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MEMORANDUM

TO: MR. BOB BECK

FROM: GEORGE SCHLOSSBERG, ESQ.  
HILARY JACKLER, ESQ.

DATE: MAY 20, 2014

RE: SUMMARY OF PRIMARY CHANGES IN TREASURE ISLAND  
ECONOMIC DEVELOPMENT CONVEYANCE MEMORANDUM OF  
AGREEMENT – APRIL 2011 VS. MAY 2014 DRAFTS

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As discussed, we reviewed (1) the draft *Economic Development Conveyance Memorandum of Agreement Between the United States of America and the Treasure Island Development Authority for the Conveyance of the Naval Station Treasure Island* (“**EDC Agreement**”) draft dated April 15, 2011 (“**2011 Draft**”) that was approved by the City and County of San Francisco Board of Supervisors (“**Supervisors**”), and (2) the draft EDC Agreement dated May 20, 2014 (“**Current Draft**”).

A “Red-Line” comparison showing all changes between the 2011 Draft and the Current Draft is attached for your reference.<sup>1</sup> Based upon your request, we attempted to identify the primary substantive changes between the 2011 Draft and the Current Draft. Clearly, there are many changes and we defer to you for a determination of what is substantive and necessary to identify for the Supervisors; accordingly, we offer for your consideration, the following summary of substantive issues:

- 1. Additional Closing Conditions Relating to Radiological Contamination** – The Current Draft provides additional protections so that the Treasure Island Development Authority (“**TIDA**”) is not obligated to accept property identified as impacted by radiological contamination unless certain additional conditions are met. The following are included as new closing conditions which must be satisfied prior to the transfer of property to TIDA: (i) the California Department of Toxic Substances Control must concur in writing on any Finding of Suitability to Transfer, (ii) if any portion of the property is identified by the Navy and the State of California as impacted by radiological

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<sup>1</sup> The red text represents deleted items, the blue text represents new items, and the green text represents relocated items.

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contamination, the Navy must obtain written assurance from the State of California that the environmental condition of such sites complies with all applicable laws and will not be subject to regulation after transfer under the California Radiation Control Law (i.e., such site shall have a license exemption or release for unrestricted use with respect to radiological issues), (iii) certain actions must be taken with respect to Site 33 in the event that any required actions related to radiological contamination are identified prior to the Initial Closing, and (iv) no Regulatory Authority shall have required additional screening, investigation, remediation or restrictions related to radiological contamination (other than employee health and safety play screening to be conducted by a contractor prior to or during construction) beyond those set forth in the Finding of Suitability to Transfer for such parcel. The failure by the Navy to satisfy a Closing Condition, by itself, does not result in a Navy default or breach under the Agreement, but it does trigger additional rights and options for TIDA.

- 2. Additional Reasons for the Tolling of Consideration Relating to Radiological Contamination** – The Current Draft permits TIDA to delay the payment of consideration to the Navy if the Navy does not satisfy certain new and additional performance benchmarks. Benchmarks are included for Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel, the Building 233 Parcel, and the UC1 and UC2 utility corridors (all as shown on Exhibit B-7 to the EDC Agreement) and relate to a delay in transfer due to the (i) Navy and State of California determining that any such parcels have been impacted by radiological contamination prior to transfer, and (ii) such determination results in the Navy having to take additional actions to address radiological contamination. Additionally, another section of the Current Draft discusses the possibility of entering into an agreement pursuant to 10 U.S.C. 2701(d), such as an Environmental Services Cooperative Agreement, in the event that property transfer is delayed due to additional screening, investigation or remediation related to radiological contamination.
- 3. Conveyance of Utilities to TIDA** – The Current Draft contains language extensively negotiated among TIDA, the San Francisco Public Utilities Commission, the Navy and the Coast Guard with respect to the transfer of utility infrastructure and the provision of utilities at Treasure Island. In summary, Article 9 of the EDC Agreement provides:

  - a. With the exception of certain identified “key infrastructure,” the Navy will transfer utility infrastructure within each parcel at the same time such parcel is conveyed to TIDA.
  - b. The Navy is reserving certain non-exclusive easements for the use, inspection, operation, maintenance, repair and replacement of the utility infrastructure over certain identified portions of the property which were determined to be critical for continuity of utility service to the Coast Guard. These easements will terminate automatically when new utility infrastructure is installed and such infrastructure is

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dedicated to and accepted by a public utility, and the Coast Guard can connect to such new infrastructure in accordance with the public utility's standard terms and conditions of service.

- c. A form Utilities Agreement consistent with Article 9 is being attached to the EDC Agreement as Exhibit E and will be executed by TIDA and the Navy simultaneously with the execution of the EDC Agreement. The existing Caretaker Agreement will terminate automatically with respect to the real property transferred to TIDA, and the Caretaker Agreement will remain in effect for those portions of the property retained by the United States (or to any existing utility lines or retained easements required to maintain service to such property under the Caretaker Agreement).
  - d. During the term of the Caretaker Agreement and consistent with TIDA's past practice and past annual expenditures, TIDA staff shall seek appropriations and any required approvals to continue to operate and maintain the Utility Infrastructure. Additionally, TIDA shall expend all revenues received by TIDA from the delivery of utility services at Treasure Island on utility-related costs at Treasure Island.
  - e. It is the objective that utility services to all occupants of Treasure Island and Yerba Buena Island, including the Coast Guard, shall be available during the normal course of development until such time as the responsibility for providing a specific utility service is assumed by a public utility. Nevertheless, given its current state and the time period for development, TIDA cannot guarantee the continued and uninterrupted availability of utility service.
- 4. Update and/or Completion of Exhibits** – Since the 2011 Draft, TIDA and the Navy have worked together to complete drafts of all exhibits to be attached to the EDC Agreement. Throughout this process, the exhibits have evolved as the Parties acquired additional information and made further plans with respect to redevelopment. Most notably, Exhibit B-2 sets forth the property that TIDA will acquire from the Navy at the Initial Closing, Exhibit R sets forth the projected conveyance schedule for the remainder of the property to be transferred to TIDA, and Exhibit E contains the form Utilities Agreement.
- 5. Deletion of Pre-Closing Parcel** – The 2011 Draft identified a parcel referred to as the “Pre-Closing Parcel.” This property was always contemplated to be conveyed to TIDA, but the additional language provided a structure for TIDA to receive this parcel in advance of the Initial Closing, thereby permitting construction of the bridge ramps using Federal grant funds to begin earlier. However, due to looming grant deadlines, this property was appropriated by the Federal Highway Administration and conveyed by deed

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to TIDA in 2013. Accordingly, all references to the Pre-Closing Parcel have been removed from the Current Draft.

Other minor changes incorporated in the Current Draft are reflected in the attached red-line comparison, including (i) correction of the final acreage amounts following input from the Navy, (ii) clarifications regarding the Navy's continued use of an office on Treasure Island, (iii) additional information regarding the assignment of easements, contracts and permits, (iv) modifications to the reporting requirements to be consistent with the Development and Disposition Agreement, and (v) various conforming/clean-up changes.

Please do not hesitate to contact George Schlossberg directly at 202-828-2418 or [george.schlossberg@kutakrock.com](mailto:george.schlossberg@kutakrock.com) or Hilary Jackler directly at 202-828-2470 or [hilary.jackler@kutakrock.com](mailto:hilary.jackler@kutakrock.com) with any questions.

G.R.S. & H.A.J.

Attachment: as stated.

cc. with attachment: Charles Sullivan, Esq.

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2  
3  
4 CONFIDENTIAL DOCUMENT  
5 REAL PROPERTY NEGOTIATION  
6 (CA GOVERNMENT CODE SECTION 54956.8)

7 Attorney-Client Privilege

8 The validity of this Agreement is expressly and wholly  
9 contingent upon the execution of this Agreement by all  
10 parties. In the event that any party hereto refuses or  
11 otherwise fails to execute this Agreement, all parties  
12 hereto acknowledge and agree that this Agreement  
13 shall be a nullity, and the rights and obligations of the  
14 respective parties shall remain as they are without this

15 Agreement.

16 (To be Removed Upon Execution)

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23 **ECONOMIC DEVELOPMENT CONVEYANCE**

24  
25 **MEMORANDUM OF AGREEMENT**

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27 **BETWEEN**

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29 **THE UNITED STATES OF AMERICA**

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31 **AND**

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33 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

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35 **FOR THE CONVEYANCE OF**

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37 **THE NAVAL STATION TREASURE ISLAND**  
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3 **ECONOMIC DEVELOPMENT CONVEYANCE**  
4 **MEMORANDUM OF AGREEMENT**  
5 **BETWEEN**  
6 **THE UNITED STATES OF AMERICA**  
7 **AND**  
8 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**  
9 **FOR THE CONVEYANCE OF**  
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1 **ECONOMIC DEVELOPMENT CONVEYANCE**  
2 **MEMORANDUM OF AGREEMENT**  
3 **BETWEEN**  
4 **THE UNITED STATES OF AMERICA**  
5 **AND**  
6 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**  
7 **FOR THE CONVEYANCE OF**  
8 **THE NAVAL STATION TREASURE ISLAND**  
9

10 This Agreement (hereinafter referred to as the “**Agreement**”) is entered into this \_\_\_\_ day  
11 of \_\_\_\_\_ ~~2011~~, 2014 (the “**Effective Date**”), between the **UNITED STATES OF**  
12 **AMERICA**, acting by and through the Department of the Navy (the “**Navy**”), and the  
13 **TREASURE ISLAND DEVELOPMENT AUTHORITY** (the “**Authority**”), recognized as the  
14 Local Redevelopment Authority by the Office of Economic Adjustment on behalf of the  
15 Secretary of Defense with regard to the disposition and conveyance of portions of Naval Station  
16 Treasure Island, San Francisco, California. The Navy and the Authority are each sometimes  
17 referred to herein individually as a “**Party**” and collectively as the “**Parties**.”  
18

19 **RECITALS**  
20

21 **WHEREAS:**  
22

23 1. In 1993, the Defense Base Closure and Realignment Commission recommended  
24 the closure of Naval Station Treasure Island (“**Treasure Island**”) located within the City and  
25 County of San Francisco, California (the “**City**”) and consisting of approximately ~~one thousand~~  
26 one hundred and ~~forty-one (1,041) / one thousand and seventy-five (1,075)~~ ~~}}~~ ~~to be confirmed by~~  
27 ~~Navy mapping dept.}}~~ eighty-seven (1,187) acres of real property, together with the buildings,  
28 improvements and related and other personal property located thereon and all rights, easements  
29 and appurtenances thereto.  
30

31 2. (a) Pursuant to the power and authority provided by § 2905(b)(4) of the  
32 Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the  
33 implementing regulations of the Department of Defense (32 C.F.R. Part ~~175~~ 174), the Secretary  
34 of the Navy is authorized to convey surplus property at a closing installation to the Local  
35 Redevelopment Authority for economic development purposes. By its “EDC Application and  
36 Business Plan for Naval Station Treasure Island” dated June 19, 2000, as amended on July 1,  
37 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its  
38 application dated \_\_\_\_\_, June 30, 2010, as further amended on \_\_\_\_\_, August 16,  
39 2011, the Authority applied for an Economic Development Conveyance (“**EDC**”) of  
40 approximately ~~one thousand and thirty-three (1,033) / nine~~ one hundred and ~~ninety-six (996)~~  
41 ~~}}~~ ~~to be confirmed by Navy mapping dept.}}~~ eight (1,108) acres of Treasure Island (“**EDC**  
42 Application Property”) together with existing Navy owned off-site utilities serving Treasure  
43 Island (the “**EDC Application**”), to be used and redeveloped in accordance with the “Draft  
44 Reuse Plan for Naval Station Treasure Island” (“**Reuse Plan**”) as endorsed by the City Planning  
45 Commission and the City’s Board of Supervisors in July 1996 and approved by the United States

1 Department of Housing and Urban Development on November 26, ~~1996, as shown on the~~  
2 ~~“Illustrative Land Use Plan” in the Authority’s EDC Application.~~ 1996.

3  
4 (b) ~~The Illustrative Land Use Plan reflects~~ Following refinements to the Reuse  
5 Plan ~~described in~~ land uses, attached hereto as Exhibit Z-1, and the execution of the Development  
6 Plan and Term Sheet for the Redevelopment of Former Naval Station Treasure Island endorsed  
7 by the Authority’s Board of Directors in October 2006 and the City’s Board of Supervisors in  
8 December 2006, as updated by the Update to Development Plan and Term Sheet for the  
9 Redevelopment of Former Naval Station Treasure Island endorsed by the Authority’s Board of  
10 Directors on April 7, 2010 and the City’s Board of Supervisors on May 18, ~~2010.~~ The  
11 ~~Illustrative Land Use Plan~~ 2010, the Authority entered into a Disposition and Development  
12 Agreement (“DDA”) with the Developer on June 28, 2011. Attached to the DDA is an updated  
13 land use plan which provides for a new development program consisting of up to 8,000  
14 residential units, approximately 500 hotel rooms, and commercial space of approximately  
15 511,000 square feet, among other things (“DDA Land Use Plan”), which is attached hereto as  
16 Exhibit Z-2 and is reflected in the Authority’s final EDC Application.

17  
18 (c) The Navy ~~has~~ approved the Authority’s EDC Application on  
19 ~~\_\_\_\_\_~~ October 7, 2011, attached hereto as Exhibit AA ~~for approximately \_\_\_\_\_~~  
20 ~~acres of Treasure Island and Yerba Buena Island.~~

21  
22 (d) The consideration for conveyance of the Navy Property, as set forth  
23 herein, has been structured to achieve an amount at least equal to the fair market value of the  
24 Navy Property.

25  
26 3. In accordance with the provisions of the Community Environmental Response  
27 Facilitation Act, the Navy prepared Environmental Baseline Surveys (“EBSs”) for ~~the Navy Real~~  
28 ~~Property~~ Treasure Island, copies of which have been provided to the Authority. Subsequently,  
29 the Navy prepared a Supplemental Environmental Baseline Survey (“SEBS”) ~~for~~ inclusive of the  
30 ~~Navy Real~~ EDC Application Property dated ~~\_\_\_\_\_~~ July 8, 2005, a copy of which has been  
31 provided to the Authority. ~~In accordance with DOD Policy on the Environmental Review~~  
32 ~~Process to Reach a~~ The Navy prepared Finding of Suitability to Transfer (“FOST”) ~~for Property~~  
33 ~~Where Release or Disposal Has Occurred, the Navy prepared FOSTs~~ documents dated February  
34 15, 2006, March 22, 2006, and ~~\_\_\_\_\_~~ 20, ~~attached hereto as Exhibit J~~ January 3,  
35 2012, copies of which have been provided to the Authority.

36  
37 4. For purposes of this Agreement, the Parties shall treat the Navy Real Property as  
38 two (2) separate parcels (that may be further subdivided into sub-parcels). Said parcels are  
39 identified as the “FOST Parcel”, substantially as described on Exhibit B-2, and the  
40 “Remainder Parcel” substantially as described on Exhibit B-3 (collectively, the “Parcels”, and  
41 each a “Parcel”, ~~as shown on the map of parcel designations attached hereto as Exhibit B-1).~~

42  
43 5. In accordance with the provisions of the National Environmental Policy Act  
44 (“NEPA”) of 1969, as amended, the Navy prepared an Environmental Impact Statement (“EIS”)  
45 for the disposal and reuse of ~~the Navy Real Property~~ Treasure Island. A Record of Decision

1 (“NEPA ROD”) regarding the disposal and reuse of ~~the Navy Real Property~~Treasure Island was  
2 issued on the 26th day of October, 2005 and is attached to this Agreement as Exhibit G.

3  
4 6. In accordance with the provisions of the California Environmental Quality Act  
5 (“CEQA”), as amended, the Authority and the City, as co-lead agencies, have prepared a  
6 project-level Environmental Impact Report (“EIR”) for the ~~Hllustrative~~DDA Land Use Plan and  
7 related documents and actions. The Authority certified the EIR as complete and the Planning  
8 Commission certified the EIR as complete on \_\_\_\_\_, April 21, 2011 (collectively, the  
9 “**Certification**”). The Certification resolutions are attached hereto as Exhibit P.

10  
11 7. In accordance with the provisions of the National Historic Preservation Act, the  
12 Navy determined that the disposal of ~~the Navy Real Property~~Treasure Island, as hereinafter  
13 defined, will have an effect upon those portions of ~~the Navy Real Property~~Treasure Island that  
14 are listed ~~and eligible for listing~~ in the National Register of Historic Places. A Memorandum of  
15 Agreement between the Department of the Navy and the California State Historic Preservation  
16 Officer (“SHPO”) was executed on the 28<sup>th</sup> day of May, ~~2003, and sets forth in full all~~  
17 ~~obligations of the signatories under~~2003 (attached hereto as Exhibit Q-1), and, together with the  
18 Memorandum of Agreement between the California Department of Transportation and SHPO,  
19 dated the 19<sup>th</sup> day of May, 2011 (attached hereto as Exhibit Q-2), takes into account the effect of  
20 the undertaking on historic properties in accordance with the National Historic Preservation Act  
21 and implementing regulations, ~~and is attached hereto as~~ Exhibit Q.

22  
23 8. In accordance with the provisions of that certain Base Caretaker Cooperative  
24 Agreement first dated March 12, 1997 and as further modified (“**Caretaker Agreement**”) and  
25 those certain Master Leases by and between the Authority and the Navy described on Exhibit  
26 LL, the Authority has maintained the physical condition of ~~the Navy Real Property has been~~  
27 ~~maintained by the Authority~~Treasure Island, including certain infrastructure as set forth in the  
28 Caretaker Agreement. The physical condition of the ~~Navy Real Property~~Treasure Island is  
29 subject to reasonable wear and may have been altered by the Authority under the terms of the  
30 Caretaker Agreement and the Master Leases, and/or the Navy where remedial activities have  
31 been required.

32  
33 ~~9. The Authority shall cause the Disposition and Development Agreement (“DDA”)~~  
34 ~~to incorporate all applicable terms of this Agreement substantially in the same form as they~~  
35 ~~appear herein.~~

36  
37 **AGREEMENTS**

38  
39 **NOW, THEREFORE**, in consideration of the foregoing and the respective  
40 representations, agreements, covenants and conditions herein contained, and other good and  
41 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Navy  
42 and the Authority agree as follows:  
43

1 **ARTICLE 1**  
2 **DEFINITIONS**

3  
4 1.1 The definitions are attached hereto as Exhibit A and are hereby incorporated by  
5 reference as if fully set forth herein.

