BVHP may coordinate with the Affiliate Lot Owners (as defined in Section 2.1(c)) and the Joint Venture Builders (as defined in Section 2.1(b) below) and delegate certain responsibilities of Lennar/BVHP to such owners with respect to obligations that affect the Lots owned by such owners; however, Lennar/BVHP must maintain diligent oversight over such delegated activities and will remain responsible for ensuring delivery of the obligations by

delegatee or for meeting such obligations itself. Any delegation or coordination by Lennar/BVHP of its obligations under this Agreement shall be specifically set forth in the Assumption Agreement that such owners will enter into with Lennar/BVHP and the Agency.

(a) **Independent Community Builders and Qualified Buyers.** Independent Community Builders and Qualified Buyers shall be bound by and subject to the terms and obligations of this Agreement, but shall have no obligation to implement the programs set forth under this Agreement other than to (i) implement the homeowner counseling services, outreach and affordable housing qualification process requirements set forth in Sections 8.2(c), (d) and (e) of this Agreement; (ii) participate in the Mentorship Program (as defined in Section 3.6 below) in a significant manner which shall be mutually agreed upon by the Agency, Lennar/BVHP and the Independent Community Builder or Qualified Buyer, as applicable, and set forth in the Assumption Agreement executed by Independent Community Builder and Qualified Builder; and (iii) implement the Outreach Program (as defined in Section 12 hereof), revised if necessary to, among other things, reflect the financial ability of each Independent Community Builder or Qualified Buyer, all as mutually agreed upon by the Agency and each applicable Independent Community Builder or Qualified Buyer, as applicable, as set forth in the Assumption Agreement executed by each Community Builder or Qualified Buyer.

(b) **Joint Venture Builder.** Each owner of a Community Builder Lot that includes an Affiliate and a Joint Venture Community Builder (collectively, a "Joint Venture Builder") shall be bound by and subject to the terms and obligations of this Agreement, but shall have no obligation to implement the programs set forth under this Agreement other than (i) the Construction Assistance Program (as defined in Section 3.1 below), except that the Joint Venture Builder will not be required to create a new Mentorship Program if it significantly participates in and helps to fund the Mentorship Program as mutually agreed upon by the Agency, Lennar/BVHP and the Joint Venture Community Builder and set forth in the Assumption Agreement executed by such Joint Venture Community Builder; (ii) the Homebuyer's Assistance Program (as defined in Section 8.1 below); and (iii) the Outreach Program.

(c) **Affiliate.** Each Affiliate that owns an Affiliate Lot, or any portion thereof ("Affiliate Lot Owner"), shall be bound by and subject to the terms and obligations of this Agreement, but shall have no obligation to implement the programs set forth under this Agreement other than (i) the Construction Assistance Program, except that the Affiliate Lot Owner shall not be required to create a new Mentorship Program if it significantly participates in and helps to fund the Mentorship Program as mutually agreed upon by the Agency, Lennar/BVHP and such Affiliate Lot Owner and set forth in the Assumption Agreement executed by such Affiliate Lot Owner; (ii) the Business Incubator Space Program, provided that such Lot has been mutually agreed upon by the Agency and Lennar/BVHP to include the Business Incubator Space; (iii) the Homebuyer's Assistance Program; (iv) the Local Community Priority Leasing Program; and (v) the Outreach Program.

(d) **Release.** Notwithstanding the foregoing, upon the conveyance by Lennar/BVHP of a Lot to a Vertical Developer and the recordation of a fully executed Vertical DDA for such Lot, Lennar/BVHP shall be released from any and all further liability for implementing the following programs with respect to such Lot: (i) the Construction Assistance Program, except for the Technical Assistance Program (as defined in Section 3.4 below) and the Mentorship Program; and (ii) provided that the Purchase Agreement for such Lot requires the Vertical Developer to implement the same, the Local Community Priority Leasing Program.

### **SECTION 3. CONSTRUCTION ASSISTANCE PROGRAM.**

**3.1. Introduction.** Pursuant to Section 2 of DDA Attachment 24B, Lennar/BVHP shall implement the following program in accordance with the terms set forth below in order to ensure that BVHP Area Contractors (as defined in Section 3.2 below) are given the opportunity to obtain needed insurance, technical, and financial assistance, and are not required to provide payment or performance bonds, in order to fully participate in the demolition and renovation of existing buildings, and construction of infrastructure and new residential, cultural, commercial, and community facilities at the Shipyard (the "Construction Assistance Program"). The Construction Assistance Program shall include the following five (5) programs, each as more specifically described herein.

- (a) Owner Consolidated Insurance Program (OCIP);
- (b) Surety Bond Program;
- (c) Technical Assistance Program;
- (d) Financial Assistance Program; and
- (e) Mentorship Program.

#### **3.2. Owner Consolidated Insurance Program (OCIP).**

(a) **General Information.** To ensure that all Lennar Contractors (as defined below) are covered by general liability insurance while conducting business on the Shipyard, except with respect to the Excluded Parties (as described in clause (b) immediately below), Lennar/BVHP shall provide general liability insurance coverage to all contractors and subcontractors who contract with Lennar/BVHP, any of its Affiliates, developers in which Lennar/BVHP or any of its Affiliates own an ownership interest, and the contractors or subcontractors of any of the foregoing to work at the Shipyard during Phase 1 (individually, a "Lennar Contractor," and collectively, "Lennar Contractors") who have enrolled in the Lennar/BVHP Owner Consolidated Insurance Program (the "OCIP"). The area of San Francisco, California located within the portions of the 94124, 94134 and 94107 zip code areas (or any successor zip codes) that are located in Supervisorial District 10, as shown on that certain Map of the City and County of San Francisco showing Precincts and Legislative Districts, prepared by the Department of Elections and dated January 2004, shall hereinafter be referred to as the "BVHP Area". Lennar Contractors that (i) are doing business in and have a primary business address in the BVHP Area with an established, fixed office in a non portable building where regular construction-related work is conducted; (ii) are listed in the Permits and License Tax Paid File with the City and County of San Francisco with a primary business address in the BVHP Area; and (iii) possess a current Business Tax Registration Certificate issued by the City and County of San Francisco that shows a primary business address in the BVHP Area shall also be referred to as "BVHP Area Contractors". Lennar/BVHP represents and warrants that the OCIP described herein has no less favorable terms and requirements than other OCIPs that Lennar/BVHP has used in the past and/or is using currently on other projects.

#### **(b) Excluded Parties.**

- (i) Architects, surveyors, and engineers;
- (ii) Soil testing engineers and their consultants;
- (iii) Hazardous waste removal and/or transport companies;

- (iv) Vendors;
- (v) Consultants;
- (vi) Suppliers, fabricators, and materials dealers;
- (vii) Truckers, haulers, drivers and others who merely transport, pick-up, deliver or carry materials, personnel, parts, equipment and other items to or from the Shipyard; and
- (viii) Any other trade or profession designated by Lennar/BVHP, which in no event shall include construction skilled trade professions not specifically set forth above as excluded parties.

(c) **Eligibility Requirements.** Lennar/BVHP shall include in each deconstruction and demolition and construction bid package issued for work on the Shipyard the OCIP Addendum attached hereto as Exhibit A, the OCIP Enrollment Application attached hereto as Exhibit B and a copy of the OCIP policy which shall be available upon request. Each bid package shall also include clear instructions regarding the required completion and submission of the OCIP Enrollment Application and contractor or subcontractor initialed OCIP Addendum with each bid. Lennar/BVHP agrees that all prospective Lennar Contractors, other than Excluded Parties, who satisfy all requirements to win a bid are eligible to enroll in the OCIP; therefore no prospective Lennar Contractor, other than an Excluded Party, who wins a bid shall be determined ineligible for enrollment in the OCIP. The administrator of the OCIP (the "OCIP Administrator") shall forward certificates of insurance to each enrolled Lennar Contractor, evidencing the Lennar Contractor as a named insured for the Shipyard project.

(d) **General Liability Limits.**

- (i) The general liability limits under the OCIP are as follows:

Primary CGL Policy
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Annual Limits of Liability Shared by All Insureds

Each Occurrence/General Aggregate	\$7,500,000
Products/Completed Operations*	\$10,000,000
Personal/Advertising Injury Any One Person or Organization	\$7,500,000

Excess Liability Coverage
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Annual Limits of Liability Shared by All Insureds

Each Occurrence and in Aggregate	\$140,000,000
Products/Completed Operations Each Occurrence and in Aggregate*	\$140,000,000

\* Products/completed operations coverage is extended to the shorter of (a) the applicable statute of limitations or (b) ten (10) years after the acceptance of the work completed by the Lennar Contractor pursuant to the terms of the contract entered into by the Lennar Contractor.

(ii) These insurance policy limits renew annually and are subject to market availability and affordability. At a minimum, these limits are evaluated for adequacy at each policy renewal, which is currently November 1.

(iii) As of the date of this Agreement, XL Europe Ltd., provides \$20,000,000 excess of the primary \$7,500,000. Interstate Fire & Casualty, AWAC, Endurance, and Starr Excess provide \$120,000,000 excess of XL Europe Ltd..

(e) **Self-Insured Obligation.**

(i) The self-insured obligation amounts listed in clause (ii) below (the "Self-Insured Obligations") apply to the applicable Lennar Contractor to the extent losses payable under the OCIP are attributable to work performed by such Lennar Contractor, or any other entity or party for whom such Lennar Contractor is responsible. In the event of such loss, such Lennar Contractor shall pay to Lennar/BVHP the sum of the applicable Self-Insured Obligation set forth below, or the cost to repair attributable to the Lennar Contractor, whichever is less, for each OCIP occurrence, including losses, judgments, court costs, attorneys fees and cost of defense for bodily injury and property damage, when any covered loss is paid under the OCIP. Lennar/BVHP may backcharge the applicable Lennar Contractor, withhold from monies otherwise owing to such Lennar Contractor or collect by any other lawful means, the amounts owed by such Lennar Contractor. The Self-Insured Obligation cannot be insured by Lennar Contractors and will not be covered by the OCIP. The Self-Insured Obligations are subject to annual review by Lennar/BVHP; however, Lennar/BVHP agrees that any increases to such levels will not amount to more than one quarter of one percent (.25%) annually. Lennar/BVHP agrees that the Self-Insured Obligations set forth below are and will continue to be determined by the risk level of the trade of the applicable Lennar Contractor and not by any other factor, including, without limitation, the business location, financial condition, litigation history or insurance claims history of the Lennar Contractor.

(ii) The list of trades applicable to construction at the Shipyard that fall into the various risk categories below is attached hereto as Exhibit C.

<u>Trade Risk Tier</u>	<u>Self-insured Obligation</u>
Low Risk	\$5,000
Medium Risk Trades	\$5,000
High Risk Trades	\$10,000
Extremely High Risk Trades	\$15,000

(f) **Key General Liability OCIP Program Benefits.** Some of the key features of the Lennar OCIP program are as follows:

(i) Insurance Services Office (ISO-GCL Occurrence Policy Form (10/01));

(ii) Extended Products/Completed Operations coverage for the shorter of (a) the applicable statute of limitation or (b) ten (10) years after the acceptance of the work completed by the Lennar Contractor pursuant to the terms of the contract entered into by the Lennar Contractor; and

(iii) No exclusion for subsidence.

(g) **Coverages Not Included.** Lennar/BVHP agrees to clearly explain and emphasize the following to prospective Lennar Contractors in writing and orally during the deconstruction and demolition and construction phases of the Shipyard development, including, without limitation, in the bid packages and in workshops conducted to describe the OCIP and on other occasions when Lennar/BVHP discusses the OCIP with Lennar Contractors:

(i) Although enrollment in the OCIP will cause the Lennar Contractors to meet Lennar/BVHP's general liability insurance requirements, such enrollment does not limit Lennar Contractors' liability exposure under the indemnity provisions of each individual contract or subcontract.

(ii) Each Lennar Contractor must independently assess with its own business advisors the necessity of supplemental, excess or umbrella liability coverage and whether or not the OCIP is adequate coverage for its business needs.

(iii) Each Lennar Contractor will be responsible for insuring its own equipment and materials prior to installation and for the general liability exposure off the Shipyard and on the other projects on which such Lennar Contractor works.

(iv) Each Lennar Contractor must maintain workers' compensation and automobile liability insurance, subject to Lennar/BVHP's standard insurance requirements.

(v) Each Lennar Contractor bears the risk of loss for its own equipment at all times, as well as the risk of loss to its materials before installation. The OCIP does not provide such builders risk and business personal property coverages.

(vi) Each Lennar Contractor must provide the certificates and endorsements for workers' compensation, automobile liability insurance and any other required insurance on a timely basis as required by its individual contract or subcontract.

(vii) Neither the Self-Insured Obligation limitation, nor the OCIP policy shall apply to (A) any obligation of the Lennar Contractor to provide customer service or to correct defective materials or workmanship arising during the term of the Lennar Contractor's warranty, or (B) any claim not covered by the OCIP (a claim or demand for which the OCIP does not provide a defense and/or indemnity).

(h) **Claims Procedures.** Lennar/BVHP shall inform all Lennar Contractors of the OCIP's claims procedures in writing and orally during the deconstruction and demolition and construction phases of the Shipyard development, including, without limitation, in the bid packages and in workshops conducted to describe the OCIP and on other occasions when Lennar/BVHP discusses the OCIP with Lennar Contractors.

(i) **Determination of Insurance Cost.** Lennar/BVHP shall pay the OCIP premium and shall explain the following procedure for determining the cost of the OCIP to the Lennar Contractors in writing and orally, including, without limitation, in the bid packages and in workshops conducted to describe the OCIP and on other occasions when Lennar/BVHP discusses the OCIP with Lennar Contractors. To offset Lennar/BVHP's costs, each prospective Lennar Contractor is required to identify the insurance costs it would normally pay to its general liability insurer and deduct such cost from its bid for the contract price. Each prospective Lennar

Contractor shall represent and warrant that its bid for the contract price does not include its own general liability policy costs. The bid deduction amount must be included in the OCIP Enrollment Application or in the bid for the contract price and the bid deduction must be shown as a percentage of the bid. Lennar/ BVHP is entitled to receive reasonable contract price reductions equal to the cost of general liability insurance resulting from any scope of work changes, additional work, or information discovered during any audits, which justify the taking of additional insurance credits. No contract price reduction based on the increased cost of general liability insurance resulting from any scope of work changes, additional work, or information discovered during any audits, shall be effective until Lennar/BVHP performs the following: No later than thirty (30) days prior to any such contract price reduction, Lennar/BVHP shall provide a detailed written explanation of the proposed contract price reduction to the applicable Lennar Contractor, and shall meet and confer with such Lennar Contractor in order to give such Lennar Contractor the opportunity to discuss and ask questions regarding the proposed action. Lennar/BVHP shall provide such Lennar Contractor with prompt and detailed answers to the Lennar Contractor's questions about the contract price reductions.

