

**DEPOSIT AND REIMBURSEMENT AGREEMENT  
(Treasure Island/Yerba Buena Island)**

THIS DEPOSIT AND REIMBURSEMENT AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND) (the "Agreement"), dated for convenience as of \_\_\_\_\_, 2015, is by and among City and County of San Francisco, a political subdivision and municipal corporation of the State of California (the "City"), Treasure Island Development Authority, a California public benefit corporation ("TIDA"), and Treasure Island Community Development, LLC, a California limited liability company ("Developer").

RECITALS:

WHEREAS, Naval Station Treasure Island ("NSTI") is a former United States Navy base located in the City that consists of two islands connected by a causeway: (1) Treasure Island, and (2) an approximately 90 acre portion of Yerba Buena Island;

WHEREAS, the United States of America, acting by and through the Department of the Navy ("Navy"), and TIDA entered into an Economic Conveyance Memorandum of Agreement (as amended and supplemented from time to time, the "Conveyance Agreement") that governs the terms and conditions for the transfer of NSTI from the Navy to TIDA; under the Conveyance Agreement, the Navy will convey NSTI to TIDA in phases after the Navy has completed environmental remediation and issued a Finding of Suitability to Transfer (as defined in the Conveyance Agreement) for specified parcels of NSTI or portions thereof;

WHEREAS, the Developer and TIDA previously entered into a Disposition and Development Agreement (Treasure Island/Yerba Buena Island) (the "DDA"), including a Financing Plan (Treasure Island/Yerba Buena Island) (the "Financing Plan"), which governs the disposition and development of a portion of NSTI (the "Project Site") after the Navy's transfer of NSTI to TIDA in accordance with the Conveyance Agreement;

WHEREAS, the DDA contemplates a project (the "Project") under which TIDA acquires the Project Site from the Navy and conveys portions of the Project Site to Developer for the purposes of (i) alleviating blight in the Project Site through development of certain improvements, (ii) geotechnically stabilizing the Project Site, (iii) constructing public infrastructure to support the Project and other proposed uses on NSTI, (iv) constructing and improving certain public parks and open spaces, (v) remediating certain existing hazardous substances, and (vi) selling and ground leasing lots to vertical developers who will construct residential units and commercial and public facilities;

WHEREAS, the Developer and the City previously entered into a Development Agreement related to the Project Site to eliminate uncertainty in the City's land use planning for the Project Site and secure orderly development of the Project consistent with the DDA and other applicable requirements, and the Financing Plan is also an exhibit to the Development Agreement;

WHEREAS, the Financing Plan identifies certain financial goals for the Project and the contractual framework for cooperation between TIDA, the City, and Developer in achieving those goals and implementing the Project;

WHEREAS, the Financing Plan, among other things, obligates TIDA and the City to take all actions reasonably necessary, and obligates the Developer to cooperate reasonably with the efforts of (i) the City to form requested community facilities districts (each, a "CFD"; together, the "CFDs") and take related actions under the Mello-Roos Community Facilities Act of 1982 (the "Mello-Roos Act") to pay for Qualified Project Costs, Ongoing Park Maintenance and Additional Community Facilities (as those terms are defined in the Financing Plan), (ii) the City to form requested infrastructure financing districts (each, an "IFD"; together the "IFDs") and take related actions under applicable provisions of the Government Code of the State of California (the "IFD Law") to pay for Qualified Project Costs and (iii) the City to issue bonds and other debt for the CFDs and the IFDs and other public financing instruments described in the Financing Plan (defined in the Financing Plan as "Public Financing");

WHEREAS, Developer and the City have agreed that the City will concurrently undertake proceedings to establish a future annexation area for one or more CFDs (each, a "Future Annexation Area"), and the Developer has informed the City that it anticipates applying to the City for annexation of territory in the Future Annexation Area(s) into the CFD(s);

WHEREAS, Section 1.5(a) of the Financing Plan provides that the City and TIDA, following consultation with Developer, will select any consultants necessary to implement their respective portions of the Financing Plan, including the formation of any IFD and CFD and the completion of any Public Financing, and that the City's and TIDA's reasonable out-of-pocket costs that are not contingent upon the completion of a Public Financing will be advanced by Developer pursuant to a deposit agreement to be entered into among the City, TIDA, and the Developer, and the Developer shall be entitled to reimbursement of such advances from the proceeds of the Public Financing if authorized by applicable law;

WHEREAS, the City, TIDA and Developer now wish to enter into the deposit agreement described in Section 1.5(a) of the Financing Plan to specify the terms of the advances of funds and reimbursement.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants set forth herein, and for other consideration the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

#### AGREEMENT:

##### Section 1. The Advances.

(a) Developer hereby agrees to provide \$100,000, in the form of cash or a check payable to the City (the "Initial Advance"), to be used by the City to pay the "Initial Costs" (as defined below); the Initial Advance shall be delivered to the Director of the Office of Public Finance of the City or its designee (the "Director of the Office of Public Finance") prior to the execution of this Agreement by the City. The City, by its execution hereof, acknowledges receipt of the Initial Advance.