6  
7 **ARTICLE 2**  
8 **ECONOMIC DEVELOPMENT CONVEYANCE**

9  
10 2.1 Pursuant to § 2905(b)(4) of the Defense Base Closure and Realignment Act of  
11 1990 (10 U.S.C. § 2687 note), as amended, and 32 C.F.R. Part 174, the Navy agrees to transfer  
12 and convey all of the Navy's right, title, and interest in the Navy Property to the Authority under  
13 a fair market value economic development conveyance, and the Authority agrees to acquire such  
14 Navy Property in consideration of the covenants, conditions and restrictions contained herein and  
15 other good and valuable consideration, subject to the terms, conditions and general provisions set  
16 forth in this Agreement.

17  
18 **ARTICLE 3**  
19 **CONVEYANCE SCHEDULE AND TRANSFERS**

20  
21 3.1 Property to be Conveyed. The Navy shall convey to the Authority, and the  
22 Authority shall accept from the Navy, subject to the terms, covenants and conditions hereinafter  
23 set forth, all of the Navy's right, title, and interest in the following property:

24  
25 3.1.1 The real property consisting of ~~approximately [996] acres of uplands,~~  
26 ~~tidelands and submerged lands~~ the EDC Application Property located within the bounds of the  
27 former Naval Station Treasure Island, as more particularly described and delineated in Exhibit B-  
28 2 and Exhibit B-3, attached hereto, less any real property appropriated permanently by the Federal  
29 Highway Administration, which shall include, but not be limited to, any right, title or interest the  
30 Navy may have in the following (collectively referred to herein as the "Navy Real Property"),  
31 except as otherwise provided for in this Agreement:

32  
33 3.1.1.1 All buildings, facilities, roadways and other  
34 infrastructure including the storm drainage systems and the utility system  
35 infrastructure, and any other improvements thereon (including all replacements and  
36 additions thereto between the date of this Agreement and the date of conveyance of  
37 all the Navy Real Property to the Authority).

38  
39 3.1.1.2 The Easements, licenses, rights of way, or other  
40 similar instruments as described in Article 7.

1 3.1.1.3 The hereditaments and tenements in and/or to the  
2 Navy Real Property and reversions, remainders, issues, profits, privileges and other  
3 rights belonging or related thereto, including any reversionary interest to real property  
4 appropriated permanently or otherwise by the Federal Highway Administration.

5  
6 3.1.1.4 All rights to minerals, gas, oil, water and similar  
7 rights.

8  
9 3.1.2 The Utility Infrastructure consisting of all utilities and related support  
10 infrastructure located on and off the Navy Real Property that serve the Navy Real Property such  
11 as electrical, water, sewer, gas, storm drainage and telecommunications lines (including all  
12 replacements and additions thereto between the date of this Agreement and the date of  
13 conveyance of all the Navy Real Property to the Authority), as more particularly described on  
14 Exhibit H-2 attached hereto.

15  
16 3.1.3 The Navy Personal Property consisting of the Navy's right, title, and  
17 interest in all personal property, ~~except for (i) items identified in Article 13 relating to the Navy~~  
18 ~~Caretaker Office, and (ii) property under the cognizance of the Navy Historical Center that is~~  
19 ~~identified on Exhibit E, attached hereto (collectively, the "Excluded Personal Property"),~~  
20 located on or used in connection with the ownership, use, or operation of the specific portion of  
21 the Navy Real Property to be transferred to the Authority at each Closing, substantially in the  
22 form of and pursuant to the terms and conditions of the Bill of Sale as more particularly described  
23 in Exhibit H-1, attached hereto, except for items identified in Article 13 relating to the Navy  
24 Office. The Navy shall retain responsibility for all ~~Excluded Personal Property~~excluded personal  
25 property under the cognizance of the Navy ~~Historical Center and/or the Navy Caretaker Office.~~  
26 ~~Unless the Navy and the Authority enter into a separate agreement regarding the Excluded~~  
27 ~~Personal Property under the cognizance of the Navy Historical Center, Navy shall remove all such~~  
28 ~~Excluded Personal Property from the Navy Real Property within 24 months after notice from the~~  
29 ~~Authority requesting removal. The Authority shall have the right to relocate the Excluded~~  
30 ~~Personal Property related to the Navy Historical Center prior to its removal so long as such~~  
31 ~~artifacts are moved with appropriate care and with Navy approval.~~ Office.

32  
33 3.2 Sequence of Conveyances. The Navy shall convey the Navy Real Property by  
34 Quitclaim Deed to the Authority, and the Authority shall accept, in Multiple Conveyances in  
35 accordance with the Conveyance Schedule attached hereto as Exhibit R, such portion of the  
36 Navy Real Property for which the Closing Conditions set forth in Section 3.7 have been satisfied  
37 or waived, subject to the following requirements:

38  
39 3.2.1 The Navy Real Property shall be conveyed and accepted within sixty (60)  
40 days after the Closing Conditions have been satisfied for the portion of the Navy Real Property  
41 subject to the applicable conveyance.



1  
2           3.2.2 ~~Prior to the satisfaction or waiver of the Closing Conditions and the Initial~~  
3 ~~Conveyance, the Authority may request the conveyance of an approximately five (5) acre parcel~~  
4 ~~(“Pre-Closing Parcel”), provided that if any portion of the Navy Real Property selected by the~~  
5 ~~Authority as the Pre-Closing Parcel is in the Historic District, or the conveyance or planned use~~  
6 ~~may affect property that is or may be eligible for listing on the National Register, then the entire~~  
7 ~~Historic District and any other property that is or may be eligible for listing on the National~~  
8 ~~Register shall be added to the selected Navy Real Property and included in the Pre-Closing~~  
9 ~~Parcel.~~RESERVED

10  
11           3.2.3 The Parties agree to meet at such times as requested by a Party, but no less  
12 than annually, to discuss the status of the Conveyance Schedule. Prior to each such meeting, the  
13 Authority shall deliver to the Navy a general phasing schedule that describes the anticipated  
14 schedule of development on the Navy Real Property for the next twenty-four (24) months.  
15 During such meeting, the Parties may mutually agree, in each Party’s sole and absolute discretion,  
16 to amend the Conveyance Schedule; including the Navy Real Property to be conveyed as part of  
17 the Initial Closing or any subsequent Closing.

18  
19           3.3     Conveyance Process.

20  
21           3.3.1 FOST Parcel. On the Initial Closing, the Navy shall convey to the  
22 Authority, and the Authority shall accept, a parcel that is substantially similar to the portion of the  
23 Navy Real Property that is more particularly described and delineated as the FOST Parcel on  
24 Exhibit B-2, attached hereto; (the parcel to be conveyed, hereinafter referred to as the “FOST  
25 Parcel”), as further modified as necessary to remove any real property that may be deemed  
26 radiologically impacted and therefore require further investigation as set forth in the Final  
27 Historical Radiological Assessment – Supplemental Technical Memorandum anticipated to be  
28 completed by the Navy in April 2014, in accordance with the process provided herein, so long as  
29 the Authority has approved any differences between the boundaries of the FOST Parcel and the  
30 parcel or parcels delineated in Exhibit B-2 and the Closing Conditions for the transfer of the  
31 FOST Parcel have been satisfied.

32  
33           3.3.2 Remainder Parcel. Upon satisfaction of the Closing Conditions for the  
34 transfer of the Remainder Parcel or applicable portions thereof, the Navy shall convey to the  
35 Authority, and the Authority shall accept, the portions of the Navy Real Property that are more  
36 particularly described and delineated as the Remainder Parcel on Exhibit B-3, attached hereto, as  
37 further modified as necessary to reflect the conclusions of the Final Historical Radiological  
38 Assessment – Supplemental Technical Memorandum, or portions of such Remainder Parcel, in  
39 accordance with the process otherwise provided herein; so long as the Authority has approved  
40 any differences between the boundaries of the Navy Real Property to be conveyed as part of a  
41 subsequent Closing and the parcel or parcels listed in Exhibit R. The Remainder Parcel shall  
42 include any portion of the FOST Parcel not conveyed at the Initial Closing.

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~~3.3.3 Pre-Closing Parcel. The Navy shall convey the Pre-Closing Parcel to the Authority, via a Quitclaim Deed in accordance with the Closing Conditions described in Section 3.7.2, within sixty (60) days following both (i) an agreement on the Pre-Closing Parcel Consideration established pursuant to Section 4.3.5, and (ii) a request by the Authority.~~RESERVED

3.4 FOST Conveyances.

3.4.1 The Navy shall convey the Navy Real Property to the Authority by Quitclaim Deed(s) with all required CERCLA warranties and covenants after a FOST is executed with respect to the applicable portion of the Navy Real Property. Unless otherwise mutually agreed by the Parties, the Navy shall provide to the Authority for review and comment copies of all draft FOSTs, any amendments to any existing FOSTs, and the contents of any proposed land use covenants as they become available, provided, however, that the Navy shall not execute any final FOST or execute or record any land use covenants related to the Navy Real Property for at least forty-five (45) days after the applicable draft FOST or land use covenant is provided to the Authority. The Navy shall promptly provide updates or revisions of such draft FOSTs or land use covenants to the Authority as soon as any updates are available to the Navy. Unless otherwise mutually agreed by the Parties, the revised draft final FOST or land use covenant, as the case may be, must be provided to the Authority at least fifteen (15) days prior to the Navy’s execution or recordation of the applicable final FOST or land use covenant.

3.4.2 The FOST(s) shall summarize how applicable requirements and notifications related to hazardous substances, petroleum products and other regulated materials have been satisfied. The FOST(s) may prescribe land use restrictions or covenants.

3.5 Title to Property.

3.5.1 Conveyance by Quitclaim Deed. At the Initial Closing, the Navy shall convey to the Authority all of its right, title and interest in and to the FOST Parcel by duly executed and acknowledged Quitclaim Deed substantially in the form attached hereto as Exhibit D-1. At each subsequent Closing, the Navy shall convey to the Authority all of its right, title and interest in and to the applicable portion of the Remainder Parcel by duly executed and acknowledged Quitclaim Deed substantially in the form ~~attached hereto as of~~ Exhibit D-2.

3.5.2 Condition of Title.

1 3.5.2.1 Attached hereto as Exhibit T is a preliminary title  
2 report that identifies the liens, exceptions to title and encumbrances recorded against  
3 the Navy Real Property as of the Effective Date of this Agreement. Any title  
4 insurance that may be desired by the Authority shall be procured at its sole cost and  
5 expense. The Navy shall cooperate with the Authority or its authorized agent and  
6 shall permit examination and inspection of any documents relating to the title of the  
7 Navy Real Property as it may have available. While, except as set forth in Section  
8 3.5.2.2, the Navy is not obligated to clear any of the title exceptions listed on Exhibit  
9 U, the Navy agrees to assist the Authority, as appropriate, to have the title exceptions  
10 listed on Exhibit U attached hereto, and any subsequently discovered title exceptions  
11 that appear to be in error or are of concern to the Authority, removed, released or  
12 insured over.

13  
14 3.5.2.2 From the Effective Date of this Agreement through  
15 the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to  
16 sell, encumber or grant any interest in the Navy Real Property or any part thereof in  
17 any form or manner whatsoever, or otherwise perform or permit any act that will  
18 diminish or otherwise affect the Authority's interest under this Agreement or to the  
19 Navy Real Property, or which will prevent the Navy's full performance of its  
20 obligations hereunder, without the written consent of the Authority, except  
21 environmental restrictions or land use covenants consistent with Section ~~3.4.23.4~~  
22 as may be designated in ~~the~~any CERCLA Record of Decision, an approved Corrective  
23 Action Plan or ~~the~~a FOST.

24  
25 3.6 Non-Assignable and Unperfected Easements, Contracts and Permits. Attached  
26 hereto as Exhibit I-5 is a list of the easements, leases, licenses ~~and~~, encroachment permits,  
27 contracts, permits and other agreements that are necessary for the operation, maintenance or  
28 improvement of the Navy Real Property and are either not assignable (the "**Non-Assignable**  
29 **Easements, Contracts and Permits**") or not validly held by the Navy (the "**Unperfected**  
30 **Easements, Contracts and Permits**"). The Navy shall cooperate with the Authority or its  
31 authorized agent and shall permit examination and inspection of any documents relating to the  
32 Non-Assignable Easements, Contracts and Permits and Unperfected Easements, Contracts and  
33 Permits as it may have available. Navy agrees to assist the Authority, as appropriate, to obtain  
34 the consents or replacement agreements necessary to transfer the Navy's rights under the Non-  
35 Assignable Easements, Contracts and Permits and to assist the Authority as appropriate to obtain  
36 the easements, leases, licenses or encroachment permits necessary for perfecting and assigning  
37 the Unperfected Easements, Contracts and Permits.

38  
39 3.7 Closing Conditions. The Authority shall be obligated to accept title to any portion  
40 of the Navy Real Property tendered to the Authority within sixty (60) days after such portion of  
41 the Navy Real Property is tendered if, at the time of the tender, all of the following conditions are  
42 satisfied, or waived by the Authority in its sole discretion (together the "**Closing Conditions**"):

1  
2 3.7.1 With respect to the Initial Closing for the FOST Parcel:

3  
4 3.7.1.1 One or more FOST(s) have been executed covering  
5 the entirety of the FOST Parcel ~~depicted on Exhibit B-2, attached hereto, and such~~  
6 FOST(s) have been concurred in by DTSC in writing, and the substance of any  
7 environmental restrictions or land use covenants whether contained in such FOST(s)  
8 or executed or recorded separately affecting all or any portion of the FOST Parcel  
9 does not prohibit the timely implementation of the Reuse Plan ~~land uses.~~ With  
10 respect to the FOST dated March 22, 2006, the DTSC letter dated May 22, 2006  
11 satisfies the requirement for concurrence by DTSC, unless such FOST is further  
12 amended. With respect to the FOST dated January 3, 2012, the DTSC letter dated  
13 February 24, 2012 satisfies the requirement for concurrence by DTSC, unless such  
14 FOST is further amended.

15  
16 3.7.1.2 Building 233 located on the Building 233  
17 Development Parcel described on Exhibit B-6 has been demolished and (i) the CDPH  
18 and DTSC have approved a Final Status Survey Work Plan for Building 233  
19 sufficient to enable CDPH to issue a Free Release Letter, ~~and~~ (ii) the CDPH and  
20 DTSC have approved the completed Final Status Survey Report (~~“FSSR”~~) submitted  
21 by the Navy, and (iii) written assurance has been received from the appropriate  
22 Regulatory Authority or Authorities that no land use restrictions or covenants will be  
23 imposed on the Building 233 Development Parcel that would prohibit timely  
24 development consistent with the ~~Illustrative~~ DDA Land Use Plan.

25  
26 3.7.1.3 A Record of Decision has been issued for Site 21  
27 described on Exhibit B-13 and any land use restriction or covenants would allow for  
28 residential use on all habitable floors of a building to be constructed on Site 21.

29  
30 3.7.1.4 An Explanation of Significant Differences has been  
31 issued by the Navy and approved by DTSC for Site 33. The remedial action for Site  
32 33 and any resulting land use restrictions or covenants would allow residential use on  
33 all habitable floors of a building to be constructed on Site 33, and a Remedial Action  
34 Completion Report (~~“RACR”~~) has been approved by DTSC for Site 33. If Site 33 is  
35 identified by the Navy and the State of California as impacted by radiological  
36 contamination prior to the Initial Closing, and as a result the Navy must undertake  
37 additional actions related to radiological contamination, such additional action shall be  
38 completed and the Navy shall have obtained written assurance from the State of  
39 California that the environmental condition of such sites complies with all applicable

1 [laws and would not preclude the timely development of Site 33 in accordance with the](#)  
2 [DDA Land Use Plan.](#)

3  
4 3.7.1.5 The Navy and the Authority are not in material  
5 default of any of their material obligations hereunder related to the transfer of the  
6 FOST Parcel pursuant to this Agreement, unless waived by the Party not in material  
7 default.

8  
9 3.7.1.6 The form and content of the Quitclaim Deed  
10 transferring the FOST Parcel is consistent with Section 3.5 and the applicable FOST, [and the Navy and the Authority have agreed on the forms of the Assignment of](#)  
11 [Easements, Contracts, Licenses and Permits described in Section 7.1, the Access](#)  
12 [Easements and Utility Easements described in Section 7.3, and the Utilities](#)  
13 [Agreement described in Article 9.](#)  
14

15  
16 3.7.1.7 The Navy has delivered into escrow the Navy  
17 Closing Documents described in Section 8.2 below.

18  
19 3.7.1.8 All third party consents for the assignment or the  
20 replacement of any Non-Assignable Easements, [Contracts and Permits](#) related to the  
21 provision of electricity to Treasure Island and all easements, leases, licenses and/or  
22 encroachment permits necessary to perfect and assign the Unperfected Easements,  
23 [Contracts and Permits](#) related to the provision of electricity to Treasure Island have  
24 been obtained. The Non-Assignable and Unperfected Easements, [Contracts and](#)  
25 [Permits](#) related to the provision of electricity to Treasure Island are shown in [Exhibit](#)  
26 [I-7.](#)

27  
28 3.7.1.9 At the Initial Closing: (i) the physical condition of  
29 the FOST Parcel shall be substantially the same as on the Effective Date of this  
30 Agreement, [excepting](#) reasonable wear and tear, activities under the Caretaker  
31 Agreement, master leases, and Navy's remedial activities ~~excepted~~, (ii) there shall be  
32 no litigation or administrative agency or other governmental proceeding pending, that  
33 materially and adversely affects the proposed redevelopment of the FOST Parcel, (iii)  
34 the environmental condition (including without limitation the presence, nature, extent  
35 and concentration of Hazardous Substances thereon) of any portions of the FOST  
36 Parcel covered by a FOST issued by the Navy ~~has~~[shall](#) not ~~be~~ materially ~~worsened~~  
37 ~~after~~[worse than the known environmental condition on](#) the Effective Date of this  
38 Agreement, (iv) ~~no Regulatory Authority has asserted the need for~~[if any portion of](#)  
39 [the FOST Parcel was identified by the Navy and the State of California as impacted](#)  
40 [by radiological contamination, the Navy shall have obtained written assurance from](#)  
41 [the State of California that the environmental condition of such sites complies with all](#)  
42 [applicable laws and will not be subject to regulation after transfer under the](#)

1 [California Radiation Control Law \(i.e., such site shall have a license exemption or](#)  
2 [release for unrestricted use with respect to radiological issues\) or such portion shall](#)  
3 [be removed from the FOST Parcel and included in the Remainder Parcel, \(v\) no](#)  
4 [Regulatory Authority shall have required](#) additional screening, investigation,  
5 remediation or restrictions related to radiological contamination (other than employee  
6 health and safety plan screening to be conducted by a contractor prior to or during  
7 construction) beyond those set forth in the FOST issued for any portions of the FOST  
8 Parcel; and ~~(vii)~~ to the extent that a Record of Decision or FOST exists for a  
9 particular portion of the FOST Parcel on the Effective Date of this Agreement, such  
10 Record of Decision or FOST ~~has~~shall not ~~have~~ been modified or changed [\(or required](#)  
11 [to be modified or changed\)](#) unless mutually agreed upon (including changing through  
12 an Explanation of Significant Differences, except for ~~Site 31~~[the final Explanation of](#)  
13 [Significant Differences for IR Site 31 dated May 2011\)](#), and no additional conditions  
14 or restrictions not identified in the existing Record of Decision or FOST [shall](#) have  
15 been added after the Effective Date of this Agreement and prior to the Initial Closing.