Prospective Lennar Contractors must submit all documentation reasonably requested by Lennar/BVHP or the OCIP Administrator in connection with the bid deduction, including, without limitation, copies of insurance policies and rate schedule pages, and if applicable, information on self-insured retention programs and documentation of the total cost of risk in any self-insured program. If a prospective Lennar Contractor does not provide Lennar/BVHP with information sufficient to allow verification of the bid deduction, then Lennar/BVHP may independently calculate a bid deduction based on commercially reasonable undiscounted or "manual" rates, calculated in accordance with construction insurance industry standards.

(j) **Termination.** Lennar/BVHP's obligation to provide the OCIP, or as set forth below, to provide a comparable owners consolidated insurance program or pay the cost of the Lennar Contractors' general liability insurance, shall continue until the completion of all work by Lennar/BVHP and its Affiliates on the Shipyard during Phase 1. No Lennar Contractor shall be terminated from the OCIP unless such Lennar Contractor's contract with Lennar/BVHP or an Affiliate also has been terminated or has expired, or the OCIP or the comparable replacement owners consolidated insurance program terminates for all Lennar Contractors. In the event that Lennar/BVHP terminates the OCIP, it shall immediately replace it with a comparable owners consolidated insurance program or give Lennar Contractors no less than thirty (30) days to obtain general liability insurance. No Lennar Contractor shall be deemed in default under its construction contract for lack of general liability insurance during such thirty (30) day period, or a mutually agreed upon extended period of time within which the Lennar Contractor must obtain general liability insurance. Lennar/BVHP shall increase the contract price payable to the Lennar Contractors by the cost of the general liability insurance obtained by the Lennar Contractors due to Lennar's failure to maintain the OCIP. Lennar/BVHP shall advance the cost of the general liability insurance premium to the Lennar Contractors at no cost to the Lennar Contractors if the general liability insurance premium is required to be paid prior to the Lennar Contractors' next receipt of installment payments under the contract with Lennar/BVHP or Affiliate, or if such contract payment is less than the amount of the general liability insurance premium due.

(k) **Modification.** Lennar/BVHP may modify the OCIP coverage, Self Insured Obligations subject to the terms of Section 3.2(e) above, or the limits of liability of the OCIP policy only upon no less than thirty (30) days' prior written notice of such modification to all Lennar Contractors, the Agency and the Executive Committee of the Hunter's Point Citizens Advisory Committee.

(l) **Subcontractors.** Each contract with a Lennar Contractor must provide that each Lennar Contractor must include the OCIP Addendum and Lennar/BVHP insurance requirements in all subcontracts of lower tier eligible subcontractors and must provide them with a copy of the OCIP Manual attached hereto as Exhibit D.

(m) **Conflicts.** Notwithstanding the terms of the OCIP Policy, OCIP Addendum, OCIP Application or OCIP Manual, in the event of any conflict between any of those documents and this Agreement, the terms of this Agreement shall prevail.

**3.3. Surety Bond Program.** Neither Lennar/BVHP nor any Affiliate or any developer in which Lennar/BVHP or an Affiliate of Lennar/BVHP owns an ownership interest shall require any Lennar Contractor to obtain surety bonds for work on the Shipyard. Lennar/BVHP, Affiliates and developers in which Lennar/BVHP or an Affiliate owns an ownership interest shall include in all contracts with Lennar Contractors and require that all Lennar Contractors provide in their contracts with subcontractors on the Shipyard, that such Lennar Contractor or subcontractor shall not be required to post any surety bonds for work on the Shipyard. Additionally, such contracts shall state that any request of a Lennar Contractor to obtain surety bonds shall be an event of default under such contract and shall entitle the Lennar Contractor to exercise all remedies at law and in equity.

**3.4. Technical Assistance.** Lennar/BVHP shall develop a technical assistance program ("Technical Assistance Program"). As part of the Technical Assistance Program, Lennar/BVHP shall establish, fund and maintain a Contractor Liaison (as defined in clause (a) below) position and a Contractor Liaison Office to be located in the Project Office (both as defined in clause (b) below). Lennar/BVHP also must host workshops that cover a range of topics related to the opportunities on the Shipyard, how to access such opportunities, financial assistance programs and other programs as deemed appropriate for each segment of the Shipyard development.

(a) **Contractor Liaison.** No less than thirty (30) days prior to the first bid advertisement for work on the Shipyard, Lennar/BVHP shall have entered into a contract with an individual who provides satisfactory evidence to Lennar/BVHP that such individual lives in the BVHP Area, or with an entity doing business in and with a primary business address in the BVHP Area (the "Contractor Liaison"). The Contractor Liaison shall have relevant experience and shall assist contractors with navigating through the process of contracting for work on the Shipyard. The Contractor Liaison's tasks shall include, without limitation, responding to questions about and providing assistance with completion and submission of bid packages, application completion, explaining submission and other deadlines, reviewing plans and other materials as necessary and providing information about the OCIP and other programs available to contractors at the Shipyard. The Contractor Liaison's position shall be a project cost recoverable by Lennar/BVHP from project revenues; provided, however, that if a replacement for the Contractor Liaison is necessary, Lennar/BVHP uses its best efforts, and conducts extensive outreach in the BVHP Area, to locate a replacement Contractor Liaison that lives in or has a primary business address in the BVHP Area.

(b) **Contractor Liaison Office.** No less than thirty (30) days prior to the first bid advertisement for work at the Shipyard, Lennar/BVHP shall establish the office for the Contractor Liaison (the "Contractor Liaison Office") in the office established by Lennar/BVHP on the Shipyard as its project office ("Project Office."). The Contractor Liaison Office shall be equipped with the equipment and furniture necessary for the Contractor Liaison to accomplish its duties in a professional and efficient manner and shall include sufficient space to comfortably accommodate at least ten (10) average-sized, adults in addition to the Contractor Liaison and the Contractor Liaison's equipment and furniture. The Contractor Liaison shall maintain in the Contractor Liaison Office plans and specifications for deconstruction, demolition and

construction work on the Shipyard, and shall maintain a sufficient supply of bid packages, applications and other information pertinent to providing information to contractors about the opportunities for contractors who are performing or wish to perform work at the Shipyard. The office will be open during normal business hours, Monday through Friday, excluding holidays. The allocation of the Contractor Liaison's time to perform its Shipyard-related duties shall be evaluated on an on-going basis. Lennar/BVHP shall obtain prior written approval from the project Decision Team (as defined in the DDA) prior to permitting any reduction of the Contractor Liaison's work hours from forty hours per week.

(c) **Contractor Workshops.** Notice shall be given to BVHP Area residents, businesses and community based organizations in accordance with the Outreach Program no less than fifteen (15) days prior to the first workshop to be held regarding construction opportunities on the Shipyard. Where appropriate, community based organizations will also be invited to participate in workshops as presenters or panelists. The workshops will be designed to address the different phases of the project, in addition to matters generally related to the construction industry, and will include deconstruction and demolition, Infrastructure Improvements, Vertical Development and general construction industry matters. Each workshop will cover a set of basic topics, which include:

- (i) Contractor opportunities and applications for bidding process;
- (ii) OCIP Program and opportunities;
- (iii) Contractor pre-qualification process;
- (iv) MBE/WBE ( for the purposes of this Agreement, "MBE/WBE" shall have the definition set forth in the DDA, or the successor definition used in any successor program to the Agency's Equal Opportunity Program that the Agency may adopt) and local hiring requirements;
- (v) Overview of technical assistance program, including plan room overview, Project Office orientation, and introduction of Constructor Liaison;
- (vi) Required accounting procedures;
- (vii) Bid package review and dissemination;
- (viii) Key dates review;
- (ix) Questions and answers;
- (x) Safety requirements;
- (xi) Contractor expectations;
- (xii) Financial assistance programs; and
- (xiii) Mentorship Program

(d) **Deconstruction and Demolition Community Benefits Workshop.** The first construction-related opportunity to work at the Shipyard will occur during the deconstruction and demolition phase, which will include the removal of specific buildings and site preparation for Infrastructure Improvements. Lennar/BVHP shall conduct a workshop no less than fifteen (15) days prior to advertising the first contract for demolition and deconstruction

work (the "Deconstruction and Demolition Community Benefits Workshop"). The Deconstruction and Demolition Community Benefits Workshop shall include information in clause (c) immediately above, as well as specific information about the deconstruction and demolition phase of the project.

(e) **Infrastructure Improvements Community Benefits Workshop.** The second segment of development at the Shipyard will focus on Infrastructure Improvements for the Shipyard, which will include the construction and installation of water systems, sewer systems, street grading and paving, street lighting, telecommunication and other wire components. Lennar/BVHP shall conduct a workshop no less than fifteen (15) days prior to advertising the first contract for the construction of Infrastructure Improvements, which will include the information in clause (c) above, and information on the Infrastructure Improvements requirements, schedules of performance, scope of work, contractor opportunities and other relevant information necessary for the successful completion of the Infrastructure Improvements ("Infrastructure Improvements Community Benefits Workshop").

(f) **Vertical Development Community Benefits Workshop Series.** The third segment of development at the Shipyard will focus on the Vertical Development of the Shipyard. Lennar/BVHP shall conduct the first workshop no less than one hundred twenty (120) days prior to the sale of the first Lot on the Shipyard which will include the information in clause (c) above, and information that will outline the scope, needs and opportunities presented with the construction of the residential and commercial developments. As the Vertical Development phase will likely be complicated, Lennar/BVHP shall host a series of workshops, in addition to the first workshop, to best address the multifaceted components of this part of the project (the "Vertical Development Community Benefits Workshop Series"). Lennar/BVHP may hold separate commercial and residential workshops to address the unique attributes of each type of construction process. Lennar/BVHP will work with its general and primary contractors to make sure that sufficient programs are in place to address local workforce hiring practices and local and MBE/WBE subcontractors as set forth in the DDA.

(g) **General Construction Industry Matters Community Benefits Workshop.** On a quarterly basis commencing within sixty (60) days after the Deconstruction and Demolition Community Benefits Workshop, Lennar/BVHP shall host a workshop that addresses general construction industry matters that may include, without limitation, accounting, legal, insurance, labor or other issues related to the construction industry.

**3.5. Financial Assistance Program.** Within no less than sixty (60) days prior to the advertisement of the first contract for each of the deconstruction and demolition, Infrastructure Improvements and Vertical Development phases, and at least one (1) more time during each such phase, Lennar/BVHP shall initiate outreach to financial institutions with whom it currently has relationships to introduce them to the Shipyard development, explain the general financial needs of the BVHP Area Contractors, and assist BVHP Area Contractors in accessing necessary financing such as lines of credit, loans, or other financial assistance based on conventional underwriting practices as follows (the "Financial Assistance Program"):

(a) **Identification of Financial Partners.** Lennar/BVHP shall contact the financial institutions with which it does business and other financial institutions that have a reputation for assisting with community development projects ("Financial Partners"), and shall use good faith commercially reasonable efforts to encourage such financial institutions to provide financial assistance to BVHP Area Contractors.

(b) **Property Tour and Immersion Event.** Lennar/BVHP shall conduct a property tour and immersion event at the Shipyard for the Financial Partners. The event shall

also include a briefing on the three (3) major phases of development, and a discussion regarding the financial needs of the BVHP Area Contractors.

(c) **Contractor Introduction Event.** Lennar/BVHP shall host an event to introduce BVHP Contractors to Financial Partners to review financial needs, distribute loan applications and to discuss other information required for financial assistance.

(d) **Technical Assistance Resources.** Lennar/BVHP shall create a list of technical and financial assistance programs in the BVHP Area and elsewhere available to help companies that need to qualify for loans.

(e) **Ongoing.** Lennar/BVHP shall, on an ongoing basis, be a resource, and provide information, to financial institutions regarding the development of the Shipyard.

**3.6. MBE/WBE Mentorship Program.** Lennar/BVHP shall institute a mentorship program to support emerging MBE/WBE construction-related enterprises doing business in and with a primary business address in the BVHP Area or with an owner who provides satisfactory evidence to Lennar/BVHP that such owner lives in the BVHP Area ("Protégés") as set forth herein (the "Mentorship Program"). The two main goals of the Mentorship Program shall be to increase the volume of work that Protégés are capable of winning in open competition, and to broaden the base of activity, increase the long-term stability, and expand the services in the construction industry of the Protégés. Lennar/BVHP shall commence full operation of the Mentorship Program within one hundred twenty days after the Close of Escrow.

(a) **Selection of Mentorship Program Sponsor.** Lennar/BVHP shall secure a qualified individual or entity, which may include, without limitation, a public agency, a private trade association, and/or the Contractor Liaison, at Lennar/BVHP's expense, in collaboration with the Agency to administer the Mentorship Program (the "Mentorship Program Sponsor"). The Mentorship Program Sponsor must possess the resources and demonstrate the relevant experience to successfully manage a Mentorship Program. Lennar/BVHP agrees that the Mentorship Program Sponsor shall be under contract approved by the Agency with Lennar/BVHP prior to the commencement of deconstruction and demolition work.

(b) **Duties of the Mentorship Program Sponsor.** The following shall be included in the Lennar/BVHP contract with the Mentorship Program Sponsor. The Mentorship Program Sponsor shall be the Mentorship Program organizer and coordinator, and will bear the responsibility for the program's administration. In accordance with the terms of its contract, the Mentorship Program Sponsor may solicit assistance from qualified individuals or organizations, including, without limitation, well-established companies, trade associations, private owners and public agencies in order to fulfill its duties, which duties shall include the following:

- (i) Advertising and promoting the Mentorship Program;
- (ii) Organizing related business events;
- (iii) Identifying potential Mentors (as described below);
- (iv) Identifying potential Protégés;
- (v) Informing and reminding Mentors and Protégés of their roles and responsibilities;
- (vi) Scheduling all meetings;

- (vii) Providing or contracting for all needed meeting space;
  - (viii) Collecting status reports;
  - (ix) Maintaining Mentorship Program records;
  - (x) Contracting for management, accounting and other professional services that Protégés will need;
  - (xi) Monitoring the sufficiency and effectiveness of the professional services received by Protégés;
  - (xii) Identifying the necessary sources of Mentorship Program funding;
- and
- (xiii) Organizing and facilitating the meetings of the Advisory Board (described below).

(c) **Advisory Board.** The Mentorship Program Sponsor shall select representatives of reputable and successful companies and individuals in the construction industry, and the financial and surety companies that serve the San Francisco Bay Area business community to provide guidance to the Mentorship Program Sponsor throughout the Mentorship Program (the "Advisory Board."). The Advisory Board will advise the Mentorship Program Sponsor but the administrative responsibilities and the decision-making power regarding the Mentorship Program shall remain with the Mentorship Program Sponsor. To the extent the Mentorship Program Sponsor finds it helpful, the Advisory Board will:

- (i) Recommend policies for the Mentorship Program;
- (ii) Participate in the selection and assignment of Mentors and Protégés; and
- (iii) Help select the Mentorship Program's Professional Services Provider (described below).