(b) Developer further agrees to advance any additional amounts (collectively with the Initial Advance, the "Advances") incurred or reasonably expected to be incurred by the City and TIDA within fifteen (15) days of written demand therefore by the Director of the Office of Public Finance, said Advances to be made to the City or TIDA or directly to the City's consultants by the date and as otherwise specified by the Director of the Office of Public Finance in writing to Developer. The City shall use good faith efforts to provide Developer with prior notice whenever

the City believes Initial Costs will exceed Advances made by Developer. In the event that Developer shall fail or refuse to remit any such amounts to or at the direction of the Director of the Office of Public Finance within said fifteen (15) day time period, then, as the sole remedy of the City and TIDA hereunder (except as set forth in the second clause of this sentence and pursuant to Section 8 hereof), all processing by the City and TIDA of the proceedings for the CFD(s), the IFD(s) and any Public Financing shall cease and the City and TIDA shall be entitled to instruct all consultants to cease performance of their services related to the CFD(s), the IFD(s) and any Public Financing until such time as the requested amounts are paid by Developer, at which time proceedings for the CFD(s), the IFD(s) and any Public Financing (including work by consultants) shall resume immediately; notwithstanding the first clause of this sentence, Developer shall remain obligated for any Initial Costs already incurred by the City or TIDA or for which the City or TIDA is committed to pay.

(c) The City and TIDA will allocate all Initial Costs to one of two expense categories: (i) CFD Expenses; or (ii) IFD Expenses. Where there is overlap between the two expense categories for an item of Initial Costs, the City and TIDA will split the costs among the expense categories by any reasonable means of allocation.

(d) The purpose of this Agreement is to have a mechanism for collecting, applying, and reimbursing deposits for Initial Costs for the life of the Financing Plan. Consequently, this Agreement shall govern all aspects of the Public Financings, including, but not limited to: (i) the formation of each additional CFD or IFD; (ii) the annexation of property to a CFD or into its own new improvement area (each, an "Improvement Area") from the property identified as Future Annexation Area; (iii) the annexation of property into an IFD; (iv) proceedings for Public Financings by both the CFD and IFD; and (v) the filing and prosecution of any required judicial validation actions.

(e) Following completion of a proceeding contemplated by this Agreement (e.g., completion of formation of the first Improvement Area and the designation of Future Annexation Areas), there may be unexpended and uncommitted Advances still on deposit with the City. Such unexpended and uncommitted Advances shall remain on deposit with the City pursuant to this Agreement and shall be utilized for the payment of any Initial Costs associated with subsequent proceedings contemplated by this Agreement unless the Developer requests the return of such funds in writing. If the Developer makes such a written request, the City shall within ten (10) business days of such written request, return any then unexpended Advances to Developer, without interest, less an amount equal to any Initial Costs incurred by the City or TIDA or that the City or TIDA is otherwise committed to pay. If the City returns such unexpended Advances to the Developer pursuant to this subdivision (e), the Developer will be required to make additional Advances before the City or TIDA will commence subsequent proceedings.

(f) The Initial Costs include, but are not limited to: (i) the fees and expenses of any consultants to the City or TIDA employed in connection with the formation of the CFDs, the IFDs and the Public Financings (such as engineering, legal counsel, including special counsel to the City or TIDA, financial advisory and special tax consultant), excluding the fees and expenses of such consultants that are payable on a contingent basis; (ii) the costs of appraisals, absorption studies and other reports necessary or deemed advisable by City staff in connection with the formation of the CFD and the IFDs and the Public Financings; (iii) costs of publication of notices, preparation and mailing of ballots and other costs related to any election with respect to the CFDs, the IFDs or the Public Financings; (iv) the costs of any action prosecuted in the superior court to validate the proceedings relating to the CFDs, the IFDs or the Public Financings; (v) a

reasonable charge, as determined by the Director of the Office of Public Finance, in such official's sole discretion, for an allocable share of administrative expense with respect to City and TIDA staff engaged in analyzing and participating in the proceedings related to formation of the CFDs and the IFDs, special tax formulation, preparation of an infrastructure financing plan, facilities acquisition and Public Financings; (vi) any costs incurred by the City or TIDA in connection with discussions with or applications to bond rating agencies, if applicable; and (vii) any and all other actual costs and expenses incurred by the City with respect to the CFDs, the IFDs, the Future Annexation Areas and the Public Financings.

Section 2. Use of Funds. The Advances are subject to reimbursement only as follows:

(a) The Advances allocated to the CFD pursuant to Section 1(c) shall be reimbursable to the Developer from (i) Remainder Taxes (as defined in the Financing Plan) collected in the CFD, but only to the extent permitted under the Financing Plan and (ii) the proceeds of any Public Financing issued by or for the CFD (collectively, the "CFD Sources"). As CFD Sources become available, the City shall provide for reimbursement to Developer, without interest, of all Advances allocated to the CFD, said reimbursement to be made solely from the CFD Sources and only to the extent otherwise permitted under applicable law.