16  
17 3.7.1.10 The FOST Parcel is not subject to any liens,  
18 exceptions and encumbrances other than the following: (i) the lien of real property  
19 taxes not yet due and payable, (ii) the exceptions to title described in the preliminary  
20 title report attached hereto as [Exhibit T](#), (iii) exceptions to title approved by the  
21 Authority in accordance with Section 3.5.2 of this Agreement, (iv) environmental  
22 restrictions or land use covenants consistent with Section 3.4 that the Navy may  
23 record against the Navy Real Property in accordance with Section 3.5.2, and (v) non-  
24 material liens, exceptions or encumbrances that do not impair the value of the Navy  
25 Real Property or the ability to develop the Project.

26  
27 3.7.1.11 All Regulatory Authority approvals have been  
28 obtained for the FOST Parcel relating to the investigation and environmental response  
29 for underground and above-ground petroleum storage tanks, and any releases of  
30 petroleum, petroleum derivatives, petroleum fractions, or any chemicals, compounds  
31 or products that result from their degradation in accordance with Article 18.

32  
33 3.7.2 With respect to any subsequent Closing for a portion of the Remainder  
34 Parcel:

35  
36 3.7.2.1 A FOST has been executed for such portion of the  
37 Remainder Parcel, [and such FOST\(s\) have been concurred in by DTSC in writing,](#)  
38 and the substance of any environmental restrictions or land use covenants whether  
39 contained in such FOST(s) or recorded separately against the applicable portion of the  
40 Remainder Parcel does not prohibit the timely implementation of the Reuse Plan [land](#)  
41 [uses.](#)

1  
2 3.7.2.2 The Navy and the Authority are not in material  
3 default of any of their material obligations hereunder related to the transfer of such  
4 portion of the Remainder Parcel pursuant to this Agreement, unless waived by the  
5 Party not in material default.

6  
7 3.7.2.3 The form and content of the Quitclaim Deed  
8 transferring such portion of the Remainder Parcel is consistent with Section 3.5 and  
9 the applicable FOST, and the Navy and the Authority have agreed on the form of  
10 Access Easements and Utility Easements described in Section 7.3 with respect to  
11 such portion of the Remainder Parcel.

12  
13 3.7.2.4 The Navy has delivered into escrow the Navy  
14 Closing Documents described in Section 8.2 below.

15  
16 3.7.2.5 ~~The~~At the applicable Closing: (i) the physical  
17 condition of such portion of the Remainder Parcel shall be substantially the same on  
18 the applicable Closing date as on the Effective Date of this Agreement, reasonable  
19 wear and tear, activities under the Caretaker Agreement, master leases and Navy's  
20 remedial activities excepted, ~~and, as of the applicable Closing date,~~(ii) there shall be  
21 no litigation or administrative agency or other governmental proceeding pending, that  
22 materially and adversely affects the proposed redevelopment of such portion of the  
23 Remainder Parcel, ~~and~~(iii) no Regulatory Authority ~~has asserted~~shall have required  
24 the need for additional screening, investigation, remediation or restrictions beyond  
25 those set forth in the FOST issued for such portion of the Remainder Parcel, (iv) if  
26 any portion of the Remainder Parcel was identified by the Navy and the State of  
27 California as impacted by radiological contamination, the Navy shall have obtained  
28 written assurance from the State of California that the environmental condition of  
29 such sites complies with all applicable laws and will not be subject to regulation after  
30 transfer under the California Radiation Control Law (i.e., such site shall have a  
31 license exemption or release for unrestricted use with respect to radiological issues),  
32 and (v) no Regulatory Authority shall have required additional screening,  
33 investigation, remediation or restrictions related to radiological contamination (other  
34 than employee health and safety plan screening to be conducted by a contractor prior  
35 to or during construction) beyond those set forth in the FOST issued for such portion  
36 of the Remainder Parcel.

37  
38 3.7.2.6 The Navy has not permitted, agreed to sell, sold,  
39 encumbered, or granted any interest in such portion of the Remainder Parcel in  
40 violation of Section 3.5.2.2.

1  
2 3.7.2.7 All Regulatory Authority approvals have been  
3 obtained for the Remainder Parcel relating to the investigation and environmental  
4 response for underground and above-ground petroleum storage tanks, and any  
5 releases of petroleum, petroleum derivatives, petroleum fractions, or any chemicals,  
6 compounds or products that result from their degradation in accordance with Article  
7 18.

8  
9 3.7.2.8 For a conveyance that contains all or portions of the  
10 Site 12 Development Parcel, Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31,  
11 the Building 3 Parcel, the Building 233 Parcel, the UC1 and UC2 utility corridors, or  
12 Parcel 24A, each as described on Exhibit B-7 attached hereto, the applicable  
13 performance benchmarks set forth in Sections 4.2.2 and 4.2.3 below have been  
14 satisfied or waived by the Authority as to each Parcel before conveyance of that  
15 Parcel.

16  
17 3.8 Failure to Satisfy Closing Conditions.

18  
19 3.8.1 If any Closing Conditions described in Section 3.7.1 relating to the Initial  
20 Closing are not satisfied prior to or on the date that the Navy is required to convey the FOST  
21 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the  
22 Parties, then the Authority shall have the right in its sole and absolute discretion to (i) waive in  
23 writing the Closing Condition in question as to all or any portion of the FOST Parcel and  
24 proceed with Closing, or (ii) extend the Closing for the FOST Parcel for a reasonable period of  
25 time up to four (4) years as specified by the Authority to allow all of the Closing Conditions  
26 applicable to the FOST Parcel to be satisfied and, if applicable, to complete early transfer or  
27 Lease in Furtherance of Conveyance (“LIFOC”) negotiations with the Navy in accordance with  
28 Section 3.11 or Section 3.12 below.

29  
30 3.8.2 If any Closing Conditions described in Section 3.7.2 relating to a  
31 subsequent Closing for any portion of the Remainder Parcel are not satisfied prior to or on the  
32 date that the Navy is required to convey such portion of the Remainder Parcel to the Authority in  
33 accordance with the Conveyance Schedule, as may be amended by the Parties, then the Authority  
34 shall have the right in its sole and absolute discretion to (i) waive in writing the Closing  
35 Condition in question and proceed with Closing, or (ii) extend the Closing for such portion of the  
36 Remainder Parcel for a reasonable period of time up to four (4) years (except as otherwise  
37 provided for ~~Site 12~~ in Section ~~4.2.24.2.4~~ and/or Section 4.2.5) as specified by the Authority to  
38 allow all of the Closing Conditions applicable to such portion of the Remainder Parcel to be



1 satisfied and, if applicable, to complete early transfer or LIFOC negotiations with the Navy in  
2 accordance with Section 3.11 or Section 3.12 below.

3  
4 3.8.3 If a dispute arises between the Parties regarding whether a Closing  
5 Condition has been satisfied, either Party may invoke the dispute resolution procedure described  
6 in Article 27. The failure by the Navy to satisfy a Closing Condition, by itself, shall not be  
7 deemed a Navy default or breach under this Agreement, and the sole remedy for failure to satisfy  
8 a Closing Condition is set out in Section 3.8.1, Section 3.8.2, and Section 3.8.4.

9  
10 3.8.4 If any Closing Conditions described in Section 3.7.1 and/or 3.7.2 are not  
11 satisfied within four (4) years after the date the Navy was required to convey the applicable  
12 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the  
13 Parties (except as otherwise provided for ~~Site 12~~ in Section ~~4.2.24.2.4~~ and/or Section 4.2.5), and  
14 such failure to satisfy a Closing Condition is not caused by a Navy breach of an obligation under  
15 this Agreement, then the Authority shall have sixty (60) days from receipt of a written notice  
16 from the Navy to elect to waive in writing the Closing Condition in question and proceed with  
17 Closing. If after sixty (60) days the Authority has not chosen to waive in writing the Closing  
18 Condition then, this Agreement shall terminate as to the affected Parcel(s). If this Agreement  
19 terminates as to the affected Parcel(s), the Navy shall have the right to transfer or convey such  
20 Parcel(s) according to applicable law and in accordance with Section 3.8.6 and 3.8.7, provided,  
21 however if this Agreement terminates as to all of the Navy Real Property prior to the Initial  
22 Closing, then the Navy shall have the right to transfer or convey such Parcel(s) according to  
23 applicable law and without complying with Section 3.8.6 or Section 3.8.7.

24  
25 3.8.5 If the Authority does not accept a Parcel for which the Closing Conditions  
26 have been satisfied or waived within sixty (60) days after the Navy's tender of the Parcel, subject  
27 to Excusable Delay, then the Authority shall be in default and the Navy shall have the right, in its  
28 sole discretion, and as its sole and exclusive remedy, to transfer or convey the Parcel in  
29 accordance with applicable law.

30  
31 3.8.6 The Navy agrees that concurrent with the transfer or conveyance of the  
32 FOST Parcel, or any portion thereof, to a third party in accordance with Section 3.8.4 the Navy  
33 shall notify the third party of the restrictions under the ~~Reuse~~DDA Land Use Plan as such  
34 ~~Reuse~~DDA Land Use Plan may be modified by the Authority to address the failure to satisfy the  
35 Closing Condition that gave rise to the Navy transfer or conveyance of such FOST Parcel, or  
36 portion thereof, if any, and concurrent with any transfer or conveyance of the Remainder Parcel,  
37 or a portion thereof, to a third party in accordance with Section 3.8.4 the Navy shall notify the  
38 third party of the restrictions under the ~~Illustrative~~DDA Land Use Plan as such version of the  
39 ~~Illustrative~~DDA Land Use Plan may be modified by the Authority to address the failure to

1 satisfy the Closing Condition that gave rise to the Navy transfer or conveyance of such  
2 Remainder Parcel, or portion thereof, if any.

3  
4 3.8.7 The Navy shall not transfer or convey all or any portion of the Navy  
5 Real Property in accordance with Section 3.8.4 to a state or federal agency, or any other entity  
6 that would be exempt from complying with land use restrictions, including restrictions arising  
7 under the ~~Reuse Plan, the Illustrative~~ DDA Land Use Plan, the City’s Planning Code, the City's  
8 General Plan or the City's Zoning Map (an “**Exempt Transferee**”), without first granting the  
9 Authority the option (the “**Authority Option**”) to lease the portion of the Navy Real Property  
10 that the Navy proposes to transfer or convey to the Exempt Transferee (the “**Option Property**”).  
11 At least sixty (60) days prior to initiating the process for transfer or conveyance of all or any  
12 portion of the Option Property to an Exempt Transferee, the Navy shall notify the Authority in  
13 writing (the “**Option Notice**”) of (i) the description of the Option Property subject to the Option  
14 Notice, and (ii) the proposed method of transfer or conveyance, and (iii) if known, the identity of  
15 the proposed Exempt Transferee and the Exempt Transferee’s proposed use of the Option  
16 Property. The Authority shall have forty-five (45) days after receipt of the Option Notice to  
17 exercise the Authority Option by delivering a written exercise notice to the Navy. If the  
18 Authority exercises the Authority Option, the Parties shall promptly execute a lease. The form  
19 of lease will be a LIFOC or master lease similar to the existing master leases and will include the  
20 following provisions: the Authority will not pay rent and the term will expire on the earlier of  
21 fifty (50) years after lease commencement or such time as the Navy satisfies the applicable  
22 Closing Condition allowing for conveyance of the Option Property to the Authority.

23  
24 3.9 Quitclaim Deeds. The Navy shall convey all of its right, title, and interest in and  
25 to the Navy Real Property to the Authority, and the Authority agrees to accept conveyance of the  
26 Navy Real Property “as is” and “where is” by good and sufficient Quitclaim Deeds in  
27 accordance with this Agreement, by separate conveyance and Closing. Acceptance of the Navy  
28 Real Property by the Authority shall be by execution of the Authority’s acceptance statement on  
29 the Quitclaim Deeds. The Navy shall prepare plats and legal descriptions of areas that are  
30 subject to environmental restrictions and covenants at its own expense and provide such plats  
31 and legal descriptions to the Authority for review. The Authority shall prepare draft plats and  
32 legal descriptions of the metes and bounds of the outer boundary of the Naval Station Treasure  
33 Island and the Parcels of Navy Real Property at its own expense and provide such plats and legal  
34 descriptions to the Navy for review. The Parties shall work cooperatively to ensure that plats  
35 and legal descriptions are correct and agreed to by each Party. The Authority shall be  
36 responsible for recording Quitclaim Deeds at its own expense. The Parties shall cooperate in  
37 executing and delivering corrective deeds necessary to convey omitted land intended to be  
38 included in the Navy Real Property and to correct any erroneous description of the Navy Real  
39 Property.

40  
41 3.10 Sub-parcels. Sub-parcelization of any Parcel may be considered and a sub-parcel  
42 may be conveyed as mutually agreed to by the Parties.

1  
2           3.11 Early Transfer Negotiations. At any time, the Parties may enter into early transfer  
3 negotiations for the conveyance of any Parcel or agreed upon sub-parcel with a covenant deferral  
4 pursuant to Section 120(h)(3)(c) of CERCLA and the terms of a mutually acceptable Early  
5 Transfer Cooperative Agreement that has been approved by the Navy, the Authority’s Board of  
6 Directors and, if required, the City’s Board of Supervisors and Mayor, each in their sole and  
7 absolute discretion.

8  
9           3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into  
10 negotiations for a LIFO for any portion of the Navy Real Property on terms mutually  
11 acceptable to the Parties, subject to approval by (1) the Authority’s Board of Directors and, if  
12 required, the City’s Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her  
13 designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority  
14 will enter into a LIFO, easement or other instrument acceptable to the Authority that allows for  
15 the construction of roads, utilities and other infrastructure on the properties ~~described in Exhibit~~  
16 ~~B-7.~~

17  
18           3.13 Marina Property. The Marina Property depicted in Exhibit F will be conveyed to  
19 the Authority pursuant to this Agreement, but will not be conveyed by the Authority to the  
20 Developer or be subject to the terms and conditions of the DDA. Accordingly, the revenues  
21 received by the Authority from the Marina Property shall not be subject to Article 4  
22 (“**Consideration**”) and Article 5 (“**Controls**”), other than Section 5.13. Revenues received by  
23 the Authority from the Marina Property shall be used by the Authority to fund the Authority’s  
24 costs of administering the closure and reuse of Treasure Island and implementing the ~~Reuse~~DDA  
25 Land Use Plan, and shall directly reduce the Authority Costs Payment. An annual accounting of  
26 Marina Property revenues shall be provided to the Navy in accordance with Section 4.3.6.2  
27 hereof.

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**ARTICLE 4**  
**CONSIDERATION**

4.1 Consideration. In consideration for the conveyance of the Navy Real Property, the Authority shall pay to the Navy (i) an initial purchase price of Fifty Five Million Dollars (\$55,000,000) (the “**Initial Consideration**”), payable over a term of ten (10) years (as such term may be extended pursuant to Section ~~4.2.24.2.4~~ and/or Section 4.2.5 below) (the “**Initial Consideration Term**”) and (ii) Additional Consideration based on Net Cash Flow generated from the ~~Navy Property Project~~. Payments of the Initial Consideration and the Additional Consideration may be made directly by the Developer on behalf of the Authority to the Navy. All payments due hereunder shall be payable to the U.S. Treasury and sent to BRAC Program Management Office West, 1455 Frazee Road, Suite 900, San Diego, CA 92108 or to any new or substitute address specified, in writing in accordance with the notice procedure set forth herein.

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16

4.2 Initial Consideration.

4.2.1 Initial Closing. Commencing on the Initial Closing, the Authority shall pay the Initial Consideration in U.S. Dollars in ten equal annual installments of Five Million Five Hundred Thousand Dollars (\$5,500,000) (each, an “**Installment Payment**”) plus interest if and when due. The first payment of Five Million Five Hundred Thousand Dollars (\$5,500,000) shall be paid at the Initial Closing. Each subsequent Installment Payment shall be made on the Anniversary Date of the Initial Closing and shall consist of (i) the amount of the Installment Payment then due, plus (ii) the Interest Rate multiplied by the amount of the Initial Consideration that had not yet been paid as of the beginning of the prior year (i.e., the Initial Consideration minus the total of Installment Payments that were actually paid through the prior year). The Parties also intend that so long as all of the Navy Real Property has been conveyed, all of the Initial Consideration and applicable interest will have become due and payable by the expiration of the Initial Consideration Term, subject to the credit against Initial Consideration pursuant to Section ~~4.2.54.2.10~~ hereof. Notwithstanding the foregoing, if at any time Navy conveys any Parcel to a third party to the extent permitted under Section 3.8.4 hereof, the total amount of the Initial Consideration shall be reduced by the amount of consideration received by the Navy from the sale or transfer of such Parcel up to the amount of the Initial Consideration, and any interest payable thereon shall be on the reduced amount of Initial Consideration. Authority shall also be entitled to a credit against any future Installment Payment (and if insufficient Installment Payments remain to fully use the credit, against future payments of Additional Consideration) equal to the interest paid by Authority to Navy from the Initial Closing through the date of the third-party sale calculated on the amount of consideration received by the Navy from the sale or transfer of the applicable Parcel. If at the time of the third party sale, one or more Installment Payments remain due, the Installment Payments shall continue until the Navy has been paid an amount equal to the Initial Consideration less the amount of the third party sale. If the conveyance to a third party occurs after Authority has already paid the Navy Installment Payments in an amount that equals more than the Initial Consideration less amounts received by the Navy from the third party sale, then no further Installment Payments shall be due, and

1 Authority shall be entitled to credit the amount of the Authority’s overpayment against future  
2 payments of Additional Consideration that may become due under Section 4.3 hereof. Without  
3 limiting the foregoing, if this Agreement terminates as to any Parcel in accordance with Section  
4 3.8.4 hereof, then such termination shall also be treated as a Redesign Trigger Event under  
5 Section ~~4.2.3~~4.2.8 hereof.