(d) **Professional Services Provider.** At the cost of Lennar/BVHP, the Mentorship Program Sponsor shall contract with one (1) or more reputable and successful organizations and/or individuals that will use its knowledge of construction business issues to educate Protégés and provide them with professional services, including, without limitation, financial administration, insurance and bonding, business management and other services that Protégés and Mentors may identify as beneficial to Protégés (collectively, "Professional Services Provider"). Lennar/BVHP shall provide the Agency with a copy of all contracts and amendments thereto for the Professional Services Provider within five (5) days after full execution thereof. The Professional Services Provider shall participate in the regular meetings between Mentors and their Protégés. They shall also respond to any requests for assistance.

(e) **Mentors.** The Mentorship Program Sponsor shall select reputable and successful individuals and companies with at least seven (7) years experience in the construction industry to assist Protégés in achieving goals identified in the Mentorship Program ("Mentors"). Lennar/BVHP acknowledges that the number and quality of the Mentors will be key to the success of the Mentorship Program. Lennar/BVHP shall be a Mentor and shall prominently display information about the Mentorship Program on its website and on the Shipyard website and shall encourage its business partners and other business contacts to participate in the Mentorship Program. Lennar/BVHP shall also assist the Mentorship Program Sponsor in

contacting potential Mentors by providing introductions to qualified companies with which Lennar/BVHP does or has done business. Mentors shall assist Protégés with setting targets for improvement, setting deadlines for reaching such targets and meeting the set deadlines. Minimum responsibilities of Mentors shall be to:

(i) Make themselves available to their assigned Protégés by attending all required meetings including, without limitation, the regularly scheduled monthly meetings to be scheduled by the Mentorship Program Sponsor;

(ii) Make themselves available to their assigned Protégés at other times to help them address significant business issues that may arise;

(iii) Regularly review their assigned Protégés' business and action plans;

(iv) Monitor their assigned Protégés' key business indicators, including cash flow, work in progress and recent bids, as their Protégés grow and develop; and

(v) Teach their assigned Protégés how to market a construction company.

(f) **Protégés.** Subject to excused absences based on rules developed by the Mentorship Program Sponsor, Protégés shall be required to attend all regularly scheduled meetings and help determine the agenda for those meetings. Between such meetings, Protégés shall be required to make every effort to implement the business decisions that the meetings produce. Additionally Protégés shall be required to perform the following activities:

(i) Work with the Professional Services Provider;

(ii) Attend seminars and/or other relevant educational programs;

(iii) Implement specific changes in the management or operation of their business, as necessary and appropriate;

(iv) Provide to the Mentorship Program Sponsor complete and up-to-date information on their businesses, including their business and action plans, cash flow information, latest bids, and work in progress; and

(v) Take the initiative to request whatever additional assistance they may need to address significant business issues.

(g) **Surety Companies.** The Mentorship Program Sponsor shall be required to encourage surety companies and brokers that serve the BVHP Area and other San Francisco Bay Area business communities to take an active role in the Mentorship Program even though Lennar/BVHP will not require that Lennar Contractors obtain payment or performance bonds to be eligible to work on the Shipyard. The Mentorship Program Sponsor shall arrange workshops and meetings with the surety companies and brokers and Protégés so that the surety companies and brokers can explain the purpose and function of surety bonds, and help the Protégés develop the underwriting files that will enable them to obtain bonds for other projects.

(h) **Financial Institutions.** The Mentorship Program Sponsor shall arrange workshops and meetings with banks and other lenders within and outside of the BVHP Area to explain how to apply for, and assist Protégés in applying for credit or increasing credit limits.

These workshops can be coordinated with those conducted as part of the Financial Assistance Program.

(i) **Protégés Performance Standards.** The Mentorship Program Sponsor shall set and monitor quarterly and annual performance standards for the Protégés in the following areas:

- (i) Capital base, including:
  - Working capital;
  - Depreciated value of equipment owned or leased;
  - Payroll;
  - Material expensed;
  - Overhead expensed;
  - Net profit; and
  - Available credit.
- (ii) Bonding limits, per job and in the aggregate;
- (iii) Value of current and future work;
- (iv) Success in getting profitable work outside any government program for small, minority, women or disadvantaged business enterprises;
- (v) Retention of reliable and productive employees; and
- (vi) Customer loyalty resulting in repeat business.

(j) **Selection of Mentors.** With assistance from the Advisory Board and Lennar/BVHP, if requested by the Mentorship Program Sponsor, the Mentorship Program Sponsor shall identify and interview all potential Mentors. In the course of the interview, and in other ways that it finds effective, the Mentorship Program Sponsor will assure itself that the candidate understands and accepts the goals of the Mentorship Program and is truly committed to making the Mentorship Program work.

(k) **Selection of Protégés.** The Advisory Board and Mentorship Program Sponsor shall invite the potential Protégés to enroll in the Mentorship Program. Members of the Advisory Board and the Mentorship Program Sponsor shall interview the prospective Protégés that apply, to identify and/or clarify the needs of each prospective Protégé. The invitation to enroll in the Mentorship Program shall make it clear that all applicants must complete and submit a Mentorship Program application, a balance sheet and an income statement. The Advisory Board and Mentorship Program Sponsor shall use the submitted balance sheet and income statement to conduct a limited financial review before interviewing the applicant. The limited financial review will include a comparison with standard industry ratios. The Advisory Board and Mentorship Program Sponsor may elect to require that all applicants have a minimum number of years in business, and will not likely accept start-up companies for the Mentorship Program.

(l) **Assignment of Mentors to Protégés.** Subject to the availability of Mentors, the Advisory Board and Mentorship Program Sponsor shall designate two (2) Mentors for each Protégé. In deference to federal and other antitrust laws, the Advisory Board and Mentorship Program Sponsor will hesitate to pair Mentors and Protégés that compete for the same work.

(m) **Meetings.** Mentors, their Protégés, the Professional Services Provider, and the Mentorship Program Sponsor shall meet at least once each month, at a regularly scheduled time and place. The Mentorship Program Sponsor shall arrange these meetings and prepare a written agenda for each meeting. The participants shall review the items on the Protégé's business and action plans and shall make appropriate changes to such plans. The Professional Services Provider shall take notes at the meeting and within a reasonable time after each meeting, distribute a written report on the meeting to all of the participants. The report shall outline the applicable Protégé's most recent efforts to implement its business and action plan and the results of those efforts. The report shall also list the applicable Protégé's current needs. Mentors and Protégés shall use this report to guide their next steps, and the Mentorship Program Sponsor will use it to prepare the agenda for the next month's meeting.

(n) **Progress Reports.** For each month, quarter and year of enrollment, the Mentorship Program Sponsor will produce a progress report on each Protégé, based on the performance standards that the Mentorship Program recommends. Progress reports shall include information and be written in a manner that helps the Mentorship Program participants assess the actual results of the Mentorship Program. The progress reports should be used as a tool to help improve the Mentorship Program, clarify, if necessary, and strengthen the roles and effectiveness of the participants. The Mentorship Program Sponsor shall deliver the progress reports to the applicable Protégés, their Mentors and the Agency within fifteen (15) days after the end of the each month, thirty (30) days after the end of each quarter and sixty days after the end of each year. The Mentorship Program Sponsor shall provide an aggregate of all progress report data to the Advisory Board.

(o) **Other Reports.** Every six (6) months, the Mentorship Program Sponsor and Professional Services Provider shall summarize all of their activities for the previous six (6) month period and provide such written summaries to the Advisory Board and the Agency.

(p) **Additional Details.** Commencing with the Deconstruction and Demolition Community Benefits Workshop and continuing for all workshops during Phase 1, Lennar/BVHP and the Vertical Developers shall include a discussion of the Mentorship Program. Additionally, Lennar/BVHP and the Vertical Developers shall encourage contractors hoping to bid and win major projects during the deconstruction and demolition, Infrastructure Improvements and Vertical Development phases of the Shipyard development to partner with BVHP Area MBE/WBE construction-related enterprises immediately and participate in the Mentorship Program or develop a mentorship program that will provide measurable results for BVHP Area MBE/WBE construction-related enterprises. Lennar/BVHP or the Vertical Developer, as applicable, shall maintain a list of BVHP Area MBE/WBE construction-related enterprises that shall be available at all workshops and in the Project Office.

Lennar/BVHP and the Vertical Developers shall require companies that bid on work at the Shipyard to submit documentation that outlines their MBE/WBE experience, including the names of the MBE/WBE entities such companies have partnered with, the level of guidance and support offered to the MBE/WBE entity by such companies, and the level of success that these MBE/WBE enterprises have accomplished as part of their business or mentorship relationship with such companies. Contract bidders shall also be required to describe how they will utilize an MBE/WBE partner during the applicable phase of the Shipyard development.

## **SECTION 4. COMMUNITY BUILDER PROGRAM.**

### **4.1. Introduction.**

(a) **General Information.** Pursuant to Section 3 of DDA Attachment 24B, with respect to Parcel A', Lennar/BVHP agrees that thirty percent (30%) of the Phase 1 Lots designated for private housing development must be developed in partnership with BVHP Area Builders (defined below) selected from the Joint Venture Community Builders Pool (defined below) ("Joint Venture Community Builders"), or by BVHP Area Builders included in the Independent Community Builders Pool ("Independent Community Builders," and together with Joint Venture Community Builders, collectively, "Qualified Community Builders"). "BVHP Area Builders" means developers and builders that (i) do business in and have a primary business address in the BVHP Area with an established, fixed office in a non-portable building where regular construction-related work is conducted; (ii) are listed in the Permits and License Tax Paid File with the City and County of San Francisco with a business address in the BVHP Area; (iii) possess a current Business Tax Registration Certificate issued by the City and County of San Francisco that shows a primary business address in the BVHP Area; (iv) have a demonstrated history of working in the BVHP Area; and/or (v) are established, construction-related businesses that include an owner, or owners, of at least 51% of the ownership interest in the company who provide satisfactory evidence to the Selection Panel that such owner(s) lives in the BVHP Area. Such developers and builders may include faith-based development organizations in the BVHP Area. The Agency and Lennar/BVHP, in consultation with the CAC, will develop an appropriate Community Builder Program for Parcel B'. Lennar/BVHP shall implement the program to benefit the Qualified Community Builders (the "Community Builder Program") as set forth below in order to provide capacity building opportunities to Qualified Community Builders, including but not limited to faith-based development organizations, during the Phase 1 Vertical Development.

(b) **Community Builder Lots.** The Community Builder Lots shall be located in areas shown on Exhibit E attached hereto. However, upon mutual agreement between the Agency and Lennar/BVHP, such locations may be changed to create more flexibility for the Qualified Community Builders and Lennar/BVHP based on the housing types most suitable for such designated locations. The following provisions establish the process whereby Lennar/BVHP will select Joint Venture Community Builders from a Joint Venture Community Builder Pool and create an Independent Community Builder Pool from which Independent Community Builders can bid on Community Builder Lots.

**4.2. Outreach Process.** Within sixty (60) days after the Close of Escrow, Lennar/BVHP shall inform potential Qualified Community Builders of the opportunity to joint venture or bid on property to develop independently. Lennar/BVHP shall perform the following activities in order to compile a list of potential Qualified Community Builders:

(a) Outreach, as described in the Outreach Program, which may include, but is not limited to, advertising, direct mail, e-mail and flyers targeted at BVHP Area Builders.

(b) Provide, or cause others to provide, a Community Builder Application (defined below) to each potential Qualified Community Builders who requests an application. Community Builder Applications shall also be posted on Lennar/BVHP's website and the Agency's website. Potential Qualified Community Builders can request consideration to qualify as both Joint Venture Community Builders and Independent Community Builders.

(c) Notify potential Qualified Community Builders of receipt of the submitted Community Builder Application and request any additional information needed to complete the Community Builder Application within ten (10) business days after receipt of the Community Builder Application. Lennar/BVHP shall keep a list of all persons who request and submit a Community Builder Application ("Potential Qualified Community Builder List") and shall consult with the Agency to supplement such list with additional names of potential Qualified Community Builders. Lennar/BVHP shall encourage potential Qualified Community Builders to

submit completed Community Builder Applications within one hundred twenty (120) days after the Close of Escrow. The due date is calculated to provide ample time prior to the Community Builder Lots becoming available for Vertical Development, for the completion of the review of the Community Builder Application, the selection of the Qualified Community Builder for either the Joint Venture Community Builder Pool or the Independent Community Builder Pool, and with respect to the Joint Venture Community Builders, the negotiation and execution of the joint venture agreement. Nevertheless, Lennar/BVHP shall accept Community Builder Applications until a Vertical DDA has been executed for the last Community Builder Lot.

(d) Conduct workshops designed to explain the Community Builder opportunities on the Shipyard and the application process.

(e) Staff the Project Office during normal business hours Monday through Friday, excluding holidays, to answer questions about the Community Builder Program and to assist in completing the Community Builder Application.

#### **4.3. Joint Venture Community Builder Requirements.**

(a) **Duties.** Through partnerships with the Joint Venture Community Builders, Lennar/BVHP shall provide the Joint Venture Community Builders with significant development experience and shall introduce the Joint Venture Community Builders to financial and professional resources during the development of Community Builder Lots with Lennar/BVHP or its Affiliates. A primary goal of the joint venture relationships is for Lennar/BVHP and the Joint Venture Community Builders to work together in such a way that based on the experience obtained from the joint venture, the Joint Venture Community Builders will secure future development projects on their own. To help satisfy the ultimate goal of the joint venture relationship, Lennar/BVHP shall require the Joint Venture Community Builder to perform duties that are economically significant to the joint venture and actively and substantially participate in the day-to-day financial and policy decision-making responsibilities of the joint venture.

(b) **No Restrictions.** Regardless of the ownership interest of the Joint Venture Community Builder in the joint venture, Lennar/BVHP shall not place any formal or informal restrictions on the Joint Venture Community Builder that would limit the customary discretion of a joint venture partner with a significant ownership interest in the joint venture. The Joint Venture Community Builder must have authority to manage significant aspects in the joint venture business and the development of the Vertical Improvements, including, without limitation:

- (i) Hiring and firing personnel;
- (ii) Selecting and supervising the contractors, subcontractors, legal, financial and other consultants;
- (iii) Approving the various development plans, construction documents, marketing strategies and project budgets; and
- (iv) Negotiating and approving various contracts in connection with the project, including, without limitation, approving the Vertical DDA to be entered into with the Agency.

(c) **Joint Venture Agreement.** For the joint venture between a Joint Venture Community Builder and Lennar/BVHP or its Affiliate to be effective, the Agency must approve the governing joint venture agreement between the Joint Venture Community Builder and

Lennar/BVHP or its Affiliate (the "Joint Venture Agreement"). The form of the Joint Venture Agreement shall be finalized after the selection of the Joint Venture Community Builder Pool following approval of such form by the Agency in consultation with the CAC. The Joint Venture Agreement must require compliance with the requirements set forth in Section 4.3 (a) and (b) above and shall include sufficient remedies for the Joint Venture Community Builder to address the failure of Lennar/BVHP or its Affiliate to so comply.