(b) The Advances allocated to the IFD pursuant to Section 1(c) shall be reimbursable to the Developer from (i) Net Available Increment (as defined in the Financing Plan) collected in the IFD, but only to the extent permitted under the Financing Plan and (ii) the proceeds of any Public Financing by or for the IFD (collectively, the "IFD Sources"). As IFD Sources become available, the City shall provide for reimbursement to Developer, without interest, of all Advances allocated to the IFD, said reimbursement to be made solely from the IFD Sources and only to the extent otherwise permitted under applicable law.

(c) If there are no CFD Sources or IFD Sources, for whatever reason, the Director of the Office of Public Finance shall, within ten (10) business days after termination of the DDA, return any then unexpended Advances to Developer, without interest, less an amount equal to any Initial Costs incurred by the City or TIDA or that the City or TIDA is otherwise committed to pay, which costs would be subject to payment under Section 1 above but have not yet been paid by the City or TIDA.

Section 3. Reimbursement of Other Costs. Nothing contained herein shall prohibit reimbursement of other costs and expenses of Developer incurred in connection with the CFDs, the Future Annexation Areas, the IFDs or the Public Financings from, as applicable, the CFD Sources or the IFD Sources. Any such reimbursement shall be made solely from the applicable CFD Sources or IFD Sources and only to the extent otherwise permitted under applicable law.

Section 4. Agreement Not Debt or Liability of City or TIDA. It is hereby acknowledged and agreed that this Agreement is not a debt or liability of the City or TIDA. The City and TIDA shall in no event be liable hereunder other than to allocate the Initial Costs as costs associated with the CFD or the IFD, process the reimbursement of the Developer from the CFD Sources and IFD Sources as provided in Sections 2(a) and 2(b) above, return any unexpended and uncommitted portions of any Advances as provided in Section 2(c) above, and provide an accounting under Section 7 below. The City and TIDA shall not be obligated to advance any of its own funds with respect to the formation proceedings or in connection with

any Public Financing. No member of the governing board of the City or TIDA, or member, associate member, director, officer, employee or agent of the City or TIDA, shall to any extent be personally liable hereunder.

Section 5. No Obligation to Complete Formation Proceedings or Complete the Public Financings. The provisions of this Agreement shall in no way obligate the City or TIDA to complete the formation of the CFDs or the IFDs, complete any Public Financings or to take any action with respect thereto. The City and TIDA obligations as to formation proceedings and Public Financings is governed by the Development Agreement and the DDA, respectively.

Section 6. Severability. If any part of this Agreement is held to be illegal or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall be given effect to the fullest extent reasonably possible.

Section 7. Accounting. The Advances may be commingled with other funds of the City for purposes of investment and safekeeping, but the City shall at all times maintain records of the expenditure of the Advances. The City shall provide Developer with a written accounting, including copies of supporting invoices, of Advances expended pursuant to this Agreement within ten (10) business days of receipt by the Director of the Office of Public Finance of a written request therefor submitted by an authorized officer of Developer. No more than one accounting will be provided in any calendar month and the cost of providing the accounting shall be considered an Initial Cost. Developer shall be deemed to have expressly waived its right to any further accounting and its right to challenge any disbursements made by City or TIDA from the Advances ninety (90) days following the earlier of either the City's reimbursement of unexpended Advances pursuant to Section 2 of this Agreement or the City sending notice that all Advances are expended and that no further Advances are required, whichever event first occurs.

Section 8. Indemnification. Developer hereby agrees to assume the defense of, indemnify and hold harmless the City, TIDA, and each of their members, officers, employees and agents, from and against all actions, claims or proceedings of every type and description to which they or any of them may be subjected or put, by reason of, or arising out of, any acts or omissions of Developer or any of its members, officers, employees, contractors or agents in connection with a breach of this Agreement by the Developer. The City and TIDA shall promptly notify Developer of any such claim, action or proceeding, and the City and TIDA shall cooperate in the defense thereof. The obligations of Developer under this Section shall not apply to any claims, actions or proceedings arising through the negligence or willful misconduct of the City or TIDA, its members, officers, employees or agents.

Section 9. Conflict with DDA and Development Agreement. In the event of any conflict between the terms of this Agreement and the terms of the DDA or the Development Agreement, the terms of the DDA or the Development Agreement shall govern.

Section 10. Term. Unless the parties execute an amendment extending the term, this Agreement shall terminate on the earlier of the following: (i) the written request from any party to this Agreement; or (ii) the twentieth anniversary of the date first written above.

Section 11. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of California.

Section 12. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 13. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original.

\* \* \* \* \*

IN WITNESS THEREOF, the parties have executed this Agreement as of the day and year first written above.

**DEVELOPER:**

TREASURE ISLAND COMMUNITY  
DEVELOPMENT, LLC

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**CITY:**

CITY AND COUNTY OF SAN FRANCISCO

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**TIDA:**

TREASURE ISLAND DEVELOPMENT  
AUTHORITY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

Approved as to form:

DENNIS J. HERRERA  
City Attorney

By: \_\_\_\_\_

Name: \_\_\_\_\_

Deputy City Attorney