6  
7 4.2.2 Performance Benchmarks/Tolling For Site 12. The provisions of this  
8 Section 4.2.2 apply only to the developable area of Site 12 (the “**Site 12 Development Parcel**”)  
9 as that site is shown on Exhibit B-5 attached hereto. The Navy shall comply with the following  
10 performance benchmarks for the Site 12 Development Parcel (each, a “**Site 12 Performance**  
11 **Benchmark**”) on or before the dates for those benchmarks set forth in the Conveyance Schedule:

12  
13 ~~4.2.2.1 Site 12 Performance Benchmarks. The Navy shall comply with~~  
14 ~~the following Performance Benchmarks for the Site 12 Development Parcel on or before the~~  
15 ~~dates for those benchmarks set forth in the Conveyance Schedule (each, a “Site 12 Performance~~  
16 ~~Benchmark”):~~

17 ~~4.2.2.1.1~~ 4.2.2.1 The issuance of a Record of Decision for the Site 12  
18 Development Parcel (the “**Site 12 ROD**”) that would not ~~prohibit~~preclude the timely  
19 development of the Site 12 Development Parcel in accordance with the ~~Illustrative~~DDA Land  
20 Use Plan for multi-family residential use at the densities contemplated by the Project ~~(as shown~~  
21 ~~on Exhibit Z).~~

22  
23 ~~4.2.2.1.2~~ 4.2.2.2 The Navy’s satisfaction of all Closing Conditions for  
24 transfer of the Site 12 Development Parcel to the Authority in accordance with the Conveyance  
25 Schedule and delivery of all Navy Closing Documents in accordance with Section 8.2.

26  
27 4.2.3 Other Performance Benchmarks. The provisions of this Section 4.2.3 apply  
28 only to Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel,  
29 the Building 233 Parcel, and the UC1 and UC2 utility corridors, as those parcels are shown on  
30 Exhibit B-7 attached hereto. The Navy shall comply with the following Performance Benchmark  
31 for each parcel, individually and separately. If (i) the Navy and the State of California determine  
32 that Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel, or  
33 the UC1 or UC2 utility corridors, as applicable, is impacted by radiological contamination prior to  
34 transfer of such parcel to the Authority, and (ii) such determination results in the Navy having to  
35 take additional actions to address radiological contamination, the Navy shall satisfy all Closing  
36 Conditions for the transfer of Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A,  
37 the Building 3 Parcel, the Building 233 Parcel, or the UC1 or UC2 utility corridors, as applicable,  
38 to the Authority in accordance with the Conveyance Schedule and deliver all Navy Closing  
39 Documents in accordance with Section 8.2 (the “Parcel 21 Performance Benchmark”, the

1 “Parcel 30 Performance Benchmark”, the “Parcel 30N Performance Benchmark”, the  
2 “Parcel 30S Performance Benchmark”, the “Parcel 31 Performance Benchmark”, the  
3 “Parcel 24A Performance Benchmark”, the “Building 3 Performance Benchmark”, the  
4 “Building 233 Performance Benchmark”, the “UC1 Utility Corridor Performance  
5 Benchmark”, and the “UC2 Utility Corridor Performance Benchmark”, as applicable).

6  
7 4.2.4 ~~4.2.2.2~~ Tolling for Failure to Meet Site 12 Performance Benchmarks. If the  
8 Navy fails to meet ~~thea~~ Site 12 Performance ~~Benchmarks~~Benchmark within the time provided,  
9 including by reason of an Excusable Delay, then the Authority’s obligation to pay any future  
10 Installment Payment on the Anniversary Date of the Initial Closing will be tolled for the same  
11 number of days occurring between the applicable Site 12 Performance Benchmark date and the  
12 date on which the applicable Site 12 Performance Benchmark is satisfied. If such tolling occurs,  
13 the due date for all future Installment Payments shall become the Anniversary Date of the Initial  
14 Closing adjusted for the period of tolling. For example, if the Site 12 ~~ROD~~ Performance  
15 Benchmark in Section 4.2.2 relating to the Site 12 ROD must be satisfied by ~~August 1,~~  
16 ~~2013,~~October 31, 2016, the next subsequent Installment Payment was due on January 1,  
17 ~~2014,~~2017, and ~~the Site 12 ROD~~such Performance Benchmark was satisfied on April 1,  
18 ~~2014~~2017 (a delay of ~~243-152~~ days), then the next Installment Payment would be due on  
19 ~~September 1, 2014~~June 2, 2017 (i.e. ~~243~~152 days from the original Anniversary Date of January  
20 1, ~~2014~~2017), and all future Installment Payments would be due on ~~September 1~~June 2 of  
21 subsequent years in the Initial Consideration Term unless further tolled.

22  
23 4.2.5 Tolling for Failure to Meet Other Performance Benchmarks. If the Navy  
24 fails to meet a Parcel 21 Performance Benchmark, a Parcel 30 Performance Benchmark, a Parcel  
25 30N Performance Benchmark, a Parcel 30S Performance Benchmark, a Parcel 31 Performance  
26 Benchmark, a Parcel 24A Performance Benchmark, a UC1 Utility Corridor Performance  
27 Benchmark, a UC1 Utility Corridor Performance Benchmark, a Building 3 Performance  
28 Benchmark, and/or a Building 233 Performance Benchmark established in Section 4.2.3 within  
29 the time provided, including by reason of an Excusable Delay, which Performance Benchmarks  
30 shall apply individually and separately to each such parcel, then the Authority’s obligation to pay  
31 any future Installment Payment on the Anniversary Date of the Initial Closing will be tolled for  
32 the same number of days occurring between the applicable Performance Benchmark date and the  
33 date on which the applicable Performance Benchmark is satisfied. For example, if a Performance  
34 Benchmark must be satisfied by November 30, 2015, the next subsequent Installment Payment  
35 was due on January 1, 2016, and such Performance Benchmark was satisfied on April 1, 2016 (a  
36 delay of 123 days), then the next Installment Payment would be due on May 3, 2016 (i.e. 123  
37 days from the original Anniversary Date of January 1, 2016), and all future Installment Payments  
38 would be due on May 3 of subsequent years in the Initial Consideration Term unless further  
39 tolled.

40  
41 4.2.6 Tolling for More than Two Years. If tolling under Section 4.2.4 or Section  
42 4.2.5 continues for a period of more than two (2) years, the Parties shall meet and confer in good  
43 faith to determine whether or not it is reasonably foreseeable that the Navy will be able to meet  
44 the applicable Performance Benchmark within a reasonable period of time.

1  
2 ~~4.2.7 4.2.2.3 Tolling for More than Two Years. If tolling under Section 4.2.2.2~~  
3 ~~continues for a period of more than two (2) years, the Parties shall meet and confer in good faith~~  
4 ~~to determine whether or not it is reasonably foreseeable that the Navy will be able to meet the~~  
5 ~~applicable Performance Benchmark within a reasonable period of time. Extension of Tolling~~  
6 ~~Period.~~ If the Parties determine that the reasons for the delay can be overcome through the good  
7 faith and diligent efforts of the Navy, and will likely result in the satisfaction of the applicable  
8 Performance Benchmark, then the Parties may by mutual agreement ~~adjust the Performance~~  
9 ~~Benchmark date~~ extend the applicable two (2) year tolling period to account for the delay. If the  
10 Parties do not reach agreement within sixty (60) days after the first meet and confer (subject to  
11 extension by mutual agreement of the Parties), then the procedures of Section ~~4.2.3~~4.2.8 and  
12 ~~4.2.4~~4.2.9 shall apply.

13  
14 ~~4.2.8 4.2.3 Redesign Trigger Events.~~ If (i) the Navy fails to ~~(i)~~ meet the Site  
15 ~~12~~applicable Performance ~~Benchmarks~~Benchmark within the applicable two year period and the  
16 Parties do not mutually agree to extend such period; pursuant to Section 4.2.7, or (ii) ~~if~~ this  
17 Agreement terminates as to any Parcel in accordance with Section 3.8.4 hereof (for any reason  
18 other than failure to satisfy the Closing Conditions in Section 3.7.1.8 or Section 3.7.1.10 (other  
19 than by reason of Navy’s breach of its covenants in Section 3.5.2.2), which Parcel or portion  
20 thereof is located within the development footprint (as that area is shown on the ~~Illustrative~~DDA  
21 Land Use Plan) (each of the foregoing events, a “**Redesign Trigger Event**”), the Authority shall  
22 have the right to re-entitle, redesign and rebuild portions of the Project (the “**Redesign Plan**”).  
23 The scope of the Redesign Plan shall be to the extent reasonably necessary, as determined by the  
24 Authority, to recapture the lost value to the Project resulting from the Redesign Trigger Event.  
25 The primary goal of any Redesign Plan shall be to recover an equivalent amount of development  
26 value attributable to the applicable parcel based on the level of development permitted by the  
27 Project and Developer’s financial projections, or if the parcel is an open space parcel, based upon  
28 the lost value to the Project resulting from the redesign of the affected open space. The Redesign  
29 Plan shall address the rebuilding of already constructed Horizontal Improvements to the extent  
30 necessary to accommodate the redesign, and shall identify the incremental level of additional  
31 Horizontal Improvements, if any, required as a result of the redesign.

32  
33 ~~4.2.9 4.2.4 Work Program and Budget.~~ No later than one hundred eighty (180)  
34 days after a Redesign Trigger Event (as such date may be extended in the reasonable discretion of  
35 the Navy), the Authority shall submit to the Navy a work program and budget (the “**Work**  
36 **Program**” and the “**Redesign Budget**”) for the Redesign Plan. The Work Program shall set forth  
37 the anticipated work program and schedule necessary to prepare, entitle and implement the  
38 Redesign Plan. The Redesign Budget shall estimate the anticipated costs necessary to prepare,  
39 entitle and implement the Redesign Plan (the “**Redesign Costs**”). Redesign Costs shall include,  
40 without limitation, all Soft Costs related to the Redesign Plan, including without limitation, costs  
41 associated with any subsequent environmental review that is required pursuant to CEQA, and  
42 Hard Costs related to the rebuilding, replacing, relocating or incremental cost of additional

1 Horizontal Infrastructure as necessary to accommodate the Redesign Plan. The Navy shall have  
2 ninety (90) days to review the Work Program and Redesign Budget and shall be deemed to have  
3 approved the Work Program and Redesign Budget unless it delivers a written objection notice  
4 within such ninety (90) day period including reasonably detailed grounds for any material  
5 objections thereto. The sole grounds for the Navy's objection rights shall be that the proposed  
6 Redesign Costs ~~exceeds~~exceed the scope for such costs permitted under Section ~~4.2.3~~4.2.8 hereof.  
7 Failure of the Navy to deliver a written objection notice within such ninety (90) day period shall  
8 be deemed approval of the Redesign Costs.

9  
10 4.2.10 ~~4.2.5~~ Credit for Redesign Costs. Starting on the date that is thirty (30) days  
11 after submittal of the Work Program and Redesign Budget (or in the event of a Navy objection  
12 related to the Work Program and Redesign Budget under Section ~~4.2.4~~4.2.9 that results in  
13 approved Redesign Costs, upon the resolution of such dispute) (the "**Credit Commencement**  
14 **Date**"), the period of tolling under Section ~~4.2.2~~4.2.4 or Section 4.2.5, as applicable, shall be  
15 discontinued, but Authority shall have the right to a credit against all subsequent payments of  
16 Initial Consideration or Additional Consideration up to the total amount of either (i) the Redesign  
17 Costs set forth in the Redesign Budget, or (ii) the Redesign Costs actually incurred by Developer  
18 and Authority if such amount exceeds the Redesign Costs set forth in the Redesign Budget. The  
19 Navy is not responsible for Redesign Costs that exceed the Initial and Additional Consideration.  
20 Any such credit shall also be subject to the accounting and reconciliation procedures of Section  
21 ~~4.3.7~~4.3.6 and 4.3.7.2.

22  
23 4.2.11 ~~4.2.6~~ Security for Pre-Closing Parcel Consideration and Initial  
24 Consideration.

25  
26 ~~4.2.6.1 Pre-Closing Parcel Consideration. The Authority shall sign and~~  
27 ~~deliver to the Navy through escrow at the Closing of the Pre-Closing Parcel a Promissory Note in~~  
28 ~~the principal amount of the Pre-Closing Parcel Consideration as established in accordance with~~  
29 ~~Section 4.3.5.1. The Promissory Note for the Pre-Closing Parcel Consideration shall provide~~  
30 ~~that the Pre-Closing Parcel Consideration may be paid in five annual installment payments, each~~  
31 ~~equal to one-fifth (1/5) of the Pre-Closing Parcel Consideration. The first installment payment~~  
32 ~~shall be equal to one-fifth (1/5) of the Pre-Closing Parcel Consideration, and any subsequent~~  
33 ~~installment payments shall consist of (i) the Interest Rate multiplied by the unpaid balance of the~~  
34 ~~Pre-Closing Parcel Consideration (the balance before the current installment payment is made),~~  
35 ~~plus (ii) the amount of the installment payment then due. The Promissory Note for the Pre-~~  
36 ~~Closing Parcel Consideration shall be secured solely by a non-recourse deed of trust~~  
37 ~~encumbering the Historic District. The form of the Promissory Note for the Pre-Closing Parcel~~  
38 ~~is attached to this Agreement as Exhibit HH-1, and the form of the non-recourse deed of trust~~  
39 ~~encumbering the Historic District is attached to this Agreement as Exhibit HH-2. The Parties~~  
40 ~~shall take the applicable action with respect to the Promissory Note for the Pre-Closing Parcel~~  
41 ~~Consideration, as follows:~~



1 ~~4.2.6.1.1—If the Initial Closing proceeds as described in~~  
2 ~~Section 4.3.5.2, then the Promissory Note for the Pre-Closing Parcel Consideration shall be~~  
3 ~~returned to the Authority at the Initial Closing;~~

4  
5 ~~4.2.6.1.2—If the Initial Closing does not occur because the~~  
6 ~~Agreement is terminated as described in Section 4.3.5.3, then, at the Authority’s election, which~~  
7 ~~shall be provided to the Navy in writing within thirty (30) days of the Agreement’s termination,~~  
8 ~~either (i) the Promissory Note for the Pre-Closing Parcel Consideration shall be honored~~  
9 ~~according to its terms, or (ii) the Promissory Note for the Pre-Closing Parcel Consideration shall~~  
10 ~~be returned to the Authority, and the Historic District shall revert to the Navy pursuant to the~~  
11 ~~non-recourse deed of trust; or~~

12  
13 ~~4.2.6.1.3—If (i) the Initial Closing is delayed in accordance~~  
14 ~~with Section 3.8.4, (ii) the Authority notifies the Navy of its election that the Promissory Note~~  
15 ~~for the Pre-Closing Parcel Consideration shall be honored according to its terms, and (iii) the~~  
16 ~~Parties agree on a date for payments to commence, then the Promissory Note for the Pre-Closing~~  
17 ~~Parcel Consideration shall be honored according to its terms beginning on such date agreed to by~~  
18 ~~the Parties in accordance with Section 4.3.5.4.~~

19  
20 4.2.11.1 RESERVED

21  
22 ~~4.2.6.2~~ 4.2.11.2 Initial Consideration. The Authority shall sign and  
23 deliver to the Navy through escrow at the Initial Closing a Promissory Note in the principal  
24 amount of the Initial Consideration. The Promissory Note for the Initial Consideration shall bear  
25 interest and be payable in installments as more particularly described in Section 4.2.1 above.  
26 The Promissory Note for the Initial Consideration shall be secured by (i) an Assignment of Rents  
27 encumbering the rents, issues and profits payable under all interim subleases for the Navy Real  
28 Property including, but not limited to, that certain Sublease, Development, Marketing and  
29 Property Management Agreement between the Authority and the John Stewart Company dated  
30 March 17, 1999, as amended from time to time, and any successor interim subleases or leases  
31 relating to the Navy Real Property whether executed prior to or after a conveyance hereunder,  
32 and (ii) to the extent the rents, issues and profits assigned under the Assignment of Rents are not  
33 sufficient to cover the unpaid principal and interest due under the Promissory Note for the Initial  
34 Consideration, a Subordinate Pledge of Net Available Tax Increment Revenues generated from  
35 the Navy Real Property prior to or after a conveyance hereunder. The Subordinate Pledge shall  
36 be subordinate to the pledge of Net Available Tax Increment Revenues to the holders of any  
37 bonded indebtedness and to the Developer under the DDA; provided, however, that the DDA  
38 shall provide that all such Net Available Tax Increment Revenues to be paid directly to  
39 Developer in reimbursement for the expenditure of Qualified Project Costs (as defined in the  
40 Financing Plan attached as Exhibit EE to the DDA) shall be withheld from Developer by the City  
41 and held for the account of the Navy upon the occurrence of and for the duration of any default

1 of a payment of Initial Consideration hereunder. Provided, further, that the Parties recognize that  
2 the Authority’s Assignment of Rents hereunder is subordinate to the senior security interest the  
3 Authority provided to the San Francisco County Transportation Authority under the  
4 Memorandum of Agreement for Project Management and Oversight, Engineering and  
5 Environmental Services for the Yerba Buena Ramps dated July 1, 2008, as amended. The  
6 Authority agrees that the senior security interest provided to the San Francisco County  
7 Transportation Authority and secured by Assignment of Rents, as described above, shall not  
8 exceed Eighteen Million Eight Hundred Thirty Thousand Dollars (\$18,830,000), plus accrued  
9 interest. Any additional obligation of funds by the Authority to the San Francisco County  
10 Transportation Authority in excess of Eighteen Million Eight Hundred Thirty Thousand Dollars  
11 (\$18,830,000), plus accrued interest, shall be covered by other forms of security that do not  
12 result in a subordinate position for the Navy. “**Net Available Tax Increment Revenues**” means  
13 tax increment revenues allocated by the City to any Infrastructure Financing District established  
14 for all or any portion of the Navy Real Property and received by the City. The forms of the  
15 Promissory Note for the Initial Consideration, Assignment of Rents, and the Subordinate Pledge  
16 are attached to this Agreement as Exhibit HH-3, Exhibit II, and Exhibit JJ. All rents, issues and  
17 profits payable to Developer under any agreement subject to the Assignment of Rents shall be  
18 immediately paid and payable directly to the Authority on account of the Navy, or directly to the  
19 Navy, as provided by the terms of the Assignment of Rents, commencing on, and for the  
20 duration of, any default in the payment of Initial Consideration hereunder.

21  
22 4.3 Additional Consideration.

23  
24 4.3.1 Amount of Additional Consideration. The Authority shall pay the Navy  
25 additional consideration consisting of (1) 100% of Net Cash Flow generated by the Project in  
26 excess of a Developer 18% IRR until the Navy has received Fifty Million Dollars (\$50,000,000)  
27 (the “**First Tier Participation**”), as more fully described below; and (2) 35% of Net Cash Flow  
28 generated by the Project in excess of a Developer 22.5% IRR (the “**Second Tier Participation**”),  
29 as more fully described below. The First Tier Participation and Second Tier Participation are  
30 collectively referred to herein as the “**Additional Consideration.**” Payments of Additional  
31 Consideration may be made directly by the Developer on behalf of the Authority to the Navy.