**4.4. Joint Venture Community Builder Application.** As shown in the Community Builder Application attached hereto as Exhibit G, and in order to demonstrate the capability to successfully undertake all activities necessary to fulfill its role as a joint venture partner for the Vertical Development, the Joint Venture Community Builder must provide information in the Community Builder Application that documents its technical proficiency, relevant experience, financial history and litigation history, as described below:

(a) **Technical Proficiency.** Documentation of technical qualifications related to the proposed development, including resumes of all members of the development entity and the identification of licenses, certificates and relevant educational training;

(b) **Relevant Experience.** Documentation of direct or related experience, including but not limited to financial, construction, engineering and development experience, and a detailed explanation of previous development projects, including project location, size, cost, capital and financing sources used, economic performance, project timeline, and a description of the role of the development entity or its members in the project;

(c) **Financial History.** To the extent available, the following financial information: four (4) years of annual credit reports, annual reports, audited financial statements or tax returns of the development entity and its principal members and real estate portfolios, recent history of obtaining financing commitments, a description of all projects currently underway but not completed, including the financial commitment required of the development entity, identification of equity and debt capital and the relationship between the developer and the financing source; and

(d) **Litigation History.** Detailed information regarding any litigation concerning a real estate project that involved the development entity or any of its principal members.

**4.5. Selection of Joint Venture Community Builder Pool.**

(a) **Selection Panel.** A selection panel comprised of representatives from Lennar/BVHP and the Agency (the "Selection Panel") shall create a pool of Joint Venture Community Builders ("Joint Venture Community Builders Pool") from which Lennar/BVHP or a Lennar/BVHP Affiliate shall select all of its Qualified Joint Venture Community Builder partners. Lennar/BVHP shall notify the Agency of which representatives of Lennar/BVHP will be on the Selection Panel within ninety (90) days after the Close of Escrow. Lennar/BVHP shall ensure that joint venture opportunities are made available to as large a number of different members of the Joint Venture Community Builders Pool as possible. The Selection Panel may request additional information from the prospective Joint Venture Community Builder in order to clarify or supplement information provided in the Community Builder Application.

(b) **Selection Criteria.** The selection criteria for Joint Venture Community Builders shall be significantly less stringent than that for Independent Community Builders because the objective of the selection will be to choose entities that have demonstrated the potential to be successful developers with limited regard to the financial ability of such entity to develop a portion of the Vertical Improvements. Joint Venture Community Builders must

demonstrate technical proficiency and relevant experience to perform duties that are economically significant to the joint venture and must actively and substantially participate in the day-to-day, financial and policy decision-making responsibilities of the joint venture. More specific criteria shall be as set forth in the Community Builders Application, however, to be considered for inclusion in the Joint Venture Community Builders Pool, BVHP Area Builders must have at least two (2) years construction experience.

(c) **Community Builders Application Updates.** Due to the phased nature of the development of the Lots in the Shipyard, membership in the Joint Venture Community Builders Pool may occur well in advance of the completion of Horizontal Improvements on the applicable Community Builder Lots. As a result, information provided for selection as a Joint Venture Community Builder may not be current at the time of Lennar/BVHP's selection of such Joint Venture Community Builder from the Joint Venture Community Builder Pool. As such, within a reasonable period of time, not to exceed thirty (30) days after Lennar/BVHP's selection of a Joint Venture Community Builder from the Joint Venture Community Builders Pool, such Joint Venture Community Builder must provide the Selection Panel with information required by the Selection Panel to update the information provided in the Community Builder Application. Failure to provide such information within the request time, or the existence of changed circumstances that would have prevented the Selection Committee from including the BVHP Area Contractor in the Joint Venture Community Builders Pool if such circumstances existed at the time of the selection to the Joint Venture Community Builders Pool, may render such BVHP Area Contractor ineligible to remain in the Joint Venture Community Builders Pool and ineligible to joint venture with Lennar/BVHP or its Affiliates. In the event of such ineligibility, Lennar/BVHP shall select another BVHP Area Contractor from the Joint Venture Community Builders Pool.

**4.6. Independent Community Builder Requirements.** Of the Community Builder Lots not developed in joint venture with the Lennar/BVHP, the balance will be eligible for purchase and development by Independent Community Builders. The Independent Community Builder must demonstrate the capability to successfully undertake all the activities necessary to fulfill its role as a Vertical Developer in Phase 1 of the Shipyard. The Independent Community Builder must demonstrate the financial capability or access to minimum capital sources to purchase the Community Builder Lot at the Minimum Purchase Price in accordance with the terms set forth in the DDA; and must demonstrate the ability to complete the Vertical Improvements on the Community Builder Lot in accordance with the schedule of performance required by the applicable Vertical DDA.

**4.7. Independent Community Builder Application.** As shown in the attached Community Builders Application, potential Independent Community Builders must provide information in the Community Builders Application that documents its technical expertise, relevant experience, financial history and financial capacity and litigation history as described below:

(a) **Technical Expertise.** Documentation of technical qualifications related to the proposed development, including resumes of all members of the development entity and the identification of licenses, certificates and relevant educational training. Documentation of a proven track record as a contractor or builder, including demonstrable record as either a builder or developer of a housing or commercial development. List of client references.

(b) **Relevant Experience.** Documentation of direct or related experience, including but not limited to financial, construction, engineering and development experience and a detailed explanation of previous development projects, including location, size, cost, capital and financing sources used, economic performance, project timeline, and a description of the role of development entity or its members in the project. Proven track record of meeting a project

timeline as well as the ability to hire and manage sub-contractors, schedule trades and materials, and secure permits.

(c) **Financial History and Financial Capacity.** Documentation of successful bid and job completion. Documentation of the following financial information: four years of annual credit reports, annual reports, audited financial statements of the development entity and its principal members and real estate portfolios, recent history of obtaining financing commitments, a description of all projects currently underway but not completed, including the financial commitment required of the development entity, identification of equity and debt capital and the relationship between the developer and the financing source.

(d) **Litigation History.** Documentation of detailed information regarding any litigation concerning a real estate project that involved the development entity or any of its principal members.

#### **4.8. Selection of Independent Community Builders Pool.**

(a) **Selection Panel.** The Selection Panel shall create a pool of Independent Community Builders (the "Independent Community Builders Pool"). In accordance with the provisions of Section 15.4 of the DDA, members of the Independent Community Builders Pool shall be allowed to participate in a competitive bid process for purchase of each Community Builder Lot eligible for purchase by Independent Community Builders. The Selection Panel may request additional information from the potential Independent Community Builders in order to clarify or supplement information provided in the Community Builders Application.

(b) **Selection Criteria.** The selection criteria for the Independent Community Builders shall be significantly more rigid than that for Joint Venture Community Builders because the Independent Community Builders must demonstrate, among other things, successful completion of residential or commercial development and the financial capacity to purchase the applicable Community Builder Lot at no less than the Minimum Purchase Price, and the ability to develop such Community Builder Lot in accordance with the applicable Vertical DDA. More specific criteria shall be as set forth in the Community Builders Application; however, to be considered for inclusion in the Independent Community Builders Pool, BVHP Area Builders must have at least two (2) years construction experience.

(c) **Community Builders Application Updates.** Due to the phased nature of the development of the Lots in the Shipyard, membership in the Independent Community Builders Pool may occur well in advance of the completion of Horizontal Improvements on the applicable Community Builder Lots. As a result, information provided for selection as an Independent Community Builder may not be current at the time the Independent Community Builders bid on a Community Builder Lot. As such, the competitive bid process will require that all Independent Community Builders who bid on Community Builder Lots must provide to the Selection Panel, within a reasonable period of time prior to the bid, information required by the Selection Panel to update the information provided in the Community Builder Application. Failure to provide such information within the request time, or the existence of changed circumstances that would have prevented the Selection Committee from including the BVHP Area Builder in the Independent Community Builders Pool if such circumstances existed at the time of the selection to the Independent Community Builders Pool, may render such BVHP Area Builder ineligible to remain in the Independent Community Builders Pool and ineligible to bid on a Community Builder Lot.

**4.9. Other Capacity Building Elements.** As part of the Lennar/BVHP's on-site support for the Community Builder Program, Lennar/BVHP shall provide to BVHP Area Contractors information on real estate and business development as well as training programs

available at local colleges. This information shall also be made available through Lennar/BVHP's outreach efforts in support of the Community Builder Program.

## **SECTION 5. INTERIM AFRICAN MARKETPLACE.**

**5.1. Introduction.** Pursuant to Section 4 of DDA Attachment 24B, Lennar/BVHP shall establish an "Interim African Marketplace" to serve as an African-themed temporary festive outdoor setting for the display and sale of: a) arts, crafts, sculptures, fabrics and clothing, and books; and b) fresh, wholesome and healthy foods as commonly found in a Farmer's Market. Additionally, it will serve as a venue for the presentation of musical performances, such as gospel, jazz and blues and African and world music. The musical events could occur in conjunction with, or independent of, the African Marketplace. The Interim African Marketplace will establish the Shipyard as a music, entertainment, cultural, and tourist destination and will provide economic opportunities for local artists.

**5.2. Location.** Lennar/BVHP shall locate the Interim African Marketplace on an approximately 1.2 acre site at the base of the hill between Galvez Steps, Galvez Avenue, the Hilltop and the parking lot north of Building 101, as more specifically identified on the map attached hereto as Exhibit H ("Interim African Marketplace Site"). Lennar/BVHP shall move the Interim African Marketplace to a permanent location on Parcel B that will be mutually agreed upon by the Agency and Lennar/BVHP.

### **5.3. Implementation Plan.**

**(a) Primary Consultants.** Lennar/BVHP has selected the Los Angeles African Marketplace Inc. (LAAM) to be the operator of the Interim African Marketplace (the "Interim African Marketplace Operator"). Lennar/BVHP has contracted with the Interim African Marketplace Operator to, among other things, develop the operating plan for the Interim African Marketplace. In addition, within sixty (60) days following the Close of Escrow, Lennar/BVHP shall contract with a local, community-based arts and cultural development organization approved by the Agency (a "LACDO") to work on outreach matters and otherwise assist the Interim African Marketplace Operator. The scope of work for Lennar/BVHP's contract with the LACDO shall include the duties set forth in Exhibit I attached hereto. The scope of work for Lennar/BVHP's contract with LAAM shall include the duties set forth in Exhibit J attached hereto. Lennar acknowledges and agrees that notwithstanding its contracts with the LACDO and LAAM, Lennar remains responsible for establishing the Interim African Marketplace pursuant to the terms hereof.

**(b) Operating Plan.** Lennar/BVHP and its consultants shall prepare an operations plan that includes, among other requirements, a vendor recruitment plan, a public relations and marketing plan, an outreach plan for working with local arts groups, ecumenical groups, merchant and business associations and others to identify performers and vendors for the Interim African Marketplace, and a financial plan for the continued operation of the Interim African Marketplace. In addition, as part of the operations plan, Lennar/BVHP and its consultants shall prepare a study that identifies estimated visitors to the Interim African Marketplace, mode of travel and need for and availability of transportation-related facilities such as bicycle and vehicle parking and transit facilities to support the operations. If the study identifies an unmet need for transportation-related facilities associated with the operations, the operations plan shall include a transportation management implementation plan that is consistent with the Redevelopment Plan, Design for Development and adopted traffic-related mitigation measures identified in the Final Environmental Impact Report.

**(c) Additional Consultants.** To support Lennar/BVHP in the establishment of the Interim African Marketplace and to assist the LACDO and LAAM, within thirty (30) days

after the Close of Escrow, or such later time as may be permitted by the Agency following a written extension request from Lennar/BVHP, Lennar/BVHP shall contract with the consultants described below for the services described below, after consultation with the Agency. Lennar/BVHP shall use best efforts to inform members of the BVHP Area community through extensive outreach about, and make available to such members, the consultant opportunities, and include provisions in the contracts of its selected consultants requiring such consultants to use best efforts to maximize the participation of members of BVHP Area community in all aspects of the planning and operation of the Interim African Marketplace. Lennar/BVHP shall provide the Agency with copies of the contracts entered into by Lennar/BVHP with the below described consultants for the below described services:

- (i) Planning/architectural consultant to design the character of the site.
- (ii) Financial consultant to:
  - (A) prepare an operations/financial feasibility study to determine the criteria for selecting vendors that will contribute to an operationally and financially successful Interim African Marketplace;
  - (B) develop a revenue/cost structure that will yield at least a "break-even financial scenario" for operating the African Marketplace;
  - (C) recommend an Interim African Marketplace Operator's leasing program, including lease rates for the Interim African Marketplace Operator and its vendors; and
  - (D) identify all potential sources of operating revenues (vendor rents and funds from sponsors like radio, television stations and beverage companies, etc.) as well as public funding sources to cover operating expenses (advertising, promotions, maintenance, operations, etc.).
- (iii) Marketing and public relations consultant to:
  - (A) recommend a marketing and public relations plan that is an integral part of the overall marketing and operations plan for Phase 1 of the Shipyard. The plan shall place the Interim African Marketplace and the Shipyard "on the map" for local residents, for the City and Bay Area region, and for tourists;
  - (B) Create a distinctive "look" for materials related to the Marketplace (letterhead, brochures, signage, etc.); and
  - (C) Create an attractive, informative Interim African Marketplace brochure and website to assist with the Interim African Marketplace Operator's marketing/public relations and outreach plans.
- (iv) Engineering consultant to make basic improvements to the site, including to:
  - (A) pave the Interim African Marketplace Site (including a performance area);
  - (B) provide utilities to the Interim African Marketplace Site;and

(C) provide a parking area and trailer to serve as the administrative and assistance center for the Interim African Marketplace Operator and its vendors.

**5.4. Timeline.** Lennar/BVHP shall comply with the following timeline which shall be followed to the extent it may be feasibly coordinated with the construction processes of Phase 1 to ensure safety to the public and the construction workers, to avoid impediments to the construction efforts, and to foster an environment conducive to the contemplated, vibrant atmosphere of the Interim African Marketplace.

(a) **Before Close of Escrow.** Lennar/BVHP shall have entered into a contract with LAAM to accomplish the scope of services required to launch the Interim African Marketplace.

(b) **90 Days After Close of Escrow.** Working with the CAC, Lennar/BVHP and its consultants shall prepare an implementation plan for the Interim African Marketplace for review and endorsement by the Agency.

(c) **120 Days After Close of Escrow.** Lennar/BVHP shall present a draft implementation plan to the BVHP Area community in cooperation with the CAC.

(d) **150 Days After Close of Escrow.** Lennar/BVHP, in cooperation with LAAM and the LACDO shall finalize the implementation plan and will commence the implementation of such plan.