32  
33 4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the  
34 expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45)  
35 days after the expiration of each subsequent Quarter during the Term hereof, the Authority shall  
36 require the Developer to submit a reasonably detailed statement to the Authority and the Navy  
37 (the “**IRR Statement**”) accompanied by an Accounting consistent with Section 4.3.6 hereof  
38 showing (i) the cumulative IRR achieved for each of the eight (8) immediately prior Quarters for  
39 any IRR Statement provided during the Initial Consideration Term, and (ii) the cumulative IRR  
40 achieved for each of the six (6) prior Quarters for any IRR Statement provided after expiration of  
41 the Initial Consideration Term (the eight or six Quarter Period, as applicable, the “**Reporting**  
42 **Period**”). The IRR Statement shall also calculate the average IRR over the Reporting Period,  
43 calculated by adding the IRR of each Quarter in the Reporting Period and dividing the total by the

1 number of Quarters in the Reporting Period. If the IRR Statement shows that Developer has  
2 achieved an average IRR of more than 18.00% over the Reporting Period, then the Authority shall  
3 within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after  
4 the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during  
5 the Term hereof, pay the Navy an amount that would reduce the cumulative IRR to 18.00% as of  
6 the end of the Reporting Period (each, a “**First Tier Payment**”) provided that the total First Tier  
7 Payments made to the Navy shall not exceed Fifty Million Dollars (\$50,000,000). First Tier  
8 Payments shall be made until the total of all First Tier Payments equals Fifty Million Dollars  
9 (\$50,000,000). All payments of First Tier Participation shall be due and payable in accordance  
10 with Section 4.3.6 hereof.

11  
12 4.3.3 Payment of Second Tier Participation. The Authority shall continue to  
13 submit the IRR Statement and Accounting through the Termination Date. If an IRR Statement  
14 shows that Developer has achieved, after reducing Net Cash Flow by the amount of any First Tier  
15 Payments, an average IRR of more than 22.5% within any Reporting Period, then the Authority  
16 shall within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring  
17 after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter  
18 during the Term hereof, pay the Navy 35% of the total amount of Net Cash Flow that would  
19 reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (per the calculation  
20 methodology in the Exhibit DD) (a “**Second Tier Payment**”). Second Tier Payments shall be  
21 made until the Termination Date. All payments of a Second Tier Payment shall be due and  
22 payable in accordance with Section 4.3.6 hereof.

23  
24 4.3.4 Late Payments and Default. Any failure to pay Initial Consideration and  
25 associated interest or Additional Consideration within ten (10) days after the payment due date  
26 shall be considered late (“**Late Payment**”). Any Late Payment will incur a late payment penalty  
27 equal to two and one-half percent (~~2 1/2~~ 2.5%) of the payment due. Failure to make any required  
28 payment under this Agreement in full within thirty (30) calendar days shall constitute a default  
29 under this Agreement. Any Late Payment constituting a default hereunder shall accrue interest at  
30 the Default Interest Rate from the due date and the Default Interest Rate shall remain in effect on  
31 the Late Payment amount until paid. Any late payment penalty and default interest shall not be  
32 allowed as a Development Cost. Without limiting any other remedies that the Navy may have at  
33 law or equity, if the Authority is in default of this Agreement, the Navy may delay conveyances  
34 of additional Parcels without the tolling provisions of Section ~~4.2.2.24~~ 4.2.4 and 4.2.5 until the  
35 Authority has cured the default.

36  
37 4.3.5 ~~Consideration for Pre-Closing Parcel.~~ ~~RESERVED~~

38  
39 ~~4.3.5.1 The Parties shall establish the value of the Pre-Closing Parcel~~  
40 ~~within ninety (90) days following the Authority’s identification of the Pre-Closing Parcel and~~

1 ~~request for its conveyance under Section 3.2.2 (“Pre-Closing Parcel Consideration”), which~~  
2 ~~appraisal shall be conducted in accordance with Section 5.4 hereof.~~

3  
4 ~~4.3.5.2 If the Pre-Closing Parcel is conveyed to the Authority prior to the~~  
5 ~~Initial Closing, and the Initial Closing subsequently occurs in accordance with this Agreement,~~  
6 ~~then the Initial Consideration shall be deemed to include the Pre-Closing Parcel Consideration,~~  
7 ~~and no additional consideration will be due for the Pre-Closing Parcel.~~

8  
9 ~~4.3.5.3 If (i) the Pre-Closing Parcel is conveyed to the Authority prior to~~  
10 ~~the Initial Closing, (ii) the Initial Closing does not occur because the Agreement is terminated~~  
11 ~~pursuant to Section 3.8.4, and (iii) the Historic District does not revert to the Navy pursuant to~~  
12 ~~the non-recourse deed of trust as described in Section 4.2.6.1.2, then the Authority shall make its~~  
13 ~~first installment payment pursuant to the Promissory Note for the Pre-Closing Parcel~~  
14 ~~Consideration commencing ninety (90) days following the termination pursuant to Section 3.8.4,~~  
15 ~~and continuing on each anniversary date thereafter.~~

16  
17 ~~4.3.5.4 If the Pre-Closing Parcel is conveyed to the Authority prior to the~~  
18 ~~Initial Closing, and the Initial Closing is extended by mutual agreement of the Parties in~~  
19 ~~accordance with Section 3.8.4, then the Parties shall agree upon the date when the Authority~~  
20 ~~shall provide notice to the Navy that either (i) the Promissory Note for the Pre-Closing Parcel~~  
21 ~~Consideration shall be honored according to its terms, or (ii) the Promissory Note for the Pre-~~  
22 ~~Closing Parcel Consideration shall be returned to the Authority, and the Historic District shall~~  
23 ~~revert to the Navy pursuant to the non-recourse deed of trust. If the Parties mutually agree to~~  
24 ~~commence payments prior to the Initial Closing, then the Authority shall make its first~~  
25 ~~installment payment pursuant to the Promissory Note for the Pre-Closing Parcel Consideration~~  
26 ~~commencing on such date agreed to by the Parties, and continuing on each anniversary date~~  
27 ~~thereafter.~~

28  
29 ~~4.3.5.5 If the Authority pays all or any part of the Pre-Closing Parcel~~  
30 ~~Consideration to the Navy under Section 4.3.5.4, and the Initial Closing subsequently occurs,~~  
31 ~~then the principal portion of all or any part of the Pre-Closing Parcel Consideration paid to the~~  
32 ~~Navy shall be credited in full against the Initial Consideration at the Initial Closing.~~

33  
34 4.3.6 Accounting.

35  
36 4.3.6.1 Accounting. The Authority shall cause the  
37 Developer to maintain accurate books and records specific to the Project setting forth  
38 all components used for determining the Additional Consideration, including, without  
39 limitation, each component of Net Cash Flow, and to determine the amount of

1 Redesign Costs and credits against Initial and Additional Consideration. The  
2 Authority shall ensure that each IRR Statement submitted by Developer as required  
3 by Sections 4.3.2 and 4.3.3 is accompanied by a complete accounting and  
4 computations setting forth the basis of each Additional Consideration to be paid,  
5 including the Gross Revenues and Development Costs for the relevant determination  
6 period, together with a narrative description of the methodology employed to  
7 calculate each Additional Consideration Payment to be due for the relevant period  
8 (the “**Accounting**”). The Accounting shall be in conformance with generally  
9 accepted accounting ~~principals~~principles consistently applied (“GAAP”) where  
10 applicable, or with respect to the IRR Statement, in conformance with appropriate  
11 industry standards. An annual ~~accounting~~Accounting shall be provided to the Navy  
12 in accordance with Section 5.9.1 hereof. After receipt of the initial Accounting, the  
13 Navy shall either approve the Accounting in writing or provide written notice  
14 providing reasonable detail of its objections to or queries of the Accounting within  
15 ninety (90) days of receipt thereof, provided that the Navy's failure to respond within  
16 such ninety (90) day period shall be deemed consent. The Navy shall either approve  
17 each subsequent Accounting in writing or provide written notice providing reasonable  
18 detail of its objections to or queries of the Accounting within forty-five (45) days of  
19 receipt thereof, provided that the Navy’s failure to respond within such forty-five (45)  
20 day period shall be deemed consent. If the Navy objects to the Accounting, it may  
21 determine to exercise its audit rights pursuant to Section 4.3.8.

22  
23 4.3.6.2 Marina Property Accounting. The Authority shall  
24 determine on a quarterly basis all gross revenues and related expenses associated with  
25 the Marina Property, and shall prepare a reasonably detailed statement showing all  
26 net revenues received by Authority from the Marina Property. The Authority shall  
27 provide a copy of such Marina Property statement to the Navy along with each  
28 ~~accounting~~Accounting in a timely manner.

29  
30 4.3.7 Reconciliation.

31  
32 4.3.7.1 Reconciliation of Final IRR. The Authority shall,  
33 within one hundred and eighty (180) days after the Termination Date, submit a Final  
34 IRR Statement and Accounting to the Navy, showing the Developer’s IRR for the  
35 entire term of the Project (the “**Final IRR**”) and all payments of Additional  
36 Consideration made to the Navy hereunder. The Final IRR Statement and  
37 Accounting shall be performed and certified by an independent Certified Public  
38 Accountant in accordance with appropriate industry standards. If the Final IRR  
39 Statement and Accounting discloses that the Final IRR exceeded 18% but payments  
40 to the Navy of First Tier Participation were less than \$50 million, the Authority shall  
41 pay to the Navy the amount necessary to reduce the Final IRR to 18%, so long as the  
42 total of all First Tier Participation payments do not exceed \$50 million. If the Final  
43 IRR Statement and Accounting discloses that the Final IRR exceeded 22.5%, but

1 payments to Navy of Second Tier Participation hereunder totaled less than 35% of  
2 Net Cash Flow for the Project above a 22.5% Final IRR, then Authority shall cause to  
3 be paid to Navy the amount of Net Cash Flow necessary to raise the total of Second  
4 Tier Participation payments to equal 35% of all Net Cash Flow above a 22.5% Final  
5 IRR.

6  
7 4.3.7.2 Reconciliation of Redesign Costs. Within one  
8 hundred eighty (180) days after completion of all planning, entitlement, design and  
9 rebuilding work required under the Redesign Plan, as evidenced by City acceptance  
10 of all public improvements and final building inspection sign-off for all  
11 improvements as identified in the Work Program, Authority shall provide Navy with  
12 a statement that includes an accounting of all Redesign Costs actually incurred by  
13 Developer and Authority, and a statement of the amount of credit against Initial  
14 Consideration actually taken by Authority. The accounting shall be performed and  
15 certified by an independent Certified Public Accountant in accordance with GAAP.  
16 To the extent that the amount of the credits taken against Initial Consideration  
17 exceeds the actual Redesign Costs shown on the statement, Authority shall promptly  
18 cause the Navy to be paid the difference. If the amount of the credit against Initial  
19 Consideration is less than the actual Redesign Costs as shown on the Statement, then  
20 Authority shall be permitted to continue to credit Initial Consideration and Additional  
21 Consideration until the entire actual Plan Redesign Costs are recovered. The Navy is  
22 not responsible for Redesign Costs that exceed the Initial and Additional  
23 Consideration.

24  
25 4.3.8 Audit Rights. The Navy shall be entitled from time to time to audit the  
26 Developer's books, records, and accounts pertaining to the Net Cash Flow and all components  
27 thereof, the payment of Additional Consideration and the calculations, payments and credits  
28 relating to the Redesign Costs. Such audit shall be conducted during normal business hours  
29 upon ten (10) business days notice at the principal place of business of the Developer and other  
30 places where records are kept. The Navy shall provide the Developer with copies of any audit  
31 performed. If it shall be determined as a result of such audit that there has been a deficiency in  
32 the payment of any Additional Consideration or an over-credit against Initial Consideration,  
33 the Authority shall immediately pay any such deficiency with interest at the Default Interest  
34 Rate. In addition, if it shall be determined as a result of such audit that an Accounting has  
35 understated the Net Cash Flow for the applicable period by more than five percent (5%), the  
36 Authority or the Developer on behalf of the Authority, shall be required to pay, in addition to  
37 interest as aforesaid, all of the Navy's costs and expenses connected with the audit or review of  
38 Developer's accounts and records for the Project. All such payments shall be paid within thirty  
39 (30) days of receipt of written notice to the Authority of such underpayment and such audit  
40 costs shall not be allowed as a Development Cost.

41  
42 **ARTICLE 5**  
43 **CONTROLS**  
44

1           5.1     Horizontal Development Process. The Parties acknowledge that the transaction  
2 contemplated by the DDA anticipates that the Developer will (among other things) construct  
3 certain infrastructure improvements ~~and otherwise prepare~~ on the Navy Real Property ~~to be~~  
4 ~~divided into Lots that will be offered~~ after conveyance or in accordance with Section 3.12,  
5 subdivide the Navy Real Property after conveyance, and offer for sale or ground lease certain of  
6 the developable Lots for the development of the vertical improvements. As described below, the  
7 sale price or ground lease value of Lots shall be determined in accordance with this Article.

8  
9           5.2     Sale or Ground Lease of Commercial Lots.

10  
11           5.2.1   Development by Developer of Critical Commercial Lots. Those Lots  
12 designated for commercial use or development in the ~~Illustrative~~ DDA Land Use Plan  
13 (collectively, the “**Commercial Lots**”) will be divided into two groups. The first group (the  
14 “**Critical Commercial Lots**”), consists of Block M-1 A and M-1B and Buildings 1, 2 and 3, as  
15 shown on the DDA Land Use Plan, which will be developed by Developer pursuant to the terms  
16 of the DDA. Developer may ground lease or purchase (as the case may be) up to one hundred  
17 percent (100%) of the Critical Commercial Lots in accordance with this Section 5.2.1. The  
18 second group (“**Non-Critical Commercial Lots**”) consists of ~~all other Commercial Lots~~  
19 ~~including~~ Blocks C-2H, 2Y, and the Senior Officers Quarters Historic District identified on the  
20 DDA Land Use Plan, and any of the Critical Commercial Lots that Developer elects not to  
21 develop, to the extent permitted under the DDA. If Developer by itself or in joint ventures with  
22 other development partners develops the Critical Commercial Lots, the sales price or capitalized  
23 ground lease rent (as the case may be) for the Critical Commercial Lots purchased by or ground  
24 leased to Developer or the Developer joint venture entity (the “**Critical Commercial Lots**  
25 **Payment**”) shall be derived from a pro-forma (including the financial model of any vertical  
26 development that requires a subsidy) prepared by Developer ~~at~~ and approved by the Authority in  
27 connection with the approval ~~by Authority~~ of the Sub-Phase application as described in the DDA  
28 that contains the applicable Critical Commercial Lot, showing reasonable detail of projected  
29 revenues, expenses, subsidies and/or target returns associated with the Critical Commercial Lots,  
30 acknowledging that to the extent that the Critical Commercial Lots require subsidy for  
31 development, the Critical Commercial Lots Payment may be \$0.00. Developer will provide this  
32 information to an independent appraiser and shall request a letter report confirming the  
33 appropriateness of Developer’s assumptions and conclusions related to the Critical Commercial  
34 Lots. No potential or actual investor or lender shall be prohibited by an exclusivity agreement  
35 between the Developer and other investors or lenders from participating in any financing of any  
36 Commercial Lot or any other commercial product type developed by parties other than Developer.

37  
38           5.2.2   Transfer by Developer of Developed Critical Commercial Lots. Developer  
39 or the Developer joint venture entity developing the Critical Commercial Lots may, in its sole  
40 discretion, subsequently transfer (as that term is defined in the DDA) any of the developed  
41 Critical Commercial Lots (the “**Developed Critical Commercial Lots**”) to a third party,  
42 provided, however, that any and all revenues received by Developer or the Developer joint  
43 venture entity arising from or associated with the transfer of the Developed Critical Commercial  
44 Lots shall be treated as Gross Revenues hereunder. Transfer of the Developed Critical

1 Commercial Lots shall be by sale, or by sub-ground lease or assignment of ground lease,  
2 provided, however, with respect to the first transfer of a ground lease by Developer, the transferee  
3 shall be required to pay a transfer payment based upon the fair market value for the right to  
4 occupy the applicable Developed Critical Commercial Lot on the terms and conditions of the  
5 ground lease. A joint venture entity in which Developer holds an ownership interest may  
6 purchase the Developed Critical Commercial Lot and in such case, the transfer price shall be  
7 determined in accordance with the Appraisal Process described in Section 5.4 hereof. If  
8 Developer or a Developer joint venture entity elects to ~~sell~~transfer the Developed Critical  
9 Commercial Lot ~~a~~ to a third-party entity (such parcel, a “**Non-Developer Critical Commercial**  
10 **Lot**”), the transfer price shall be determined by Auction pursuant to the Auction process  
11 applicable to Commercial Lots, as set forth in Section 5.2.4 below.

12  
13 5.2.3 Sale or Ground Lease of Non-Critical Commercial Lots. At such time as  
14 deemed appropriate by the Authority and Developer pursuant to the terms of the DDA, the  
15 Authority shall convey to Developer the Non-Critical Commercial Lots. Upon such conveyance,  
16 Developer shall be required to offer by Auction the Non-Critical Commercial Lots for sale or sub-  
17 ground lease or assignment of ground lease (as applicable).

18  
19 5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical  
20 Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the Developer  
21 at the approval of each applicable Sub-Phase application(as confirmed by an appraiser letter  
22 described in Section 5.2.1) . The minimum bid price shall be set for the Auction for a Non-  
23 Developer Critical Commercial Lot ~~immediately~~no sooner than three months prior to the  
24 applicable Auction. The pool of qualified bidders in the Auction of any Non-Critical Commercial  
25 Lots or any Non-Developer Critical Commercial Lots shall be determined by the Authority and  
26 Developer prior to the applicable Auction based on the Auction Bidder Selection Guidelines  
27 applicable to Commercial Lots (attached hereto as Exhibit S-2). The pool of qualified bidders in  
28 the Auction of any Non-Critical Commercial Lot or any Non-Developer Critical Commercial Lot  
29 and the minimum bid price for the Auction of Non-Developer Critical Commercial Lots shall be  
30 provided to the Navy at least 10 days prior to the applicable Auction. If no qualified bids are  
31 received for the Non-Critical Commercial Lots, Developer and/or its affiliates will have the  
32 option to purchase such Commercial Lot(s) based upon an appraisal in accordance with Section  
33 5.4 hereof. If Developer does not exercise the option to purchase unsold Non-Critical  
34 Commercial Lot(s), the Authority and Developer shall mutually agree upon a new minimum bid  
35 price to be used in a new Auction, which may take the form of adjustment to the pro forma  
36 minimum bid price or an appraisal. In such case, the Authority shall cause Developer to re-bid  
37 the Non-Critical Commercial Lot at such time deemed appropriate by the Authority and  
38 Developer pursuant to the terms of the DDA. If no minimum bids from qualified bidders are  
39 received for the Non-Developer Critical Commercial Lots that are acceptable to Developer,  
40 Developer shall reserve the right to withdraw the Non-Developer Critical Commercial Lot from  
41 sale and re-bid the Non-Developer Critical Commercial Lot at such future time deemed  
42 appropriate in accordance with the terms of the DDA.