(e) **210 Days After Close of Escrow.** The Interim African Marketplace shall be established and the Interim African Marketplace Operator shall be ready to host its first event. The Interim African Marketplace will continue to operate from the Interim African Marketplace Site until the permanent facility on Parcel B is completed.

## **SECTION 6. CULTURAL/HISTORICAL RECOGNITION PROGRAM.**

**6.1. Introduction.** Pursuant to Section 5.1 of DDA Attachment 24B, Lennar/BVHP shall develop a design program that (a) through the urban design process identifies opportunities for recognizing and enhancing the cultural and historical context of the Shipyard and its surrounding community in both the development and design of the Shipyard; (b) integrates cultural features and facilities throughout the Shipyard, starting with Phase 1 through the Interim African Marketplace; and (c) provides opportunities for local artists (both at the Shipyard and from the surrounding community) to participate in creating public art for the Shipyard, working with the community to identify appropriate locations and art forms for public art program.

**6.2. Program Description.** Lennar/BVHP, in collaboration with the CAC and members of the BVHP Area community, developed certain cultural and historical recognition design concepts for the Shipyard, and in satisfaction of its obligations described in Section 6.1 above, Lennar/BVHP agrees to implement the following program (the "Cultural/Historical Recognition Program"):

(a) **Open Space Master Plan.** Lennar/BVHP agrees to include in the Open Space Master Plan required by the DDA, the location for the installation of 500 square feet of tiles designed by youth participants at a San Francisco Bayview Opera House program, and the creation of a walkway connecting Galvez Steps to the site of the Interim African Marketplace. The walkway shall incorporate the following three (3) elements identified in the design process:

- (i) A timeline of events to recognize all the inhabitants of the Shipyard from the earliest settlers to today;
- (ii) Anecdotal narratives to preserve the stories of the people who worked at the former Shipyard Naval base through oral, written and illustrative works; and
- (iii) Physical markers to incorporate into the Shipyard certain artifacts, representations or symbols of its early Native American inhabitants, the shipbuilding era, the African Diaspora and more.

(b) **Interim African Marketplace.** Lennar/BVHP shall develop the Interim African Marketplace as described in Section 5 in a manner that will integrate cultural features and facilities on the Shipyard in Phase 1. Lennar/BVHP recognizes that its obligation to integrate cultural features and facilities throughout the Shipyard shall be a continuing obligation during all other Phases of Shipyard development in which Lennar/BVHP or an Affiliate obtains any development rights.

(c) **Art Program and Implementation.** Within one hundred twenty (120) days after the Close of Escrow, Lennar/BVHP shall form an exploratory committee with representatives of BVHP Area arts organizations and artists, BVHP Area residents and the CAC to (i) design an arts program that provides opportunities for local artists (both at the Shipyard and from the surrounding community) to participate in creating public art for the Shipyard and identify appropriate locations and art forms for such arts program; and (ii) develop a strategy for implementing the Cultural/Historical Recognition Program. Lennar/BVHP shall provide the Agency and the CAC with a written report ("Progress Report") describing in detail the arts program and the implementation strategy within two hundred ten (210) days after the Close of Escrow, and shall revise such strategy as requested by the Agency and the CAC.

(d) **Fundraising Consultant.** As part of its commitment to the success of the Cultural/Historical Recognition Program, within sixty (60) days after the Close of Escrow, Lennar/BVHP shall engage and maintain a fundraising consultant to pursue government, foundation and private funding to underwrite the creation of the arts program, the public art and the implementation of the Cultural/Historical Recognition Program.

**6.3. Progress Report.** If Lennar/BVHP fails to provide the Progress Report within the required time period, or if the Progress Report demonstrates that Lennar/BVHP has not diligently complied with its obligations under the proposed Cultural/Historical Recognition Program, at the Agency's option, and within no less than ten (10) business days after written demand by the Agency, Lennar/BVHP shall pay to the Agency the sum reasonably determined by the Agency to be sufficient for the Agency to implement the proposed Cultural/Historical Recognition Program, which sum may include, without limitation, the cost of working with Myles Stevens or a comparable cultural historian, landscape artists and other artists.

## **SECTION 7. BUSINESS INCUBATOR SPACE PROGRAM.**

**7.1. Introduction.** Pursuant to Section 5.2 of DDA Attachment 24B, Lennar/BVHP shall set aside space in accordance with the terms set forth herein ("Business Incubator Space") for a small business incubator program in an effort to facilitate the growth and development of a variety of businesses at the Shipyard. Lennar/BVHP shall provide the Business Incubator Space or will cause the Business Incubator Space to be provided in the Shipyard, at cost (without profit), pursuant to the program described below ("Business Incubator Space Program"). This obligation shall be a covenant running with the land and shall be included in all appropriate Vertical DDAs. Lennar/BVHP shall not be responsible for the management of the day-to-day

operation of the actual business incubator program that will operate in the space provided by Lennar/BVHP (the "Business Incubator Program"), the staffing, or selection of the participants in the Business Incubator Program. Lennar/BVHP acknowledges that the intent of the Business Incubator Space Program is for Lennar/BVHP to create a place where emerging businesses doing business in and with a primary business address in, or with an owner, or owners, of at least fifty-one percent (51%) of the ownership interest in the entity who provide satisfactory evidence to Lennar/BVHP that such owner(s) lives in the BVHP Area, and entrepreneurs who provide satisfactory evidence to Lennar/BVHP that such entrepreneurs live in the BVHP Area (collectively, "Emerging BVHP Area Businesses") have at their disposal a below-market location on the Shipyard to operate.

## **7.2. Program Specifics.**

(a) **Business Incubator Space Plan.** In order to facilitate Lennar/BVHP's satisfaction of its obligations under the Business Incubator Space Program, Lennar/BVHP shall include in the Purchase Agreements for all Lots zoned to permit retail space, provisions that require the applicable Vertical Developers to (i) cooperate with Lennar/BVHP in drafting and revising as required by the Agency, the Business Incubator Space Plan (as defined below) and submit such plan to the Agency for approval prior to awarding any vertical commercial contracts on an Affiliate Lot; and (ii) provide the lease for the Business Incubator Program Space to the Agency for prior approval. Prior to the awarding of the first vertical commercial construction contract, Lennar/BVHP shall submit to the Agency, for the Agency's review and approval, a proposed plan delineating the outline and square footage of the premises proposed for the Business Incubator Space and a budget of the development costs (including developer's overhead and cost of funds, but excluding profit) and resulting rent required to recover such costs (the "Business Incubator Space Plan"). The Business Incubator Space must be located on an Affiliate Lot. No vertical contract for the subject Lot shall be awarded until the Agency approves the Business Incubator Space Plan.

(b) **Business Incubator Program Facilitator.** Within thirty (30) days after the Agency's written approval of the Business Incubator Space Plan, Lennar/BVHP, in collaboration with the Agency, shall begin the interview and selection process to choose a business incubator program facilitator to create and manage the Business Incubator Program. If Lennar/BVHP fails to initiate the selection process within such thirty (30) day period, or such extended period of time permitted by the Agency upon Lennar/BVHP's written request, then at the Agency's option, and upon reasonable written notice by the Agency, the Agency may select the business incubator program facilitator without input from Lennar/BVHP and Lennar/BVHP shall be responsible to pay all of Agency's costs in connection with selecting the business incubator program facilitator. The business incubator program facilitator will be required to perform at least the following activities:

- (i) Develop a Business Incubator Program or refine an existing Business Incubator Program that has met with success in similar situations;
- (ii) Determine tenant improvements to the Business Incubator Space that would be required for the Business Incubator Program (to be installed by the facilitator or to be included in development costs and rent);
- (iii) Demonstrate the ability to adequately fund the program for the long-term;
- (iv) Conduct outreach to the BVHP Area community to seek involvement in the Business Incubator Program;

(v) Manage workshops to describe the Business Incubator Program to interested parties;

(vi) Select Business Incubator Program participants from the BVHP Area;

(vii) Manage day-to-day activities of the Business Incubator Program; and

(viii) Identify opportunities at the Shipyard, within and outside of the Business Incubator Space, for start up companies with a primary business address in the BVHP Area or with an owner or owners, of at least fifty-one percent (51%) of the ownership interest in the entity, who provide satisfactory evidence to the business incubator program facilitator that such owner(s) lives in the BVHP Area.

(c) **Lease.** The lease for the Business Incubator Space shall not be effective without the prior approval of the Agency.

## **SECTION 8. HOME BUYERS' ASSISTANCE PROGRAM.**

**8.1. Introduction.** Pursuant to Section 5.3 of DDA Attachment 24B, Lennar/BVHP shall develop a program to provide assistance to qualified Shipyard home buyers of affordable as well as market rate homes. The program shall include: (a) Down Payment Assistance, (b) First-Time Buyer Financing Programs, and (c) Homeownership Counseling Services. Lennar/BVHP agrees to implement the program described below (the "Home Buyers' Assistance Program") to equally service prospective market rate and affordable home buyers as permitted under the terms of the Agency's Limited Equity Homeownership Program (described in the DDA).

### **8.2. Program Description.**

#### **(a) Down Payment Assistance.**

(i) For market-rate home buyers, Lennar/BVHP, through its affiliate mortgage company Universal American Mortgage Company (UAMC) shall offer a zero down-payment option to qualified buyers.

(ii) For affordable home buyers, under the terms of the Affordable Housing Program (Attachment 22 of the DDA), pursuant to the rules established by the Agency, qualified buyers of affordable homes must provide a down payment of five percent (5%) of the purchase price. Up to two percent (2%) may be a gift, but the balance (three percent (3%)) must be the buyer's funds. In light of the foregoing, Lennar/BVHP, working with local community economic development organizations, shall provide qualified buyers with a list of programs that could be the source of "gift" funds for two percent (2%) of the required down payment.

#### **(b) First-Time Buyer Financing Programs.**

(i) Lennar/BVHP, in conjunction with UAMC, shall provide qualified home buyers with a choice of financial lenders that provide 30-year fixed loans to low and moderate-income, first-time home buyers. When processed by UAMC, buyers may qualify for a waiver of mortgage insurance.

(ii) First-time home buyers are defined as individuals who have not owned a home within the past three (3) years. The loan application process will require buyers to provide tax returns for the previous three (3) years to verify the absence of any deductions taken for mortgage interest payments. Applicants may also be required to submit a list of assets.

(c) **Homeownership Counseling Services.** The Agency currently contracts with the San Francisco Housing Development Corporation and the Mission Economic Development Association for homeownership counseling services. Lennar/BVHP shall notify these and other community-based homeownership counseling services, such as the Consumer Credit Counseling of San Francisco, of the opportunity for homeownership at the Shipyard in advance of marketing the homes for sale. Lennar/BVHP shall also provide an orientation to the counseling services' staff and application information for prospective homeowners.

(d) **Outreach.**

(i) Within sixty (60) days after Close of Escrow, Lennar/BVHP shall conduct an outreach program in cooperation with the CAC and local credit counseling services to ensure BVHP Area residents are aware of the homeownership opportunities well in advance of homes being marketed for sale. On a quarterly basis, after the initial outreach program, Lennar/BVHP in cooperation with the CAC and local credit counseling services shall conduct seminars on homeownership opportunities and the qualification process.

(ii) Within sixty (60) days after the Close of Escrow, Lennar/BVHP shall require UAMC to provide information to credit counseling services regarding UAMC's eligibility requirements for zero down payment, first time home buyer and other programs available to prospective home purchasers.

(iii) Within sixty (60) days after the close of escrow for the first Lot sold on the Shipyard, and quarterly thereafter until the last home is sold on the last Lot sold, Lennar/BVHP shall, and shall require Vertical Developers, to host quarterly workshops on homeownership opportunities and the qualification process.

(e) **Affordable Housing Qualification Process.** Lennar/BVHP shall provide the following information to prospective home purchasers:

(i) Buyers of homes offered under the Agency's Limited Equity Homeownership Program will qualify for the program based on:

(A) Income (below 80% AMI), which eligibility is determined based on the U.S. Department of Housing and Urban Development's calculation of Area Median Income (AMI). The standard qualifying AMI has been adjusted to account for the economics of the Bayview Hunters Point community;

(B) First time home buyer status;

(C) Five percent (5%) downpayment (3% own funds); and

(D) Agreement to occupy the home as a principal residence.

(ii) As required by the Agency, qualified low- and moderate-income, first-time home buyers will be selected through a lottery system. Qualified affordable home buyers will be entered into a lottery and selected at random to establish a ranking according to the priorities established by the DDA. Qualified applicants will continue to be entered into a lottery for each available affordable home until they purchase a home or choose to remove themselves from the lottery process.

(iii) Following the lottery, each applicant will be evaluated based on the preference criteria established by the DDA. Priorities (listed in order) are:

- (A) Hunters Point Certificate Holders;
- (B) Western Addition Certificate Holders;
- (C) Rent Burdened or Assisted Housing Residents who live in San Francisco;
- (D) San Francisco residents; and
- (E) Members of general public.

(iv) Certificates of Preference were given to persons who were displaced by redevelopment activities in the past. The Certificates allow their holders certain priorities in accessing new housing. All Certificates will be verified by the Agency.

(f) **Failure to Comply.** Unless an extension of time is requested in writing by Lennar/BVHP, or a Vertical Developer, as applicable, prior to the deadlines set forth herein, and granted by the Agency, if Lennar/BVHP, or applicable Vertical Developer, fails to comply, and until it does comply, with the terms of the Home Buyers' Assistance Program, at the sole option of the Agency, and upon prior written notice, neither UAMC nor any other affiliate mortgage company of Lennar/BVHP shall be permitted to pre-qualify prospective homeowners or provide mortgages for prospective Shipyard homeowners. Additionally, Lennar/BVHP and Vertical Developers shall be prohibited from conducting any marketing, entering into any home sales contracts or closing any home sales.

## **SECTION 9. JOB TRAINING AND EMPLOYEE ASSISTANCE PROGRAM.**

**9.1. Introduction.** Pursuant to Section 5.4 of DDA Attachment 24B, Lennar/BVHP shall create a job training and employee assistance program ("Job Training Program") by (i) working with existing community based job training and assistance programs with successful track records to identify job training needs for the Shipyard, including social service needs that support job training programs; (ii) designing the Job Training Program to specifically address training and employment needs at the Shipyard, rather than incorporating the program into more geographically expansive jobs programs; (iii) including in the Jobs Training Program the creation of after school, summer school and vacation employment via internships or partnering with local summer jobs programs; (iv) in consultation with the Agency and CAC, establishing a process initially to determine, then annually to review the job training and employee assistance needs of the Shipyard; and (v) in consultation with the Agency and CAC, establishing a process to determine which of these programs will receive funding from the Two Hundred Twenty-Five Thousand Dollar (\$225,000) job training fund ("Job Training Fund") required to be established and funded by Lennar/BVHP at the Close of Escrow, and subsequently funded by Lennar/BVHP

on the annual anniversary of the Close of Escrow until Substantial Completion of the Infrastructure.

**9.2. Job Training Needs.** Lennar/BVHP conducted a labor needs analysis for Phase 1 of the Shipyard development, surveyed existing job training organizations in the BVHP Area, reviewed projected growth sectors and gathered information about existing BVHP Area youth programs that focus on job or career preparation. The methodology used for the foregoing and the data used as the basis for the Job Training Program are more specifically set forth in the attached Exhibit L. To satisfy Lennar/BVHP's obligations set forth in Section 9.1 above, Lennar/BVHP shall implement the Job Training Program as set forth herein. The Job Training Program addresses four (4) main training areas consisting of (a) construction skilled trades pre apprenticeship training, (b) non-construction occupational skills training, (c) professional services trainee training and (d) youth development.

**9.3. Plan For Skilled Trades Pre-Apprenticeship Job Training.**

(a) **Lennar/BVHP's Findings.** The construction activities in Phase 1 will generate a significant number of apprenticeship or entry-level positions in several skilled trade areas. Currently there are several existing pre-apprenticeship training programs available to BVHP Area residents. At this time, the City and County of San Francisco and the Agency are directing considerable job training funding towards pre-apprenticeship training for BVHP Area residents. The greatest concentration of training is in carpentry pre-apprenticeship. There is also some training available in truck driving, and a small electrical program. However, little or no pre-apprenticeship training is currently available in the following three (3) fields that will be in highest demand at the Shipyard during Phase 1:

- (i) Plumbing;
- (ii) Heavy equipment operation; and
- (iii) Electrical.

(b) **Job Training Fund Allocation.** Based on the foregoing, Lennar/BVHP shall make a percentage of the Job Training Fund available per year for two (2) years to existing organizations experienced in pre-apprenticeship training. Through the Request for Proposal (RFP) solicitation process described below ("RFP Process"), Lennar/BVHP shall encourage existing organizations experienced in pre-apprenticeship training to expand into plumbing, heavy equipment operation and electrical pre-apprenticeship training. To the extent feasible, training programs shall include supportive services resources or referrals to available supportive services resources to meet client needs. To the extent feasible, the Job Training Funds shall be leveraged with other governmental and/or private sources of funds.

**9.4. Plan For Professional Service Trainee Job Training.**

(a) **Lennar/BVHP's Findings.** There will be approximately thirty-five (35) trainee positions generated by Lennar/BVHP's consultants in Phase 1. These are on-the-job training positions. Although not one (1) community program currently exists that addresses the specific needs of professional service consultants, one (1) organization, Visitacion Valley Jobs Education & Training (VVJET) has proposed a five-month training program for a construction assistant. Public training dollars are not currently being spent in the BVHP Area to provide this type of training. Because the local construction industry remains a growth area, professional services consultant employment opportunities should also expand. Employment in this area includes a variety of career options, ranging from those that can be entered with minimal education and training such as materials testers to those such as project management, engineering

and architecture that require college degrees. During the course of Phase 1, the Shipyard's professional service trainee positions should provide unique training opportunities for BVHP Area residents. Further, some of these positions could play a role in providing BVHP Area youth, including school age and college students, with exposure to these careers and industry specific job training.

(b) **Job Training Fund Allocation.** Based on the foregoing, Lennar/BVHP shall make a percentage of the Job Training Fund available per year for two (2) years to existing experienced job training organizations. Through the RFP Process, Lennar/BVHP shall encourage existing experienced job training organizations to create or augment an occupational skills program that focuses on professional services and/or focuses on providing career exposure and training for youth.

#### **9.5. Plan For Non-Construction Occupational Job Training.**

(a) **Lennar/BVHP's Findings.** A large portion of the existing job training efforts conducted by BVHP Area community-based agencies currently focuses on the skilled construction trades to the exclusion of other types of training options. City College of San Francisco's Southeast Center provides the majority of occupational skills training offered to BVHP Area residents. The two (2) biotechnology occupational skills training programs surveyed operate as partnerships between BVHP Area agencies and City College of San Francisco's Southeast Center. These partnerships have resulted in bringing BVHP Area residents into the college structure, promoting achievement within that structure, and providing training that leads directly to employment in an employment sector with a great deal of career advancement and growth potential. Occupational skills training focuses on permanent, long-term sustained employment opportunities, which have been identified as a BVHP Area priority and such training generates opportunities for residents in the BVHP Area, particularly women, who may not be interested in construction work.

(b) **Job Training Fund Allocation.** Based on the foregoing, Lennar/BVHP shall make a percentage of the Job Training Fund available per year for two (2) years to existing experienced job training organizations. Through the RFP Process, Lennar/BVHP shall encourage existing experienced job training organizations to create or augment an occupational skills program that operates as a partnership between a BVHP Area organization or group of such organizations and the City College of San Francisco's Southeast Center (or another such educational institution) in a field that has been identified as a growth area, and is directly connected to employment opportunities for BVHP Area residents. Such employment opportunities must pay at least a minimum living wage (as defined by the San Francisco Living Wage Ordinance).

#### **9.6. Plan For Youth Employment Job Training.**

(a) **Lennar/BVHP's Findings.** Many programs exist in the BVHP Area for youth. However, most of these programs have an academic, tutorial or recreation emphasis. There is a lack of job training programs for youth in the BVHP Area. The few that exist are not industry specific, with the exception of the program operated by the San Francisco Black Firefighters. An opportunity exists with the Shipyard development to develop industry /sector specific career exposure and training. There would be great interest in a program that marketed, exposed and prepared young people for apprenticeship opportunities and/or other construction – related career paths.

(b) **Job Training Fund Allocation.** Based on the foregoing, Lennar/BVHP shall make a percentage of the Job Training Fund available per year for two (2) years to existing experienced job training organizations that serve youth. Through the RFP Process,

Lennar/BVHP shall encourage existing experienced job training organizations that serve youth to create or augment a program that provides field or industry specific career exposure and training. The selected field/industry should be one that has been identified as either a San Francisco Bay Area growth area or is directly connected to specific employment.

**9.7. Overview of RFP and Contract Management Process.** In order to ensure an equitable and transparent procedure for distributing the Job Training Fund, Lennar/BVHP shall utilize the RFP Process as set forth herein.

**(a) Issuance of the First RFP.** Lennar/BVHP shall be responsible for initiating and managing the RFP process throughout Phase 1. Lennar/BVHP shall solicit job training organizations that operate in the BVHP Area ("BVHP Area Job Training Organizations") by issuing a series of RFPs. Lennar/BVHP, in consultation with the Agency, shall produce and distribute the RFPs. Lennar/BVHP shall release the first RFP within thirty (30) days after the Close of Escrow and the selection of the first recipient of funds shall occur no later than ninety (90) days after the Close of Escrow. The RFP application for 2005/2006 shall request proposals in the following four (4) training areas: (i) pre-apprenticeship training in the skilled trades, (ii) professional services, (iii) non-construction occupational skills training and (iv) youth development. BVHP Area Job Training Organizations shall have the opportunity to seek funding for programs in one or more of the foregoing job training areas.

**(b) Outreach.** Lennar shall notify BVHP Area Job Training Organizations of the Job Training Fund availability by direct mailing to BVHP Area Job Training Organizations, publishing the RFP on Lennar/BVHP's, Agency's, and CAC's websites, and in the BVHP Shipyard Newsletter. Lennar shall also use the other outreach means set forth in the Lennar/BVHP Outreach Program, including, without limitation, placing notices in publications that serve the BVHP Area. After the publication and distribution of the RFP, Lennar/BVHP shall host an information meeting for interested job training organizations to discuss the RFP Process.

**(c) RFP Requirements.** Lennar/BVHP recognizes that the Job Training Fund generally will not be adequate to create stand alone programs, recipients of the funds must be experienced in the field of job training and have a proven track record, and the success of the Job Training Program requires performance standards and accountability. In light of the foregoing, the RFP shall request that each respondent provide specific details regarding the following and the applicable documents listed below:

**(i)** How the respondent will utilize the Job Training Fund award to augment an existing program or expand the organization's ability to offer expanded training;

**(ii)** How the respondent will provide needed supportive services, such as transportation, childcare, legal aid, medical/dental care, assistance with special clothing or equipment, etc. to BVHP Area clients that are not covered by other sources of funding;

**(iii)** How the respondent will leverage funds from other sources;

**(iv)** How the respondent satisfies the criteria regarding qualifications set forth in clause (d) immediately below;

**(v)** A description of clearly stated and measurable program goals and measures of performance;

(vi) A schedule for reporting the progress and outcome of the applicable program;

(vii) A plan for tracking and documenting training activities and services delivered to trainees; and

(viii) A detailed Job Training Fund utilization plan, including labor costs, supportive services expenses, supply costs and other direct training costs.

(d) **Recipient Qualifications.** The RFP shall clearly set forth desired qualifications for recipients of the Job Training Fund awards. Examples of some of the most basic qualifications that the recipients will need to satisfy are as follows:

(i) Must be an existing organization serving residents of the BVHP Area;

(ii) Must have training experience and a proven positive track record;

(iii) Must be able to address supportive services needs of trainees;

(iv) Must have a proven track record of fiscal accountability;

(v) Must demonstrate ability to recruit and retain BVHP Area trainees that reflect the diversity of the BVHP Area;

(vi) Must demonstrate an understanding of the training, educational and supportive services needs of BVHP Area clients; and

(vii) Must have the means to accurately track and report on trainee progress.

(e) **RFP Submission Deadlines.** The RFPs shall include specified dates and times for submission beyond which dates and times, such RFPs shall not be accepted.

(f) **Selection Panel.** Lennar/BVHP shall assemble a selection panel to review submitted proposal and select the Job Training Fund awardees (the "Job Training Fund Selection Panel"). The Job Training Fund Selection Panel shall make the final selection of the awardees based on the proposal submissions and interviews with each respondent that submits a complete and timely proposal. At minimum, the Job Training Fund Selection Panel shall consist of the following individuals and representatives from the following entities:

(i) Lennar/BVHP;

(ii) The Agency;

(iii) The CAC;

(iv) A workforce development expert from outside the City and County of San Francisco who is familiar with the needs of residents similar to BVHP Area residents;

(v) A youth program and/or youth employment expert from outside of the City and County of San Francisco who is familiar with the needs of youth similar to BVHP Area youth; and

(vi) A member of the philanthropic community.

(g) **Job Training Contracts.** Lennar shall notify the Job Training Fund awardees of their Job Training Fund awards and shall negotiate a contract with each such awardee. These contracts will be in conformity with Lennar/BVHP's other contracts with consultants and shall require approval from the Agency prior to becoming effective. The terms of the contracts shall be two (2) years to allow the awardees a reasonable measure of sustained funding while allowing Lennar/BVHP and the Agency to remain responsive to changes in Shipyard job training needs. A specific scope of services reflecting what was requested in the RFP will be detailed in the contract along with all insurance, fiscal reporting requirements and program reporting. Lennar/BVHP shall administer or cause the administration of the Job Training Fund contracts. The Job Training Fund awards shall be released in portions, either monthly, quarterly, or at other time periods mutually agreed upon by Lennar/BVHP and the Agency, and payment shall be tied to meeting key performance benchmarks as well as submitting timely progress reports.

(h) **Job Training Needs Review.** For the duration of Phase 1, Lennar/BVHP shall review project labor and training needs every two (2) years. It is critical that the investment in training remain responsive to actual Shipyard activities and conditions as well as wider workforce development and economic trends. Prior to completion of the initial RFP funding cycle, Lennar/BVHP shall review the solicitation process and, in collaboration with the Agency, shall make improvements or changes as needed to ensure that the subsequent RFP solicitations meet the needs of the BVHP Area residents and the Shipyard development (the "Job Training Needs Review"). Lennar/BVHP and the Agency shall determine the actual configuration of the Job Training Fund allocation process during the review period, including, without limitation, determining whether funds should be allocated to all four (4) job training categories, consolidated into fewer job training categories or allocated to different job training categories and whether the funding cycles should be expanded to more than two (2) years or shortened. Each two (2) year period after the date of the Close of Escrow, or such longer or shorter period determined in the Job Training Needs Review, shall be referred to as a "Funding Cycle." Lennar/BVHP shall initiate the first Job Training Needs Review prior to the end of the first Funding Cycle, and each subsequent Job Training Needs Review prior to the end of the next successive Funding Cycle. Lennar/BVHP shall complete each Job Training Needs Review within enough time to issue an RFP, select and enter into contracts with RFP awardees and begin disbursing Job Training Funds within sixty (60) days after the end of the Funding Cycle for which the Job Training Needs Review is conducted.

(i) **Monitoring.** During each Funding Cycle, Lennar/BVHP shall be responsible for monitoring and preparing written reports on the progress of the job training programs funded by the Job Training Fund. Lennar/BVHP may conduct the monitoring itself or, at its sole cost, and if permitted under such contract, utilize monitoring services provided by the Agency through the Agency's existing contract with the San Francisco Private Industry Council, or another organization approved by the Agency. The monitoring reports shall provide the basis upon which progress payments will be made to the job training program providers. Lennar/BVHP, in collaboration with the Agency, shall determine the monitoring standards during the RFP proposal review and selection process; however, at minimum, as part of its monitoring obligation, Lennar/BVHP will require that each job training provider submit monthly reports detailing the following: (i) the number of trainees participating in the program, (ii) the number of trainees completing the program, (iii) the supportive services provided to each trainee, (iv) the monthly training schedule, (v) job placement information for each trainee to include name of employer, type of job, salary level, and length of employment, (vi) the job retention services and activities provided each trainee, (vii) the follow-up activities to document trainee progress after completion of training at 30 days, 60 days, 180 days and 365 days, and (viii) monthly and cumulative financial expenditures for training. Lennar/BVHP shall visit the job

training provider's site at least once each quarter. Additionally, all job training providers will be required to (A) submit annual reports that detail training outcomes financial information including the job training providers' annual financial reports reviewed by independent accounting firms, and (B) provide to the CAC summary reports on the applicable job training program funded by the Job Training Fund.

**9.8. Failure to Comply.** At the option of the Agency, if Lennar/BVHP fails to comply with the terms of the Job Training Program, Lennar/BVHP agrees to increase Job Training Fund by \$15,000 after the first such failure and written demand by the Agency, \$30,000 after the second such failure and written demand by the Agency and \$50,000 after the third such failure and written demand by the Agency. After the third such failure, and upon written notice from the Agency, the Agency shall have the right to take over the administrative responsibilities of the program at the cost of Lennar/BVHP, and Lennar/BVHP shall continue to be responsible for funding the Job Training Fund in accordance with the terms of the Job Training Program. At the Agency's request, Lennar shall assign all Job Training Program contracts to the Agency after the Agency's written notice to Lennar of its third failure to comply with the Job Training Program.