43



1           5.3     Sale of Market Rate Lots. ~~Those~~ Lots identified on the ~~Illustrative~~DDA Land Use  
2 Plan as appropriate for the development of residential units that are sold or leased at  
3 predominantly market rates (the “**Market Rate Units**”) shall be referred to in this Agreement as  
4 the “Market Rate Lots.” Developer may purchase Market Rate Lots for up to sixty percent  
5 (60%) of the Market Rate Units (the “**Developer Lots**”), at a purchase price established by the  
6 Appraisal Process described in Section 5.4. Market Rate Lots for approximately twenty percent  
7 (20%) of the Market Rate Units shall be available for purchase (at a purchase price established  
8 by the Appraisal Process set forth in Section 5.4) by joint ventures in which the Developer or its  
9 affiliates have no more than a fifty percent (50%) ownership interest and under which a non-  
10 affiliated joint venture partner exercises management control as the “managing partner” (or  
11 member, as the case may be) of the joint venture entity (collectively, the “**JV Lots**”). In order to  
12 ensure that the Developer Lots and JV Lots are sold at fair market value, Market Rate Lots for  
13 approximately twenty percent (20%) of the Market Rate Units will be offered for sale via  
14 Auction (collectively, the “**Residential Auction Lots**”) in accordance with Section 5.5. No  
15 potential or actual investor or lender shall be prohibited by an exclusivity agreement between the  
16 Developer and other investors or lenders from participating in any financing of any Market Rate  
17 Lot or any other residential product type developed by parties other than Developer.

18  
19           5.3.1   Developer Lots. Unless otherwise agreed upon by the Parties in their  
20 reasonable discretion, no more than one-third of the Developer Lots (which also equals 20% of  
21 the Market Rate Lots) can be sold directly to Developer, and the balance of the Developer Lots  
22 may be sold to an entity or entities comprised of some or all of the same partners as Developer,  
23 but having a materially different capital structure than Developer, in accordance with the  
24 Appraisal Process. Concurrent with the sale of any Developer Lot to an entity or entities  
25 comprised of some or all of the same partners as Developer, but having a materially different  
26 capital structure than Developer, a duly authorized officer of Developer shall provide the  
27 Authority and Navy with a certified statement that the prospective purchaser has a materially  
28 different capital structure than Developer. For purposes hereof, an entity having a “materially  
29 different capital structure” means an entity comprised of some or all of the same partners as  
30 Developer but one in which there has been a cumulative change of at least 25% in the capital  
31 positions of all the partners, and at least one of the partners has changed its capital position by at  
32 least 15%. Before the close of each Sub-Phase within each Major Phase, the Developer will  
33 provide to the Authority and Navy a list of equity investors for that Sub-Phase. During the  
34 implementation of any Sub-Phase, Developer will provide to the Authority and Navy  
35 immediately prior to the sale of any parcels to an affiliate of Developer or the equity investors of  
36 that Major Phase, a notice of such affiliate sale which notice shall describe why the sale is  
37 permitted under the terms of this Agreement. Prior to the close of any sale directly to Developer,  
38 the Authority shall cause Developer to provide to the Navy a letter from a real estate broker or  
39 licensed real estate professional familiar with the Bay Area market who is not an affiliate of the  
40 Developer and has no equity investment in the Developer in such Sub-Phase, finding that  
41 acquisition and development of the Market Rate Lot by the Developer is appropriate in the  
42 context of then-existing market conditions. The basis of such findings could include, but is not  
43 limited to, establishing a new product type, initiating or establishing the development of a new  
44 phase in the Project, responding to changes in market conditions, or other similar market-based  
45 factors. Any disputes arising out of this Section 5.3.1 shall be referred to the arbitration process  
46 for other disputes set forth in Section 27.3.3 hereof.

1

2           5.4 Appraisal Process. The process described in this Section 5.4 (the “**Appraisal**  
3 **Process**”) shall apply to ~~the Pre-Closing Parcel,~~ the Developer Lots, the JV Lots and those  
4 Developed Critical Commercial Lots and Non-Critical Commercial Lots for which an appraisal  
5 is required under Sections 4.3.5.1, 5.2.2 or 5.2.4. The Authority and Developer shall confer and  
6 select an appraiser from the Qualified Appraiser Pool for each such ~~Pre-Closing Parcel,~~  
7 Developed Critical Commercial Lot, Developer Lot, Non-Critical Commercial Lot or JV Lot to  
8 be appraised. An appraisal used for the purpose of determining the parcel sale price (or ground  
9 lease rent, if applicable) shall be updated if a sales contract (or ground lease) for such parcel has  
10 not been executed within one (1) year from the date of the appraisal.

11

12           5.4.1 Qualified Appraiser Pool. Appraisals of ~~the Pre-Closing Parcel required~~  
13 ~~to be appraised under Section 4.3.5.1,~~ any Developed Critical Commercial Lots required to be  
14 appraised by Section 5.2.2, the Developer Lots, Non-Critical Commercial Lots required to be  
15 appraised under Section 5.2.4 and JV Lots shall be conducted by a qualified appraiser, which  
16 for purposes of this Agreement and the DDA shall be defined as an appraiser (i) licensed in the  
17 State of California as a Certified General Appraiser and holding the MAI designation from the  
18 Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm,  
19 or regional firm based in California, (iii) who is not an affiliate of the Developer and has no  
20 equity investment in the Developer or the Project investors, (iv) who has particular experience  
21 with coastal California real property transactions involving the Product Type that is the subject  
22 of the appraisal, and (v) who has no conflict of interest as evidenced by contractual  
23 relationships with Developer either existing or in the immediately prior 24 months, unless a  
24 conflict waiver is obtained from the Navy. The Parties have agreed upon a list of pre-qualified  
25 appraisers, which list is attached hereto as Exhibit Y (the “**Qualified Appraiser Pool**”). From  
26 time to time, either Party may propose in writing to add or subtract additional persons meeting  
27 the above qualifications. If the Parties disagree on a proposed addition or subtraction, then the  
28 Parties shall follow the dispute resolution procedure set forth in Section 27.3.2.

29

30           5.4.2 Appraisal Instructions. The selected appraiser shall appraise the  
31 applicable ~~Pre-Closing Parcel,~~ Developer Lot, JV Lot, Non-Critical Commercial Lot (to the  
32 extent subject to appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the  
33 extent subject to appraisal by Section 5.2.2) utilizing ~~appraisal instructions by appropriate~~  
34 ~~Product Type substantially in the form of those~~ either the Residential Lots Appraisal Instructions  
35 attached hereto as Exhibit X-1 through X-4, or the Commercial Lots Appraisal Instructions  
36 attached hereto as Exhibit X-3, as applicable, as the Parties hereto may agree to amend from time  
37 to time which agreement shall not be unreasonably withheld, conditioned or delayed. If an  
38 Excess Land Appreciation Structure is established in a Major Phase by Product Type, such  
39 structure will be deemed to apply to all Market Rate Lots in the applicable Major Phase, and the  
40 appraisal instructions shall incorporate such terms. If an Excess Land Appreciation Structure  
41 established for a Major Phase is later revised in connection with a Sub-Phase, in accordance with  
42 Section 5.6 hereof, then such structure will be deemed to apply to all Market Rate Lots in the  
43 applicable Sub-Phase, and the appraisal instructions shall incorporate such terms. If material

1 changes are proposed to appraisal instructions, including assumptions, special assumptions,  
2 limiting conditions, hypothetical conditions, and other special instructions, the requesting Party  
3 shall propose such amendment in writing, and, if the Parties disagree, they shall follow the  
4 dispute resolution procedure set forth in Section 27.3.2.

5  
6 5.4.3 Notification of Appraisal. The Authority shall provide to the Navy  
7 documentation of appraiser selection and appraisal instructions prior to the commencement of the  
8 appraisal and shall provide a copy of the complete appraisals promptly following completion of  
9 all appraisals.

10  
11 5.5 Auction Process for Residential Auction Lots. The Authority and Developer in  
12 connection with the approval of each Major Phase application, as described below in Section 5.6,  
13 shall jointly determine the pool of qualified bidders for each Auction of an Auction Lot based on  
14 the Auction Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit  
15 S-1), as agreed upon by the Parties. In the event no qualified third party bids are received at or  
16 above the minimum bid price (as described in Section 5.6.3) for the Residential Auction Lots,  
17 Developer and/or its affiliates will have the option to purchase such Auction Lot(s) at the  
18 minimum bid price and any Residential Auction Lots so acquired by Developer shall not be  
19 deemed to apply against the percentage limits otherwise applicable to the Developer Lots or the  
20 JV Lots. If Developer does not exercise the option to purchase unsold Auction Lot(s), the  
21 Authority and Developer shall mutually agree upon a new minimum bid price to be used in a  
22 new Auction (the “**Re-Setting of the Minimum Bid Price**”). The Re-Setting of the Minimum  
23 Bid Price may take the form of adjustment to the pro forma minimum bid price or an appraisal.  
24 All costs associated with the Auction shall be treated as Development Costs.

25  
26 5.5.1 Timing of Residential Auction Lots Selection. The Residential Auction  
27 Lots will be selected by mutual agreement by the Authority and the Developer prior to  
28 approval of each Major Phase application.

29  
30 5.5.2 Residential Auction Lots as Benchmarks. The Auction Lot sales prices,  
31 as deemed appropriate by the appraisers, and other relevant market data shall be used as  
32 comparables in the appraisal process for the Developer Lots and the JV Lots. The mix of  
33 Product Types of the Market Rate Lots subject to Auction shall roughly mirror that of the  
34 Market Rate Lots to be allocated and sold in that Major Phase, with a goal of selecting at least  
35 one representative parcel for each Market Rate Lot Product Type offered in that Major Phase.  
36 For the purposes of this Agreement and the DDA, “**Product Types**” are defined as a  
37 residential building with a typical unit count and building typology that allows general  
38 assumptions of construction costs. Examples of such Product Types are townhomes; low rise  
39 (up to 70’ in height); mid rise (above 70’ and up to 125’ in height) and towers (above 125’ in  
40 height).

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5.5.3 Guidelines for Residential Auction Lots Selection. The distribution and selection of the Residential Auction Lots shall be based on a principle of nondiscrimination. The selected Residential Auction Lots shall be generally representative of the average advantages and disadvantages of the Market Rate Lots to be developed in that Major Phase. Factors to be considered in such selection include, but are not limited to, parcel size, views, proximity to parks, proximity to the transit center, proximity to the Job Corps site, proximity to the Bay Bridge, proximity to the retail core and exposure to wind (collectively, the “**Guidelines for Residential Auction Lot Selection**”), attached hereto as Exhibit FF.

5.6 Major Phase Decisions. Prior to approval of each Major Phase or Sub-Phase application, as applicable, the decisions in this Section 5.6 (collectively, the “**Major Phase Decisions**”) shall be agreed upon by the Authority and the Developer and notice thereof shall be provided to the Navy as more fully described in Section 5.7 below. The foregoing notwithstanding, pursuant to the DDA, the Developer or the Authority may, at its election, request amendments of, or modification of, Major Phase Decisions in connection with each Sub-Phase within the Major Phase and during the course of each Sub-Phase. If the Authority and Developer agree upon such amendments or modifications to the Major Phase Decision(s), notice of such amendment or modification shall be provided to the Navy in accordance with Section 5.7 below and the Navy shall have ~~an exercise any rights of objection~~the right to object to such amendment or modification in accordance with Section 5.7 hereof.

5.6.1 Prior to approval of each Major Phase, the proposed location of Residential Auction Lots within that Major Phase as shown on a revised land plan for that Major Phase showing the distribution of various Product Types.

5.6.2 Prior to approval of each Major Phase, the qualifications of Residential Auction Lot bidders by Product Type for that Major Phase based on the applicable Auction Bidder Selection Guidelines.

5.6.3 Prior to approval of each applicable Sub-Phase, minimum bid prices for the Residential Auction Lots and the Non-Critical Commercial Lots located within that Sub-Phase, which shall be based on the pro forma, as updated prior to approval of the application for such Sub-Phase, as well as any Re-Setting of the Minimum Bid Price, as described above.

5.6.4 Prior to approval of each Major Phase ~~or~~(and each Sub-Phase if updated by Developer at such time), the Excess Land Appreciation Structure for that Phase for each Product Type in such Phase. For purposes of this Agreement and the DDA the “Excess Land

1 Appreciation Structure” is defined as the structure, procedures and metrics of the then-  
2 prevailing, industry standard market based participation in price appreciation greater than  
3 forecast at the time of such pad sale (if any) for horizontal development land sellers.

4  
5 5.7 Navy Objection Rights to Major Phase Decisions.

6  
7 5.7.1 Notice. The Authority shall send a notice to the Navy in writing providing  
8 the details of the Major Phase Decisions (the “**Major Phase Decision Notice**”). The Navy shall  
9 have the right to reasonably object to any of the Major Phase Decisions (or any component part  
10 thereof) if the Navy believes any of the following is true with respect to the Major Phase Decision  
11 at issue: (i) the mix of Product Types for the Residential Auction Lots were not sufficient to  
12 achieve adequate benchmarking for that Major Phase; or (ii) the Guidelines for Residential  
13 Auction Lot Selection were not followed; or (iii) the Excess Land Appreciation Structure is not  
14 commensurate with industry practice, market based participations for that Product Type in such  
15 Major Phase, or Sub-Phase as applicable; or (iv) the Auction Bidder Selection Guidelines were  
16 not followed.

17  
18 5.7.2 Right to Object. The Navy shall have ten (10) business days from certified  
19 receipt of the Major Phase Decision Notice to object in writing, which grounds may include  
20 failure to provide adequate information necessary for the Navy’s review, and any such objection  
21 shall state with specificity the item or items to which the Navy objects or the items of additional  
22 information reasonably requested by Navy. Failure to so object in writing within such ten (10)  
23 business day period shall be deemed consent. The Authority shall have five (5) business days to  
24 respond to the objection or to seek to confer, as more fully set forth in Section 27.2. If the  
25 Authority responds and the Parties do not reach agreement with one another after such response,  
26 either Party can request to confer (as set forth in Section 27.2.1). If a conference is requested, the  
27 Parties shall confer and attempt to resolve the outstanding objections within five (5) business days  
28 of the conference request. Failure to reach agreement at such meeting shall be referred to the  
29 expedited dispute resolution process set forth more fully in Section 27.3.2.

30  
31 5.8 Audit Rights and Reporting. The Authority agrees to submit to the Navy annual  
32 audited financial statements specific to this Project within thirty (30) calendar days of  
33 completion of the annual audited financial statements, which completion shall in no case be later  
34 than ninety (90) calendar days after the end of the year being audited. The Navy shall have  
35 commercially reasonable access to the Developer’s auditors if the Navy needs clarifications  
36 relating to the financial statements. Authority shall provide Navy with annual statements of its  
37 records maintained pursuant to Section 5.13.2 hereof, certified by Authority’s chief financial  
38 officer or equivalent.

1           5.9     DDA Audit Rights and Reporting. The Authority agrees to provide the Navy with  
2 copies of the DDA Reports and any audits promptly upon their receipt by the Authority and  
3 further agrees to cause the DDA to provide the following audit rights and reporting requirements  
4 for the benefit of the Authority and the Navy, provided, however, that the Navy shall treat such  
5 information as confidential to the fullest extent permitted under all laws, rules and regulations  
6 applicable to the Navy related to public disclosure of information as long as such confidentiality  
7 does not in any way limit the Navy's remedies hereunder:

8  
9           5.9.1   ~~The~~Following the Initial Major Phase Approval, the Authority shall cause  
10 the Developer shall to provide to the ~~Authority and the Navy, within ninety (90) calendar days~~  
11 ~~after~~Navy, no later than four (4) months following the end of each ~~year~~Developer Fiscal Year, an  
12 annual Accounting for the preceding Developer Fiscal Year consistent with the requirements of  
13 Section ~~4.3.6.1 annualized,~~4.3.6.1, including reports of Gross Revenues and Development Costs,  
14 including Net Cash Flow, specified by Major Phases and including a cumulative project level  
15 summary of IRR, executed by the Developer's Chief Financial Officer, certified by the Developer  
16 and reviewed by an independent accounting firm. As set forth in Section 1.6(a)(i) of the  
17 Financing Plan attached to the DDA, if the Developer obtains a Major Phase Approval less than  
18 six (6) months before the end of the Developer Fiscal Year, the reporting may commence for that  
19 Major Phase following the close of the following Developer Fiscal Year.

20  
21           5.9.2   A summary pro forma (including the financial model of any vertical  
22 development that requires a subsidy) will be attached to the DDA as an exhibit and the budget  
23 will be updated by the Developer prior to the approval of each Major Phase or Sub-Phase  
24 application and submitted to the Authority and the Navy for its review.

25  
26           5.9.3   ~~The pro forma budget will be updated by~~In conjunction with the annual  
27 Accounting, the Developer ~~and submitted~~shall submit to the Authority and the Navy ~~annually~~an  
28 updated pro forma budget in both a printed and electronic form. The electronic form of the pro  
29 forma must be in Microsoft Excel 2007 or its successor format.

30  
31           5.9.4   The DDA shall provide the Authority and the Navy the right, but not the  
32 obligation, to audit the books and accounts of the Developer no more frequently than once per  
33 twelve (12) month period, unless such audit reveals a discrepancy in the calculation of Gross  
34 Revenues and/or Development Costs or the Developer is otherwise in material default of its  
35 financial obligations under the DDA. The Authority, or the Navy, as the case may be, shall bear  
36 all costs of such audit unless the results of the audit demonstrate more than a five percent (5%)  
37 discrepancy between the results of the audit and the annual financial statements provided by the  
38 Developer. Payment by the Authority of audit costs shall not be allowed as a Development Cost  
39 if there is a discrepancy of more than five percent (5%). All such reports and audits are subject to

1 the Authority’s obligation to treat such information as confidential to the full extent permitted by  
2 law. The Navy shall treat such information as confidential to the fullest extent permitted under all  
3 laws, rules and regulations applicable to the Navy related to public disclosure of information as  
4 long as such confidentiality does not in any way limit the Navy’s remedies hereunder.

5  
6 5.10 DDA Timelines. The Authority shall provide a Schedule of Performance  
7 establishing commercially reasonable timelines for completion of each Major Phase, subject to  
8 industry standard force majeure provisions, including regulatory, economic and litigation force  
9 majeure.

10  
11 5.11 Limit on Soft Costs for Purposes of Calculating Consideration. Except for a  
12 reasonable limit on Developer management and overhead fees as further provided herein,  
13 Developer Soft Costs will not be capped, but will be subject to a “reasonableness” standard,  
14 certain approval rights by the Authority, and subject to audit by the Authority. The Authority  
15 agrees that “reasonable” Developer’s Soft Costs shall be defined as “incurred in a manner that is  
16 consistent with an efficient, well-managed project of comparable scope, duration and complexity  
17 and is commensurate with market-based charges by third party providers for similar projects.”  
18 Whether or not the Developer utilizes unrelated third-party contractors for development,  
19 construction and property management services, such management fees and costs will not exceed  
20 market-based charges by third-party providers for similar projects, taking into account the level  
21 of project management, auditing and reporting requirements. The Developer may provide such  
22 management services internally, or through a combination of internal management services and  
23 third-party management contractors not owned or controlled by Developer. For purposes of  
24 determining Soft Costs for any particular scope of work, a construction management fee may be  
25 included not to exceed the lesser of four percent (4%) of Hard Costs or actual construction  
26 management fees actually incurred for such scope; a property management fee may be included  
27 not to exceed the lesser of two and one-half percent (2.5%) of lease revenues or actual property  
28 management fees actually incurred for such scope; and a development/project management fee  
29 not to exceed the lesser of three percent (3%) of Hard Costs or actual development/project  
30 management fees actually incurred for such scope. If the actual and reasonable costs incurred by  
31 Developer exceed the above limits, Developer, on behalf of the Authority may submit a request  
32 to the Navy to approve the increase of any applicable fee to an amount equal to the actual cost.  
33 Such requests shall be made in writing with appropriate supporting documentation. Failure of  
34 the Navy to respond in writing to any such request within thirty (30) days shall be deemed  
35 consent. Navy’s consent shall not be unreasonably withheld or delayed, and Navy shall make its  
36 determination within thirty (30) days of Developer’s request. If Navy requests additional  
37 information as may be reasonably required to make its determination within ten (10) days of  
38 Developer’s request, then Navy shall make its determination denying or granting the request  
39 within thirty (30) days after receipt of such additional information. The Navy shall only deny its  
40 consent if it reasonably determines, as evidenced by its written determination provided to  
41 Developer and the Authority, that the cost limit exceedance is inconsistent with current market  
42 standards as applied to the scope and nature of the Project and the fee limit request is  
43 unreasonable under the circumstances. Any such exceedance objected to by the Navy in  
44 accordance with this Section shall not be included as Development Cost .

1  
2           5.12 Limit on City Fees and Exactions. The Authority shall limit City fees and  
3 exactions to those fees and exactions as set forth in the DDA, at the rate or amounts in effect as  
4 of the date of the DDA for a period of time specified in the DDA. The agreed upon development  
5 fees and exactions for the Project will be fixed for a specified period of time (through a  
6 Development Agreement or other legally enforceable mechanism) and the application of new  
7 fees and exactions and changes in City regulations will be limited over the life of the  
8 Development Agreement. To the extent legally permissible, the DDA and Development  
9 Agreement shall include certain limits on the authority of the City and the Authority to impose  
10 new or amend City laws and regulations that would have a material adverse effect on the  
11 horizontal or vertical development by the Developer or Vertical Builders or the rights and  
12 obligations of the Developer or any Vertical Builder under the DDA, Vertical DDA,  
13 Development Agreement or other applicable transactional documents. Any City fees and  
14 exactions in violation of these limitations will not qualify as Development Costs.

15  
16           5.13 ~~Economic Development Purposes~~Reinvestment of Real Estate Proceeds. Any  
17 proceeds from a sale, lease, or equivalent use of the Navy Real Property (i.e., any mechanism  
18 that serves to accomplish the same purposes of a sale or lease such as licenses, permits,  
19 concession agreements, etc.) received by the Authority for the Navy Real Property during the  
20 first seven (7) years after the recording date of the ~~first Quitclaim Deed for a part of the Navy~~  
21 ~~Real Property~~last transfer of property to the Authority, must be used to pay the Navy the Initial  
22 Consideration and the Additional Consideration as set forth herein, or to support long-term job  
23 creation and the economic redevelopment of, or related to, the Navy Real Property. Tax  
24 revenues shall not be construed to be proceeds from a sale, lease, or equivalent use of the Navy  
25 Real Property.

26  
27           5.13.1 Examples of Allowable Uses of Proceeds. Allowable uses of proceeds  
28 pursuant to Section 5.13 include payment for, or offsetting the costs of public investment, for the  
29 following purposes:

30  
31                   5.13.1.1       Land acquisition;

32  
33                   5.13.1.2       Road construction;

34  
35                   5.13.1.3       Transportation management facilities;

36  
37                   5.13.1.4       Storm and sanitary sewer construction;



- 1                   5.13.1.5     Police and fire protection facilities and other public  
2 facilities;
- 3
- 4                   5.13.1.6     Utility construction;
- 5
- 6                   5.13.1.7     Building rehabilitation;
- 7
- 8                   5.13.1.8     Historic property preservation;
- 9
- 10                  5.13.1.9     Pollution prevention equipment or facilities;
- 11
- 12                  5.13.1.10    Demolition;
- 13
- 14                  5.13.1.11    Disposal of hazardous materials generated by demolition;
- 15
- 16                  5.13.1.12    Landscaping, grading, and other site or public  
17 improvements; and
- 18
- 19                  5.13.1.13    Planning for or the marketing of the redevelopment and  
20 reuse of the Navy Real Property.

21

22                  Other activities on the Navy Real Property that are related to those listed above  
23 (including, for example, new construction related to job creation and economic redevelopment,  
24 construction of affordable housing, environmental remediation of the Navy Real Property,  
25 environmental insurance, any other capital improvements required to support the economic  
26 redevelopment of the Navy Real Property, management and leasing of the Navy Real Property  
27 needed to market its redevelopment and reuse and implementation, oversight and regulation of  
28 redevelopment of the Navy Real Property via any contracts with public or private entities) would  
29 also be considered an appropriate, allowable use of such proceeds.

30

31                  5.13.2 Records. Consistent with standard accounting practices for tax purposes,  
32 the Authority shall maintain adequate records and books of account for income and expenses  
33 related to the redevelopment of the Navy Real Property detailing transactions described in Section  
34 5.13 and Section 5.13.1. The Authority shall provide the Navy with access to such records and  
35 books of account and proper facilities for inspection thereof at all reasonable times.

36

37                  5.13.3 Recoupment of Proceeds. The Navy may recoup all proceeds described in  
38 Section 5.13, which have not been reinvested in allowable uses described in Section 5.13 or

1 Section 5.13.1. If recoupment is desired after review of annual financial statements, the Navy  
2 shall notify the Authority in writing that it intends to recoup proceeds in a specific amount,  
3 describing why it believes that those proceeds have not been reinvested as required by Section  
4 5.13 or Section 5.13.1. Within sixty (60) days of receipt of such notification, the Authority shall  
5 submit its response to the Navy. Within sixty (60) days of receipt of the Authority's response or  
6 within sixty (60) days of the date the Authority's response was due under this Section, the Navy  
7 shall issue its decision on the matter, which shall be final and binding on the Authority, subject to  
8 the dispute resolution procedures contained in Article 27. The Authority shall pay the amount of  
9 recoupment due within sixty (60) days of final resolution of the dispute.

10  
11 5.14 Covenant of Good Faith and Fair Dealing. The Authority will provide that the  
12 DDA will be subject to, and the Parties agree that this Agreement is subject to a covenant of  
13 good faith and fair dealing.

14  
15 ~~5.15 Use of Pre-Closing Parcel. If the Pre-Closing Parcel is conveyed to the Authority~~  
16 ~~in advance of the Initial Closing and the Pre-Closing Parcel includes the Historic District or~~  
17 ~~property that is or may be eligible for listing on the National Register pursuant to Section 3.2.2,~~  
18 ~~then the Authority may use the Parcel only for those uses allowed under that certain Master~~  
19 ~~Lease dated \_\_\_\_\_, until such time as the Authority pays the Pre-Closing Parcel~~  
20 ~~Consideration.~~

21  
22 **ARTICLE 6**  
23 **CONTRACTS AND PERMITS DEVELOPMENT AND DISPOSITION AGREEMENT**

24  
25 6.1 Upon full execution and delivery, the Authority will deliver a copy of this  
26 Agreement to the Developer, and this Agreement shall become the Conveyance Agreement as  
27 defined in the DDA (and attached as Attachment 2 to the DDA), thereby incorporating the  
28 applicable terms of this Agreement into the DDA.

29  
30 **ARTICLE 7**  
31 **EASEMENTS, CONTRACTS, PERMITS AND OTHER SIMILAR INSTRUMENTS**

32  
33 7.1 Assignable Easements, Contracts and Permits. As part of the Initial Closing, the  
34 Navy shall assign to the Authority (i) the assignable easements, leases, licenses and  
35 encroachment permits held by the Navy over, under, or through non-Navy owned property  
36 necessary for the operation, maintenance, or improvement of the Property, and (ii) the assignable  
37 contracts, permits or other agreements relating to the Navy Property that the Authority has  
38 agreed to assume, each as listed on Exhibit I-1, attached hereto (collectively, the "Assignable  
39 Easements, Contracts and Permits").

1  
2 7.2 ~~6.1~~ The Navy agrees to assist the Authority, as deemed appropriate by mutual  
3 agreement of the Parties, to enable the assignment and amendments required for any assignable  
4 contracts, ~~permits~~, licenses, ~~permits~~ permits, or other agreements ~~relating to Navy Property that~~  
5 ~~Authority agrees to assume on each Parcel are limited to the following~~ that were in existence on  
6 the Effective Date of this Agreement and that are identified by either of the Parties after Closing  
7 as necessary for the Authority to develop the Navy Real Property.

8 ~~(the “Contract Assumption List”)~~

9  
10 ~~[specifically list the assignable contract, permits or agreements in this Section].~~

11  
12 ~~6.2~~ ~~At the Initial Closing, the Navy shall assign to the Authority the contracts,~~  
13 ~~licenses, permits or other agreements listed in Section 6.1.~~

14  
15 **ARTICLE 7**  
16 **EASEMENTS AND OTHER SIMILAR INSTRUMENTS**

17  
18 7.3 ~~7.1~~ Access and Utility Easements or Other Similar Instruments. At each Closing,  
19 the Navy shall grant to the Authority or reserve to itself ~~the following~~ easements, licenses, rights  
20 of way, or other similar instruments, as applicable, and at locations mutually and reasonably  
21 agreeable to the Parties and adjusted from time to time.

22  
23 7.3.1 ~~7.1.1~~ Access Easements.

24  
25 7.3.1.1 ~~7.1.1.1~~ The Navy shall grant to the Authority non-  
26 exclusive easements, licenses, rights of way, or other similar instruments for ingress  
27 and egress on, over and across existing roads on Navy owned Parcels for pedestrian,  
28 vehicular and other access ~~(the “Road Easement”)~~ as required to connect the  
29 Authority owned Parcels to each other and to connect the Authority owned Parcels to  
30 publicly accessible roads adjacent to the Navy owned Parcels (the “**Authority Access**  
31 **Easements**”). At the Initial Closing, the Authority Access Easements related to the  
32 FOST Parcel shall be granted for the area ~~described in Exhibit I-4 attached hereto,~~  
33 ~~or~~ reasonably necessary to provide the Authority reasonable access to its property.  
34 The Authority Access Easements will be provided in an easement agreement or, to  
35 the extent mutually agreed by the Parties, in the applicable Quitclaim Deeds or as a  
36 license, right of way, or other similar instrument. The Parties shall negotiate in good  
37 faith subsequent Authority Access Easements related to other Parcels prior to the  
38 subsequent Closing of each such Parcel.

1                                 7.3.1.2   ~~7.1.1.2~~—The Navy may reserve to itself, its  
2 successors and assigns non-exclusive easements or other similar instruments for  
3 ingress and egress on, over and across existing roads on Parcels to be conveyed to the  
4 Authority for pedestrian, vehicular and other access as required to connect the Navy  
5 owned Parcels to each other, to connect the Navy owned Parcels to publicly  
6 accessible roads adjacent to the Parcel to be conveyed to the Authority (“**Navy  
7 Reserved Access Easement**”). The Navy may reserve non-exclusive easements or  
8 other similar instruments for access to third parties that own portions of the former  
9 Naval Station Treasure Island, which were previously disposed of and conveyed by  
10 the Navy, for ingress and egress on, over and across existing roads on Parcels to be  
11 conveyed to the Authority for pedestrian, vehicular and other access as required to  
12 connect third party owned parcels of real property to public roads adjacent to the  
13 Parcel to be conveyed to the Authority (“**Third Party Access Easement**”). The  
14 Navy Reserved Access Easement and Third Party Access Easement are collectively  
15 referred to as the “**Navy Access Easements.**” ~~Such Navy Access Easements shall be  
16 reserved or granted by the Navy substantially in conformance with the areas shown  
17 on Exhibit I-6.~~

18  
19                                 7.3.1.3   ~~7.1.1.3~~—The Authority Access Easements and Navy  
20 Access Easements shall include the following:

21  
22   ~~7.1.1.3.1~~ 7.3.1.3.1 Each Party shall have the right, but  
23 not the obligation, to access, repair and maintain such roads, at its own expense, and  
24 to the extent that such access, repair or maintenance does not interfere with the  
25 development or the environmental remediation of any of its own property.

26  
27   ~~7.1.1.3.2~~ 7.3.1.3.2 Use of existing roadways by the  
28 Parties to the Authority Access Easements or Navy Access Easements, or their  
29 successors or assigns, shall be at the sole cost and expense of said Parties, their  
30 successors and assigns, without any representation or warranty on the part of the  
31 Parties regarding the condition or state of repair of said roadways or any obligation to  
32 make, or liability for, any alterations, improvements, repairs or additions thereto.

33  
34   ~~7.1.1.3.3~~ 7.3.1.3.3 The location of the Authority Access  
35 Easements and Navy Access Easements will be adjusted from time to time as  
36 necessary to accommodate the redevelopment activity. The Party on whose property  
37 the Authority Access Easements or Navy Access Easements exists (the “**Owner  
38 Property**”) shall not redevelop, close, abandon, reconfigure or replace existing  
39 roadways within such easement in such a manner that would unreasonably interfere  
40 with the ability of the other Party to exercise its access rights to the easement except  
41 where the Party on whose property the Authority Access Easements or Navy Access  
42 Easements exists provides the other Party with suitable comparable alternative access  
43 over other areas of the Property. Where such redevelopment, closure, abandonment,

1 reconfiguration or replacement is necessary to conduct actions required by the  
2 redevelopment that results in such roadway subject to this easement no longer  
3 providing the intended access or otherwise ceasing to exist, the Authority Access  
4 Easement or Navy Access Easements, as applicable, shall be moved from time to  
5 time to include, in the following order of priority either (i) access over other  
6 improved roads that may exist on the Owner Property, (ii) access over other  
7 unimproved roads that may exist on the Owner Property, or (iii) access over other  
8 unimproved portions of the Owner Property. The adjustment of the Access  
9 Easements shall be completed by revising the exhibits in the original Quitclaim Deeds  
10 or other applicable instruments with written approval by the Navy or the Authority.  
11 The approval will not be unreasonably withheld.

12  
13 ~~7.1.1.3.4~~ 7.3.1.3.4 The Navy Access Easements shall  
14 continue until such time as final subdivision maps are recorded and attendant street  
15 dedications provide public access. The Authority Access Easements shall continue  
16 until such time as either the Parcel is owned by the Authority or final subdivision  
17 maps are recorded and attendant street dedications provide equivalent access.

18  
19 7.3.2 ~~7.1.2~~ Utility Easements. Prior to the Initial Closing and any subsequent  
20 Closing, as appropriate, the Navy shall grant to the Authority on Navy owned Parcels, or reserve  
21 to itself on Parcels being conveyed to the Authority, easements, licenses, rights of way, or other  
22 similar instruments for the operation and maintenance of existing utilities, and installation,  
23 operation and maintenance of all or portions of new utility systems on said Parcels (“**Utility**  
24 **Easements**”). Such Utility Easements on Navy owned Parcels may be provided pursuant to the  
25 Utility Utilities Agreement referenced in Article 9 hereof. Such Utility Easements on Parcels  
26 being conveyed to the Authority shall be reserved by the Navy ~~substantially in conformance with~~  
27 ~~the areas shown on Exhibit I-3, as reasonably necessary to provide the remaining Navy-owned~~  
28 parcels with utility service. The location of the Utility Easements will be adjusted from time to  
29 time as necessary to accommodate the redevelopment activity. The Party on whose property the  
30 Utility Easements exist (the “**Owner Property**”) shall not redevelop, close, abandon, reconfigure  
31 or replace existing utilities within such easement in such a manner that would unreasonably  
32 interfere with the ability of the other Party to exercise its use of the utilities except where the  
33 Party on whose property the Utility Easements exists provides the other Party with suitable  
34 comparable alternative utility service and easements over other areas of the Property. Where  
35 such redevelopment, closure, abandonment, reconfiguration or replacement is necessary to  
36 conduct actions required by the redevelopment that results in such utility no longer providing the  
37 intended service or otherwise ceasing to exist, the Utility Easement, as applicable, shall be  
38 moved from time to time to include, in the following order of priority either (i) utilities in other  
39 improved roads that may exist on the Owner Property, (ii) utilities in other unimproved roads  
40 that may exist on the Owner Property, or (iii) utilities in other unimproved portions of the Owner  
41 Property. The adjustment of the Utility Easements shall be completed by revising the exhibits in  
42 the original Quitclaim Deeds or other applicable instruments with written approval by the Navy  
43 or the Authority. The approval will not be unreasonably withheld.

44

1 ~~7.1.3 Assignable Easements. As part of the Initial Closing, the Navy shall~~  
2 ~~assign to the Authority the assignable easements, leases, licenses and encroachment permits~~  
3 ~~held by the Navy over, under, or through non-Navy owned property necessary for the~~  
4 ~~operation, maintenance, or improvement of the Property, as listed on Exhibit I-1, attached~~  
5 ~~hereto (the "Assignable Easements").~~

6  
7 7.4 ~~7.2~~ Cost of Work on the Easements. The cost of any work and improvements on  
8 the easements shall be borne entirely by the Party undertaking such work, except to the extent  
9 agreed to in writing by the Parties. The cost of the preparation of surveys and legal descriptions  
10 of the easements shall be borne by the requesting Party, except to the extent agreed to in writing  
11 by the Parties.

12  
13 **ARTICLE 8**  
14 **CLOSING AND SETTLEMENT**  
15

16 8.1 Opening of Escrow. On or before the Effective Date of this Agreement, the  
17 Parties shall open escrow by depositing an executed copy of this Agreement with Title  
18 Company. The Parties agree to jointly develop escrow instructions for the Initial Closing and  
19 each subsequent Closing, if applicable. The Authority shall deposit the agreed upon escrow  
20 instructions with the Title Company that shall serve as the instructions to the Title Company, as  
21 the escrow holder, for each of the Closings contemplated hereby. The Navy and the Authority  
22 agree to execute such additional escrow instructions as may be appropriate to enable the Title  
23 Company to comply with the terms of this Agreement; provided, however, that in the event of  
24 any conflict between the provisions of this Agreement and any supplementary escrow  
25 instructions, the terms of this Agreement shall control.