## **SECTION 10. LOCAL COMMUNITY PRIORITY LEASING PROGRAM.**

**10.1. Introduction.** Pursuant to Section 5.5 of DDA Attachment 24B, Lennar/BVHP and all Vertical Developers shall implement a local priority leasing program for businesses that (i) have a primary business address in the BVHP Area with an established, fixed office in a non-portable building where regular business is transacted and that is appropriately equipped for the business of the enterprise; (ii) are listed in the Permits and License Tax Paid File with the City and County of San Francisco with a business address in the BVHP Area; (iii) possess a current Business Tax Registration Certificate issued by the City and County of San Francisco and shows a primary business address in the BVHP Area, and/or (iv) have one or more owners with at least a fifty-one percent (51%) ownership interest in the business who provide Lennar/BVHP or the applicable Vertical Developer with satisfactory evidence that such owner(s) lives in the BVHP Area ("BVHP Area Businesses"), which program satisfies the goals set forth below, includes the elements set forth below and is approved by the Agency (the "Local Community Priority Leasing Program").

**(a) Vertical Developers.** Lennar/BVHP shall include in all Purchase Agreements for the Lots the requirements that:

**(i)** Within ninety (90) days following commencement of the Vertical Development on the applicable Lot, the Vertical Developer shall provide to the Agency for the Agency's approval, a leasing plan ("Leasing Plan") that satisfies the goals and leasing plan elements set forth below;

**(ii)** If the Leasing Plan is not submitted to the Agency with such ninety (90) day period, on the ninety-first (91<sup>st</sup>) day, all vertical construction shall cease until a Leasing Plan is delivered to and approved by the Agency;

**(iii)** BVHP Area Businesses that lease space on the Shipyard shall be equitably distributed throughout the retail areas, both geographically and qualitatively, so that BVHP Area Businesses enjoy equitable benefits in terms of pedestrian and vehicle access, visibility, proximity to anchor tenants and other desirable retail or service business characteristics. BVHP Area Businesses shall not be clustered in any particular area; and

(iv) Any violation of the equitable distribution requirement or the terms of the Leasing Plan shall permit the Agency to prohibit any additional leasing until such violations are cured to the satisfaction of the Agency.

(b) **No Required Concessions.** The Agency and Lennar/BVHP acknowledge that no Vertical Developer shall be required to make special concessions for BVHP Area Businesses in terms of lease rates, sales prices, credit requirements, or other terms customarily required of lessees of similar commercial properties.

(c) **Local Community Priority Leasing Program Goals.**

(i) To generate interest from BVHP Area Businesses so that a significant portion of the total prospective tenants who make inquiries, request brochures, attend tours and make offers on available lease space are BVHP Area Businesses.

(ii) To give priority consideration to displaced BVHP Area Businesses.

(d) **Elements of a Leasing Plan.** Elements of the Leasing Plan shall include the following outreach activities:

(i) Vertical Developers shall work with local partners, like the Bayview Business Resource Center and the Bayview Merchants Association to identify BVHP Area Businesses. BVHP Area Businesses can be both retail and service based, and should be, when possible, MBE/WBE businesses.

(ii) Vertical Developers must proactively notify BVHP Area Businesses by direct mail and in local advertising outlets about the leasing opportunities available at the Shipyard for relocation and/or expansion of their operations to the Shipyard. Vertical Developers shall also notify BVHP Area Businesses of orientation meetings for those interested in operating at the Shipyard.

(iii) Vertical Developers shall host a series of orientation meetings for BVHP Area Businesses that wish to sign up for the Local Priority Leasing Program, learn more about the leasing opportunities and tour the new facilities.

## **SECTION 11. SMALL BUSINESS ASSISTANCE PROGRAMS.**

**11.1. Introduction.** Pursuant to Section 5.6 of DDA Attachment 24B, Lennar/BVHP shall establish or fund an existing small business assistance program located in the BVHP Area (the "Small Business Assistance Program"). The Small Business Assistance Program shall identify opportunities to assist small businesses in the BVHP Area to obtain contracts for and participate in other business opportunities at the Shipyard. The term "small business operating in the BVHP Area", or "BVHP Area Small Businesses", shall mean any business located in and with a principal business address in the BVHP Area and which has fewer than fifty (50) employees, based on information provided by such business.

**11.2. Program.** Lennar/BVHP shall implement the following Small Business Assistance Program, which will have four (4) main components:

(a) **Database of BVHP Area Small Businesses.** Lennar/BVHP shall generate and maintain a database of BVHP Area Small Businesses, including for each such

business, contact information, a description of the business and how that business can provide products and services needed by Shipyard contractors, consultants and other parties doing business at the Shipyard or associated with the Shipyard Project ("Directory"). Lennar/BVHP shall also include in the Directory similar information regarding BHVP Small Businesses from existing databases created by applicable entities such as applicable government agencies and community-based organizations. The purposes of this Directory are to facilitate networking among businesses and to serve as "yellow pages" for prime construction contractors and other contractors and consultants to identify and market BVHP Area Small Businesses. Lennar/BVHP shall use reasonable efforts to cause the Directory to be comprehensive and to reflect a wide variety of anticipated business needs such as catering/restaurants, copying and reproduction, legal and accounting services, construction suppliers, office supplies, furniture suppliers, etc. Lennar/BVHP shall develop and post the Directory on the Shipyard website, and make it available at the Project Office and other outreach venues described in the Outreach Program within sixty (60) days after the Close of Escrow. Lennar/BVHP shall update the Directory periodically, but no less than biannually. Upon the mutual agreement of the Agency and Lennar/BVHP, and with reasonable prior notice to the BVHP Area Small Businesses, the definition of "BVHP Area Small Businesses" may be revised to adjust the maximum number of employees, if based on information gathered during the implementation of this Small Business Assistance Program, the Agency and Lennar/BVHP determine that a different employee number would more accurately reflect the size of the majority of the businesses in the BVHP Area that can provide Shipyard Project-related products and services.

**(b) Contract Requirements.** Lennar/BVHP shall require its contractors and consultants (other than legal and auditing) engaged in connection with the Shipyard Project to use their best efforts to purchase no less than twenty percent (20%) of the dollar value of all of their Shipyard Project-related purchases from BVHP Area Small Businesses. Lennar/BVHP shall (i) supply each of such contractors and consultants with the current copy of the Directory prior to executing its contracts with them and (ii) require them to provide monthly progress reports on the dollars they spend with BVHP Area Small Businesses (A) compared with the dollars they spend on their total Shipyard Project-related purchases; and (B) compared with the dollars they spend on their Shipyard Project-related purchases with non-BVHP Area businesses with less than fifty (50) employees. Lennar/BVHP shall include in all of its contracts with such contractors and consultants that failure to comply with the above requirements shall be a default under such contracts. In determining whether such requirements have been met, each contractor and consultant that does not meet the 20% goal shall provide Lennar/BVHP with evidence satisfactory to the Agency and Lennar/BVHP that it used best efforts to meet the 20% purchasing goal, including, with limitation:

**(i)** A detailed, written description of its efforts to purchase Shipyard Project-related supplies and/or services from BVHP Area Small Businesses, including from those relevant sources listed in the Directory;

**(ii)** A detailed, written description of responses, if any, received from BVHP Area Small Businesses to its bid, pricing, solicitation or other requests to purchase supplies or services; and

**(iii)** A detailed, written description stating why responses from BVHP Area Small Businesses did not satisfy its selection requirements, including, without limitation, whether price quotes given by the responding BVHP Area Small Businesses were reasonably competitive considering the amounts that could reasonably be attributed to the increased costs generally faced by small businesses.

Lennar/BVHP shall encourage its contractors and consultants to exceed this 20% requirement and will evaluate the contractors' and consultants' efforts to do so in determining future contract opportunities. Lennar/BVHP shall develop an effective procedure for verifying and reporting to the Agency the progress of, and any failure of, its contractors and consultants to meet the requirements of this paragraph (b).

**(c) Marketing and Networking Opportunities.**

**(i)** At least once each quarter during Phase 1, or less if such lesser number is determined by the Agency and Lennar/BVHP to be warranted, Lennar/BVHP shall host a small business networking workshop for BVHP Area Small Businesses. The purpose of the workshop will be two-fold:

**(A)** To inform BVHP Area Small Businesses of the upcoming needs of contractors, consultants and Shipyard businesses; and

**(B)** To provide BVHP Area Small Businesses with an opportunity to market their goods and services to Lennar/BVHP and its contractors and consultants.

**(ii)** Lennar/BVHP shall hold the first BVHP Area Small Business networking workshop within ninety (90) days from Close of Escrow.

**(iii)** Lennar/BVHP shall also outreach to the various merchants and business associations in the BVHP Area (such as the Rotary), utilize the media and coordinate with organizations such as the San Francisco Mayor's Office and the Small Business Administration to keep them informed of opportunities for small businesses and vendors at the Shipyard, encourage their members to submit information to Lennar/BVHP for distribution to contractors and consultants, and to participate in the networking workshops.

**(iv)** Lennar/BVHP shall conduct a quarterly survey of Shipyard businesses, contractors, consultants and tenants via its website, at its Project Office, via mail, fax or through face-to-face meetings, in order to collect updated information about the Shipyard businesses, contractors, consultants and tenants, their contract needs, and supplies and services they use. This survey shall be used to assess the quality of the Small Business Assistance Program, to determine the extent of dollars getting into the BVHP Area community from the program and to focus on critical supplies and services needed for the networking workshops.

**(v)** Lennar/BVHP shall feature a BVHP Area Small Business in each Shipyard newsletter and on the website to promote and advertise the utilization of these businesses by Lennar/BVHP, and contractors, consultants and other businesses at the Shipyard.

**(d) Community Benefits Manager.** Lennar/BVHP shall assign a member of its project team to be responsible for operating the Small Business Assistance Program and ensuring that all of the components of the program are implemented as described herein.

**SECTION 12. OUTREACH PROGRAM.**

Lennar/BVHP shall implement and refine as necessary, the outreach program described in Exhibit L (the "Outreach Program") to facilitate the dissemination of important information,

deadlines, updates and other information about the programs described in this Agreement as well as other information regarding Phase 1 of the Shipyard development.

### **SECTION 13. COMMUNITY BENEFITS STATUS REPORT.**

Each quarter commencing immediately after the Close of Escrow for the duration of Phase 1, and more often if requested by the Agency or the CAC, Lennar/BVHP shall provide the CAC and the Agency with a written status report on all of the community benefits programs discussed in this Community Benefits Agreement ("Status Report"), then shall present the contents of each Status Report to the appropriate CAC subcommittees and full CAC meeting occurring in the month the Status Reports are released. Failure to provide the required Status Reports or to make requisite presentations at the full CAC meetings, or other meeting requested by the CAC, shall be a default under this Agreement and the DDA.

### **SECTION 14. INDEMNITY.**

**14.1. General Indemnity.** Except as provided in Section 14.2, Lennar/BVHP and all applicable Vertical Developers shall respectively defend, indemnify and hold harmless the Indemnified Parties and their successors and assigns from and against all Losses arising from or as a result of (a) the noncompliance of Lennar/BVHP or applicable Vertical Developers, respectively, with this Agreement, (b) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur in the Redevelopment Area and which shall be directly or indirectly caused, respectively, by the negligent or willful act or omission of Lennar/BVHP, any Vertical Developer, or their officers, employees, agents, contractors, subcontractors or others for whom they are responsible, except (as to any particular Indemnified Party) to the extent caused, respectively, by the willful misconduct or the active negligence of that Indemnified Party. In addition to the foregoing, Lennar/BVHP and all applicable Vertical Developers shall, respectively, defend, indemnify and hold harmless the Indemnified Parties and their successors and assigns from and against all Losses arising directly or indirectly out of or connected with contracts or agreements entered into by Lennar/BVHP or any applicable Vertical Developer, respectively, in connection with its performance of its obligations under this Agreement, except (as to any particular Indemnified Party), to the extent caused by the willful misconduct or the active negligence of that Indemnified Party.

**14.2. Common Law Remedies.** The agreement to indemnify, defend and hold harmless set forth in Section 14.1 is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Lennar/BVHP or applicable Vertical Developer may have to the Agency in this Agreement, the DDA or any Vertical DDA at common law or otherwise except as same may be limited by the provisions of Section 15.

**14.3. Defense of Claims.** The Agency will give prompt notice to Lennar/BVHP, and all applicable Vertical Developers with respect to any suit or claim initiated or threatened against the Agency which the Agency believes is likely to give rise to a claim for indemnity hereunder. In no event will such notice be given later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim. If notice is not given to Lennar/BVHP or all applicable Vertical Developers within the time periods specified above, then Lennar/BVHP's or the applicable Vertical Developer's liability hereunder shall continue except to the extent Lennar/BVHP or the applicable Vertical Developer can show that it was prejudiced as a result of such delay. At its option, but subject to the reasonable consent and approval of the Agency, Lennar/BVHP and all applicable Vertical Developers shall be entitled to control the defense, compromise or settlement of any such matter through counsel of Lennar/BVHP's or the applicable Vertical Developer's own choice; provided, however, that in all cases the Agency

shall be entitled to participate in such defense, compromise or settlement at its own expense. If Lennar/BVHP or the applicable Vertical Developer shall fail, however, in the Agency's reasonable judgment, within a reasonable time following notice from the Agency alleging such failure (which in no event will exceed thirty (30) days after Lennar/BVHP's or the applicable Vertical Developer's receipt of such notice), to take reasonable and appropriate action to defend, compromise or settle such suit or claim, then the Agency shall have the right promptly to hire counsel at Lennar/BVHP's and the applicable Vertical Developer's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Agency upon the Agency's delivery to Lennar/BVHP or the applicable Vertical Developer of a properly detailed invoice therefor.

## **SECTION 15. DEFAULTS AND REMEDIES.**

**15.1. General.** Except as otherwise expressly provided in this Agreement, in the event of any default in or breach of this Agreement by Lennar/BVHP or Vertical Developer the Agency may deliver a notice of default to Lennar/BVHP and Vertical Developer, as applicable, regarding such default or breach. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Upon receipt of such notice of default, unless a shorter time is provided for in this Agreement Lennar/BVHP, or Vertical Developer shall commence within a reasonable time not to exceed thirty (30) days to cure or remedy such default or breach, and shall thereafter pursue such cure or remedy diligently to completion.

**15.2. Meet and Confer.** Upon delivery of a notice of default, the Agency and Lennar/BVHP or Vertical Developer shall promptly meet to discuss the alleged default or breach and the manner in which Lennar/BVHP or Vertical Developer can cure or remedy the same so as to satisfy the Agency's concerns. Lennar/BVHP or Vertical Developer and the Agency shall continue meeting regularly, discussing, investigating and considering alternatives during the cure period permitted under this Agreement for the particular default. If, at any time, the Agency no longer holds the view that Lennar/BVHP or Vertical Developer is in default the Agency shall issue a written acknowledgement of the Agency's cure or remedy of the matter which was the subject of the notice of default.

**15.3. Institution of Proceedings.** If (a) remedial action is not diligently taken or pursued, or the default or breach shall not be cured or remedied within the cure period permitted under this Agreement or (b) either Lennar/BVHP or Vertical Developer shall refuse to meet and discuss as described above, then the Agency may institute such proceedings (except as otherwise provided in this Agreement) as may be necessary or desirable in its opinion to cure such default or breach, including without limitation, proceedings to compel specific performance by Lennar/BVHP or Vertical Developer for breach of its obligations. Nothing in this Section 15.3 shall require the Agency to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to the Agency or the BVHP Area community.

**15.4. Default by Lennar/BVHP, Vertical Developers or Guarantor(s).** The occurrence of any one of the following events or circumstances shall constitute an "Event of Default" by Lennar/BVHP, Vertical Developer or Guarantor, as applicable, under this Agreement:

(a) Lennar/BVHP or Vertical Developer, as applicable, fails to commence and diligently pursue implementation of the programs under this Agreement within the time periods set forth in this Agreement, and such failure continues for a period of thirty (30) days following Lennar/BVHP's receipt of written notice thereof from the Agency as to such failure;

(b) Lennar/BVHP or Vertical Developer, as applicable, fails to pay any amount required to be paid hereunder, and such failure continues for a period of ten (10) Business Days following Lennar/BVHP's receipt of written notice thereof from the Agency;

(c) Lennar/BVHP or Vertical Developer, as applicable, does not submit to the Agency and the CAC any Status Reports, Progress Reports and other written documents required to be submitted to the Agency and/or the CAC as required by this Agreement within the periods of time specified in this Agreement, and such failure continues for a period of thirty (30) days following Lennar/BVHP's receipt of written notice thereof from the Agency;

(d) Lennar/BVHP or Vertical Developer, as applicable, fails to perform any other agreements or obligations on Lennar/BVHP's or Vertical Developer's part, as applicable, to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after Lennar/BVHP's or Vertical Developer's, as applicable, receipt of written notice thereof from the Agency, or in the case of a default that is curable but is not susceptible of cure within thirty (30) days, Lennar/BVHP or Vertical Developer, as applicable, fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time, but in no event to exceed sixty (60) days;

(e) Lennar/BVHP or Vertical Developer, as applicable, fails to conduct outreach for the programs under this Agreement in accordance with the terms of this Agreement, including, without, limitation in accordance with the Outreach Program;

(f) Lennar/BVHP fails to enter into contracts with the consultants listed in Section 5 of this Agreement for the Interim African Marketplace within the specified times set forth in this Agreement, and such failure continues for a period of thirty (30) days following Lennar/BVHP's receipt of written notice thereof from the Agency;

(g) Lennar/BVHP or Vertical Developer, as applicable, defaults under or breaches the terms of any contract required to be entered into by Lennar/BVHP or Vertical Developer pursuant to the terms of this Agreement, including, without, limitation, a default or breach for failure to timely and accurately pay the following persons or entities in accordance with the terms of the applicable contracts: the Contractor Liaison, Mentorship Program Sponsor, Professional Services Provider, Interim African Marketplace Operator, Los Angeles African Marketplace Inc., the following consultants for the Interim African Marketplace: the planning/architectural consultant, the financial consultant, the marketing and public relations consultant and the engineering consultant, and the fundraising consultant for, and any consultant required to assist with implementation of, the Cultural/Historical Recognition Program;

(h) Lennar/BVHP defaults or breaches under the terms of any contract for Job Training Fund and fails to assign any such contract or increase the Job Training Fund in accordance with the terms of this Agreement; or

(i) Either or both Guarantor(s) default under the Guaranty.

### **15.5. Agency's Remedies.**

(a) **Self Help.** If Lennar/BVHP fails to cure a default within the cure period permitted under this Agreement, and after exhaustion by the Agency of the applicable remedies, if any, specifically set forth within the description of the specific program under which such default occurred, following written notice to Lennar/BVHP, the Agency shall have the right to perform the obligations that Lennar/BVHP failed to perform at Lennar/BVHP's full cost payable from Lennar/BVHP's share of Net Revenues. The Agency shall receive such payment for performing Lennar/BVHP's obligations prior to any distribution of Net Revenues to Lennar/BVHP.

(b) **Specific Performance.** Subject to Section 15.12 below, the Agency shall have the right to institute an action for specific performance of this Agreement.

(c) **Other Remedies.** The remedies provided for herein are in addition to and not in limitation of other remedies available to the Agency, including, without limitation, those provided in the DDA, Guaranty or Vertical DDA, as applicable; and (ii) the remedies set forth elsewhere in this Agreement and any other remedies available in equity and at law.

### **15.6. Default by Agency.**

(a) **No Obligations.** The Parties acknowledge that the Agency only enters into this Agreement to assist Lennar/BVHP satisfy its obligation under the DDA to enter into an agreement appropriate to implement Lennar/BVHP's obligations set forth in DDA Attachment 24B. The Agency's sole role under this Agreement is to enforce Lennar/BVHP's and applicable Vertical Developer's obligations under this Agreement and the Agency would not have entered into this Agreement otherwise. Based on the foregoing, the Agency shall have no obligations whatsoever under this Agreement. The Agency has the rights set forth in this Agreement, including, without limitation those described below, but no obligation to assist with staffing the selection panels for the Qualified Community Builders, the business incubator program facilitator, or the Job Training Fund recipients, to approve the contract for the Mentorship Program Sponsor, the Business Incubator Program Space Plan, the lease agreement for the Business Incubator Program Space, the RFP and recipient contracts for the Job Training and Employee Assistance Program, preparing the Job Training and Employee Assistance Program RFPs, the consultants contracts in connection with the Interim African Marketplace, or the Leasing Plan for the Local Community Priority Leasing Program. The Agency may waive any of its foregoing rights in writing.

(b) **Agency Delay.** Any delay in Lennar/BVHP's or Vertical Developer's ability to meet a deadline set forth in this Agreement in satisfaction of an obligation under this Agreement caused solely by the Agency's failure to timely waive any of its foregoing rights or failure to exercise any its foregoing rights in a timely manner, and not for any other reason, including Lennar/BVHP's or applicable Vertical Developer's failure to submit documents required by the terms of this Agreement to the Agency in a timely manner or to provide the Agency with written notice in a timely manner of the need to staff a selection committee (an "Agency Delay"), shall extend Lennar/BVHP's or applicable Vertical Developer's time within which such obligation was required to be satisfied under the terms of this Agreement by one (1) day for each day of Agency Delay ("Agency Delay Extension"). Notwithstanding the foregoing, there shall be no Agency Delay or Agency Delay Extension if either of the following occurs:

(i) Lennar BVHP or Vertical Developer, as applicable, did not provide the Agency with written notice at least five (5) days prior to the effective date of Agency Delay Extension, including detailed information regarding the dates required notices or documents were provided to the Agency and dates of the

applicable deadline that Lennar/BVHP or Vertical Developer will miss due to the Agency's actions or inaction which Lennar/BVHP or Vertical Developer, as applicable, assert are the basis for the Agency Delay; or

(ii) Lennar/BVHP or Vertical Developer, as applicable, did not provide the Agency with at least thirty (30) days prior written notice of the need to staff a selection panel and/or did not deliver all documents for review by the Agency to the Agency with a minimum thirty (30) day period for the Agency to review and comment on such documents after each submission of such documents by Lennar/BVHP or Vertical Developer.

**15.7. Remedies.** Lennar /BVHP or Vertical Developer, as applicable, shall be entitled to dispute the Agency's notice of default in accordance with the provisions of Section 15.2 above, and subject to Section 15.8 below, shall be entitled to dispute the Agency's determination of an Event of Default by exercising all remedies permitted by law.

**15.8. Limitation on Damages.** The Agency shall not be liable to Lennar/BVHP or Vertical Developer, as applicable, for monetary damages caused by any actions, or failure to act, of the Agency under this Agreement, or required to expend money to cure any default by the Agency, except as provided in Section 15.9 below, subject to the limitation contained in Section 15.12.

**15.9. Agency Liability.** The Agency shall be liable for reasonable attorneys' fees and costs and other payments allowed under Section 16.4 incurred by Lennar/BVHP if Lennar/BVHP prevails in enforcing its rights hereunder, and is entitled to the same under Section 16.4. Except as expressly set forth in Section 16.4, the Agency shall have no liability whatsoever for monetary damages, and in no event will the Agency be liable for lost opportunities, lost profits or other damages of a consequential or incidental nature.

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

**15.11. No Implied Waiver.** No waiver made by a waiving Party with respect to the performance or manner or time thereof (including an extension of time for performance) of any obligations of the other Party, or of any condition to the waiving Party's own obligations, shall be considered a waiver of the waiving Party's rights with respect to any obligation of the other Party or any condition to the waiving Party's own obligations beyond those expressly waived in writing.

**15.12. Limitation on Liability.** No commissioners, members, supervisors, officers, agents or employees, attorneys, contractors or lenders of the Agency or City (or of their successors or assigns) shall be personally liable to Lennar/BVHP or Vertical Developer, nor shall any officers, directors, shareholders, agents or employees of Lennar/BVHP or Vertical Developer (or of their successor or assigns) be personally liable to the Agency in the event of any Event of Default under this Agreement by the Agency or Lennar/BVHP or for any amount which may become due to Lennar/BVHP or the Agency or any obligations under this Agreement (except as expressly provided in the Guaranty).

**15.13. Criteria For Specific Performance.** Both Parties recognize that the obligations of Lennar/BVHP and the applicable Vertical Developers to provide the significant benefits to the BVHP Area community in compliance with the terms of this Agreement, are special, unique and

of extraordinary character, and if Lennar/BVHP or any applicable Vertical Developer fails to perform such obligations, the Agency will not have an adequate remedy at law. Under such circumstances, the Agency, in addition to any other rights which it may have, shall be entitled to injunctive relief to enforce any such obligations. In the event proceedings are brought in equity to enforce such obligations, Lennar/BVHP nor any applicable Vertical Developer shall raise as a defense that there is an adequate remedy at law as to such obligations.

## **SECTION 16. MISCELLANEOUS PROVISIONS.**

**16.1. Incorporation of Exhibits and Recitals.** Each Exhibit attached to this Agreement is incorporated herein and made a part hereof as if set forth in full.

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

In the case of a notice of communication to the Agency:

San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, California 94102-3102  
Attn: Executive Director  
Facsimile: (415) 749-2525

with a copy to:

San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, California 94102-3102  
Attn: Legal Division  
Facsimile: (415) 749-2575

In the case of a notice or communication to Lennar/BVHP:

Lennar/BVHP Partners  
c/o Lennar Partners  
49 Stevenson Street, #525  
San Francisco, California 94105  
Attn: Hunters Point Asset Manager  
Facsimile: (415) 995-1778

with copies to:

Sheppard, Mullin, Richter & Hampton, LLP  
Four Embarcadero Center, 17<sup>th</sup> Floor  
San Francisco, California 94111-4106  
Attn: Robert A. Thompson, Esq.  
Facsimile: (415) 434-3947

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

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

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

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

### **16.3. Time for Performance.**

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

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

**16.4. Attorneys' Fees.** Should either Party institute any action or proceeding in court to enforce any provision hereof, or should the Agency institute any action or proceeding in court for damages by reason of an alleged breach of any provision of this Agreement, the prevailing Party shall be entitled to receive from the losing Party court costs or expenses incurred by the prevailing Party, including without limitation expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered the prevailing Party in such action or proceeding. Attorneys' fees under this Section 16.4 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 attorneys and any in-house counsel for the Agency or Lennar/BVHP shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency's or Lennar/BVHP's in-house counsel's services were rendered who practice in the City in law firms.

**16.5. Successors and Assigns/No Third-Party Beneficiary.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Agency, applicable Vertical Developer, Lennar/BVHP, as applicable, and the Lennar/BVHP, and where the term "Agency" "Vertical Developer" or "Lennar/BVHP" is used in this Agreement, it shall mean and include their respective successors and assigns. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns.

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

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

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

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

**16.7. Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws of the State of California. It is the responsibility of Lennar/BVHP to be informed of local, state and federal laws and requirements applicable to this Agreement, and to perform all obligations hereunder in compliance with those laws and requirements.

**16.8. Authority and Enforceability.** Lennar/BVHP and the Agency each represents and warrants to the other that the execution and delivery of this Agreement, and the performance of its respective obligations hereunder, have been duly authorized by all necessary action on its part, will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to it, nor of any present law or governmental regulation or court decree binding upon or applicable to it.

**16.9. Further Assurances.** Lennar/BVHP and the Agency each covenant, on behalf of itself and its successors and assigns, to take all actions and to do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be reasonably necessary or proper to achieve the purposes and objectives, or to correct inadvertent errors, in the drafting of this Agreement. The Agency's Executive Director is authorized to execute on behalf of the Agency any additional documents and any contracts, agreements, memoranda or similar documents with state, regional and local entities or enter into any tolling agreement with any person or entity that are necessary or proper to achieve the purposes and objectives of this Agreement, if the Executive Director determines that the document or Agreement is necessary or proper and is in the Agency's best interests.

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

**16.11. Entire Agreement.** This Agreement (including all Exhibits) and the DDA. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Lennar/BVHP or the Agency or other entity or person and no court or other body shall consider those drafts in interpreting this Agreement.

**16.12. No Party Drafter.** Although certain provisions of this Agreement were drafted by the Agency and certain provisions were drafted by Lennar/BVHP, the provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against either Party in order to achieve the objectives and purposes of the parties.

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

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

**16.15. Recordation.** After complete execution, the Agency may record this Agreement in the City's official records. If this Agreement is terminated pursuant to its terms, either Party may record a notice of termination as provided in Section 6.9 of the DDA.

**16.16. Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts may be assembled to form a single document.

**16.17. Modification.** Any modification or waiver of any provision of this Agreement or any amendment to it must be in writing and signed by an entity or person having authority to do so, on behalf of both the Agency and Lennar/BVHP.

## **SECTION 17. GUARANTY.**

**17.1. Guaranty.** Lennar/BVHP's obligations under the DDA have been guaranteed by Lennar Corporation, a Delaware corporation, and LNR Property Corporation, a Delaware corporation (collectively, the "Guarantor"), under that certain Guaranty Agreement (the "Guaranty"), in the form attached as Attachment 8 to the DDA. Lennar/BVHP acknowledges that Lennar/BVHP is required to enter into this Agreement pursuant to the terms of the DDA; therefore all of its obligations hereunder are obligations under the DDA and are "Guaranteed Obligations" as defined in the Guaranty dated December 2, 2003.

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

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

AGENCY:

Authorized by Agency Resolution  
No. 179-2003, adopted December 2, 2003

Redevelopment Agency of the City and  
County of San Francisco

APPROVED AS TO FORM:

By: [Signature]  
for James Morales  
Agency General Counsel

By: Maria Rosell  
[Executive Director]

By: \_\_\_\_\_  
[Secretary]

DEVELOPER:

LENNAR-BVHP, LLC, a California limited  
liability company

By: Lennar Southland I, Inc., a California  
corporation, its managing member.

By: [Signature]

Its: VP