26  
27 8.2 Navy Deliveries. The Navy shall deliver to escrow at least five (5) days prior to  
28 any Closing the following documents, as applicable ("**Navy Closing Documents**"), in a form  
29 previously reviewed and approved by the Authority, and duly executed and authorized (and  
30 acknowledged if necessary for recordation):

31  
32 8.2.1 Quitclaim Deed(s) substantially in the form as set forth in Exhibit D-1,  
33 Exhibit D-2, or Exhibit D-3, as applicable, attached hereto.

34  
35 8.2.2 Final FOST(s), as appropriate for such Parcel(s) to be conveyed at such  
36 Closing that meet the conditions of Section 3.4, and copies of all Regulatory Authority approvals  
37 obtained for the applicable Parcel relating to the investigation and environmental response for  
38 underground and above-ground petroleum storage tanks, and any releases of petroleum,  
39 petroleum derivatives, petroleum fractions, or any chemicals, compounds or products that result  
40 from their degradation that meet the conditions of Article 18.

1 8.2.3 Bill of Sale for the Navy Personal Property conveyed to the Authority for  
2 such Parcel(s), in substantially the form set forth in Exhibit H-1.

3  
4 8.2.4 ~~Any appropriate instrument(s) assigning the Assumed Contracts and copies~~  
5 ~~of the Assumed Contract(s), as applicable.~~ Bill of Sale for the Navy owned Utility Infrastructure  
6 located on such Parcel(s) and for the Initial Closing, including off-site Utility Infrastructure, in  
7 substantially the form set forth in Exhibit H-2.

8  
9 8.2.5 Any Access Easement(s) required by the Authority relating to such  
10 Parcel(s), in accordance with Section 7.3.1 of this Agreement, ~~which shall be substantially in the~~  
11 ~~form set forth in Exhibit I-4.~~

12  
13 8.2.6 Any Utility Easement(s) required by the Authority relating to such  
14 Parcel(s), in accordance with Section 7.3.2 of this Agreement, ~~which shall be substantially in the~~  
15 ~~form set forth in Exhibit I-3.~~

16  
17 8.2.7 Any appropriate instruments assigning the Assignable  
18 ~~Easement(s)~~ Easements, Contracts and Permits required by the Authority in accordance with  
19 Section 7.1 of this Agreement, ~~which shall be substantially in the form set forth in Exhibit I-2.~~

20  
21 8.2.8 Any appropriate instruments assigning or replacing the Non-Assignable  
22 Easements, Contracts and Permits and perfecting the Unperfected Easements, Contracts and  
23 Permits necessary for electricity to be provided to Treasure Island as required by Section 3.7.1.8  
24 hereof that the Navy has obtained.

25  
26 8.2.9 If applicable, any appropriate instruments assigning or replacing the Non-  
27 Assignable Easements, Contracts and Permits and perfecting the Unperfected Easements,  
28 Contracts and Permits that are not necessary for electricity to be provided to Treasure Island,  
29 which the Navy has been able to obtain as described in Section 3.6 hereof.

30  
31 8.2.10 ~~8.2.9~~ Any LIFOC, easements, or other instruments that may be required  
32 under Section 3.12.

33  
34 8.2.11 ~~8.2.10~~ For the Initial Closing, a Utilities Agreement or subsequent  
35 amendments, as the case may be, as set forth in Article 9, as applicable.

1 [8.2.12](#) ~~8.2.11~~ The Land Use Covenant, as applicable.

2  
3 [8.2.13](#) ~~8.2.12~~ Such additional documents as may be required to close escrow,  
4 under this Agreement or by California law.

5  
6 [8.2.14](#) ~~8.2.13~~ Representation to the Authority, in substantially the form set forth in  
7 Exhibit N-1, stating that as of the date of Closing, the Navy has the full capacity, right, power,  
8 and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing  
9 unless subsequently prohibited by law.

10  
11 8.3 The Authority Deliveries. The Authority shall deliver to escrow at least five (5)  
12 days prior to the Initial Closing and, to the extent applicable, any other Closings, the first  
13 Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the  
14 following documents in a form previously reviewed and approved by the Navy, and duly  
15 executed and authorized (and acknowledged if necessary for recordation) (the “**Authority**  
16 **Closing Documents**”):

17  
18 8.3.1 Acceptance of Quitclaim Deed(s) substantially as set forth in Exhibit D-  
19 ~~1, Exhibit D-2, or Exhibit D-3, as applicable~~, attached hereto.

20  
21 ~~8.3.2 Acceptance of the assignment of the Assumed Contracts substantially in~~  
22 ~~the form attached hereto as Exhibit BB.~~

23  
24 [8.3.2](#) ~~8.3.3~~ Any LIFOC, easements, or other instruments that may be required  
25 under Section 3.12.

26  
27 [8.3.3](#) ~~8.3.4~~ For the Initial Closing, a Utilities Agreement, or subsequent  
28 amendments, as the case may be, as set forth in Article 9, as applicable.

29  
30 [8.3.4](#) ~~8.3.5~~ Any appropriate instruments assigning or replacing the Non-  
31 Assignable Easements, Contracts and Permits and perfecting the Unperfected Easements,  
32 Contracts and Permits necessary for electricity to be provided to Treasure Island as required by  
33 Section 3.7.1.8 hereof that the Authority has obtained.

34  
35 [8.3.5](#) If applicable, any appropriate instruments assigning or replacing the Non-  
36 Assignable Easements, Contracts and Permits and perfecting the Unperfected Easements,



1 Contracts and Permits that are not necessary for electricity to be provided to Treasure Island as  
2 required by Section 3.6 hereof.

3  
4 8.3.6 Acceptance of any Access Easement(s) required by the Authority relating  
5 to such Parcel(s) in accordance with Section 7.3.1 of this Agreement, ~~which shall be substantially~~  
6 ~~in the form set forth in Exhibit I-4, attached hereto.~~

7  
8 8.3.7 Acceptance of any Utility Easement(s) required by the Authority relating to  
9 such Parcel(s) in accordance with Section 7.3.2 of this Agreement, ~~which shall be substantially in~~  
10 ~~the form set forth in Exhibit I-3, attached hereto.~~

11  
12 8.3.8 Acceptance of any Assignable ~~Easement(s)~~Easements, Contracts and  
13 Permits, Non-Assignable Easements, Contracts and Permits and the Unperfected Easements,  
14 Contracts and Permits required by the Authority relating to such Parcel(s), in accordance with  
15 Section 7.1 of this Agreement, ~~which shall be substantially in the form set forth in Exhibit I-1,~~  
16 ~~attached hereto.~~

17  
18 8.3.9 Such additional documents as may be required to close escrow, under this  
19 Agreement or by California law.

20  
21 8.3.10 Representation to the Navy, in substantially the form set forth in Exhibit N-  
22 2, stating that as of the date of Closing, the Authority has the full capacity, right, power, and  
23 authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing unless  
24 subsequently prohibited by law.

1  
2 **ARTICLE 9**  
3 **UTILITY INFRASTRUCTURE AND UTILITIES AGREEMENT**

4 9.1 ~~Without limiting the Parties' obligations under this Agreement, the Parties shall~~  
5 ~~execute and enter into an agreement that addresses ownership and use of existing utilities by the~~  
6 ~~Parties in light of the Parties separate ownership of the different Parcels of the Navy Real~~  
7 ~~Property (a "Utilities Agreement"). The Parties shall enter into a Utilities Agreement related to~~  
8 ~~the conveyance of the FOST Parcel in substantially the form attached hereto as Exhibit EE at the~~  
9 ~~Initial Closing and shall enter into amendments thereto (pursuant to the terms of the Utilities~~  
10 ~~Agreement) at each subsequent Closing, as necessary. Utilities Agreement. Concurrently with~~  
11 ~~this Agreement, the Parties are entering into a Utilities Agreement in the form attached hereto as~~  
12 ~~Exhibit E relating to the phased transfer of the existing utility infrastructure on Treasure Island~~  
13 ~~(the "Utility Infrastructure"). At the time of any transfer of real property from the Navy to the~~  
14 ~~Authority under this Agreement, (i) the Caretaker Agreement shall not terminate with respect to~~  
15 ~~the real property on Treasure Island retained by the United States (or to any existing utility lines~~  
16 ~~or retained easements required to maintain service to such real property under the Caretaker~~  
17 ~~Agreement) as a result of the transfer, and (ii) the Caretaker Agreement shall automatically~~  
18 ~~terminate with respect to the real property that is transferred to the Authority.~~

19  
20 9.2 Navy Role. So long as the Authority maintains an ownership interest in Treasure  
21 Island, or operates and maintains the utility infrastructure pursuant to the Caretaker Agreement  
22 and the Master Leases, the Navy will not be required under this Agreement to assume  
23 responsibility for the operation or maintenance of the Utility Infrastructure or expend funds for  
24 such purpose.

25  
26 9.3 Authority Role. From the Effective Date of this Agreement until such time  
27 as the responsibility for providing a specific utility service is assumed by a public utility, the  
28 Authority will continue to operate and maintain the Utility Infrastructure under the Caretaker  
29 Agreement, as amended from time to time and for so long as it remain in effect, consistent with  
30 the Authority's past practice, subject to any required approvals and appropriations of (a) the  
31 Authority's Board of Directors and the City's Board of Supervisors and Mayor, and (b) the  
32 Secretary of the Navy or his/her designee as appropriate, each in their sole and absolute  
33 discretion. The Authority is not a public utility, and therefore shall procure utility services from  
34 a public utility as necessary to fulfill its obligations under this Agreement.

35  
36 9.3.1 During the term of the Caretaker Agreement, the Authority staff shall seek  
37 appropriations and any required approvals to continue to operate and maintain the Utility  
38 Infrastructure consistent with the Authority's past practice and past annual expenditures before  
39 the Effective Date. The Parties understand that the Authority's past practice and past annual  
40 utility expenditures have been generally limited to the revenues received by the Authority from  
41 utility operations at Treasure Island and some portion of the revenues received from the property  
42 on Treasure Island (which are also used to fund all operations and maintenance at Treasure  
43 Island and not just utility operations and maintenance). If and to the extent that the Authority has  
44 obtained in the past, or obtains in the future, appropriations of funds for utilities operations and  
45 maintenance from additional sources such as the City's General Fund (above the revenues

1 received from subleasing activities), any such appropriation will not create an obligation by the  
2 Authority to continue to seek such an appropriation in the future, and nothing in this Article 9  
3 shall amend or limit the provisions set forth in Section 22.2.

4  
5 9.3.2 The Authority shall expend all revenues received by the Authority from  
6 the delivery of utility services at Treasure Island on utility-related costs at Treasure Island. Upon  
7 receipt of appropriations for utilities maintenance, repairs and operations at Treasure Island, the  
8 Authority shall expend all such appropriated funds for utility repairs, maintenance and operations  
9 at Treasure Island. Subject to the availability of appropriations as set forth above, the Authority  
10 shall use good faith efforts to continue to operate and maintain the utility systems at Treasure  
11 Island during the normal course of development until such time as the responsibility for  
12 providing a specific utility service is assumed by a public utility.

13  
14 9.3.3 The United States Coast Guard (the “Coast Guard”), an agency of the  
15 United States, operates federally owned land, buildings, and structures on Yerba Buena Island  
16 (the “Coast Guard Installation”) for the benefit of the public, including maritime search and  
17 rescue and oil spill response. Other users of the Coast Guard Installation include other federal  
18 agencies, agencies of the State of California, and San Francisco municipal agencies, including  
19 the San Francisco Fire Department and San Francisco Police Department. Although the Coast  
20 Guard Installation is separate from and not part of Naval Station Treasure Island, all users of the  
21 Coast Guard Installation are entirely reliant on the existing utility infrastructure installed by the  
22 Navy decades ago. The Coast Guard Installation is not subject to the authority provided by §  
23 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as  
24 amended, and is not subject to closure or transfer to the Authority. Subject to the limitations set  
25 forth above, the Authority shall consider public health and safety and the Coast Guard  
26 Installation’s role in the protection of the environment in the San Francisco Bay and the  
27 operation of the Ports of San Francisco and Oakland in all decisions regarding the utility  
28 infrastructure serving Treasure Island and Yerba Buena Island.

29  
30 9.4 Utilities During Development.

31  
32 9.4.1 The Parties agree that the proposed development of Treasure Island and  
33 Yerba Buena Island with new utility infrastructure will benefit all residents and occupants of  
34 Treasure Island and Yerba Buena Island, including the Coast Guard, and that the sooner that  
35 such new utility infrastructure can be built, the better for all residents and occupants as such new  
36 utility infrastructure will help to improve system reliability and performance.

37  
38 9.4.2 It is the objective of the Parties that utility services to all occupants of  
39 Treasure Island and Yerba Buena Island, including the Coast Guard, shall be available during the  
40 normal course of development until such time as the responsibility for providing a specific utility  
41 service is assumed by a public utility. Nevertheless, given the current state of the Utility  
42 Infrastructure and the duration of the Treasure Island development period (and the limitation of

1 revenue sources), the Authority cannot guarantee the continued and uninterrupted availability of  
2 utility services to Treasure Island. The failure of any Utility Infrastructure, by itself, shall not be  
3 a default under this Agreement or give rise to any right or claim against the Authority.

4  
5 9.4.3 The Authority and its successors may remove, alter, relocate, or abandon  
6 any of the Utility Infrastructure, provided that replacement of that component of the Utility  
7 Infrastructure is installed as part of the proposed work (if needed to continue to provide service  
8 to the Coast Guard Installation), and there is no material interruption or decrease in service (other  
9 than temporary interruptions consistent with infrastructure repair and replacement projects) to  
10 the Coast Guard Installation as a result of such work. The Authority shall be responsible for  
11 promptly repairing any utility line damaged by the Authority or its agents in connection with  
12 work undertaken by it. The Authority shall keep the Navy and the Coast Guard reasonably  
13 informed of development plans and schedules that may impact the Coast Guard's access to utility  
14 service, and shall respond to requests for additional information.

15  
16 9.5 Key Infrastructure. In connection with any transfer of land from the Navy to the  
17 Authority, the Navy will (a) reserve non-exclusive easements (each individually an “Easement”  
18 and collectively the “Easements”) for the use, inspection, operation, maintenance, repair and  
19 replacement of the Utility Infrastructure on, over, under, and across those portions of the  
20 Property described in the following exhibits (each individually an “Easement Area” and  
21 collectively the “Easement Areas”): (i) Exhibit MM-1 easement for water lines; (ii) Exhibit  
22 MM-2 easement for electric lines; (iii) Exhibit MM-3 easement for natural gas lines; and (iv)  
23 Exhibit MM-4 easement for wastewater lines, and (b) retain fee title to the appropriate Utility  
24 Infrastructure located within the Easement Areas (the “Key Infrastructure”). The Authority  
25 shall have the right to relocate the Key Infrastructure without the prior consent of the Navy or the  
26 Coast Guard, so long as (a) the requirements set forth in Section 9.4.3 are satisfied, and (b) the  
27 Coast Guard has been informed of the proposed relocation project at least sixty (60) days before  
28 the relocation. Upon the completion of any such relocation, following the cut over and  
29 functional operation of the new utility line, the Authority shall provide a legal description of the  
30 new Easement Area and deliver to the Navy an easement, in recordable form, that grants access  
31 to the relocated Key Infrastructure in the same manner as that reserved by the original Easement,  
32 and the Navy shall deliver to the Authority or its successor a quitclaim deed or other instrument,  
33 in recordable form, that terminates the original Easement.

34  
35 9.5.1 In exercising any rights in the Easement Areas, the Navy and/or the Coast  
36 Guard shall (i) provide at least sixty (60) days prior notice before performing any excavation,  
37 repair or replacement of any utility infrastructure, except in the event of an emergency, (ii)  
38 perform such work in accordance with applicable requirements taking into consideration  
39 customary engineering standards and practices in San Francisco, and seek to minimize safety  
40 hazards, property damage and disruption, (iii) use reasonable, good faith efforts to comply with  
41 the reasonable traffic and utility coordination requirements of Grantee, (iv) comply with the  
42 requirements of the Underground Service Alert regarding notification of excavation and marking  
43 of subsurface facilities, (v) promptly repair any damage to property (including any utility  
44 infrastructure) resulting from exercise of its easement rights, and (vi) comply with the utility

1 provider's standard terms and conditions if and when connecting to that utility provider's  
2 equipment. Notwithstanding anything to the contrary above, in the event of an emergency, the  
3 Coast Guard shall have the right to begin work immediately if it reasonably determines that the  
4 Authority is not able or willing to perform the required repair work.

5  
6 9.5.2 In connection with the use of the Easement Areas, the Navy and the Coast  
7 Guard shall meet and confer with Authority, and the parties shall coordinate and cooperate in  
8 good faith at all times to expeditiously resolve all matters and to avoid any potential conflicts in  
9 use, and any disruption in the operations of Treasure Island and Yerba Buena Island to the  
10 greatest extent possible. In the event of any dispute regarding the Easement Areas, the conflict  
11 dispute resolution process described in Section 27.2.1 shall apply, provided the foregoing shall  
12 not prevent the Coast Guard from making any emergency repairs as needed to restore service to  
13 the Coast Guard Installation as set forth in Section 9.5.1. To the maximum extent provided by  
14 law, the Authority, the Navy and the Coast Guard shall each remain responsible for all liabilities,  
15 claims, demands, judgments, suits, litigation, or amounts payable attributable to their respective  
16 uses or activities on or about the Property.

17  
18 9.5.3 When the Authority has installed a new utility line that has been dedicated  
19 to and accepted by a public utility, and utility service to the Coast Guard Installation can connect  
20 to such new infrastructure in accordance with the public utility's standard terms and conditions  
21 of service (such that the Easement Area is no longer needed), the applicable Easement will  
22 automatically terminate, together with the Navy's rights in and to the Key Infrastructure located  
23 within that Easement Area, except to the extent that the point of connection is located outside the  
24 Coast Guard Installation, in which case the easement shall continue to run in perpetuity from the  
25 Coast Guard Installation to the point of connection. At the request of the Authority or the  
26 successor owner of the applicable property, the Navy shall confirm the termination of the  
27 Easement and the transfer of the Key Infrastructure by executing and delivering a quitclaim  
28 deed, bill of sale, or other instrument in a form reasonably acceptable to the Authority or its  
29 successor.

30  
31 **ARTICLE 10**  
32 **TIME OF THE ESSENCE AND POSTPONEMENT**  
33

34 10.1 Time is of the Essence. The Parties agree that a fundamental component of this  
35 Agreement is the timely disposal of the Navy Real Property by the Navy, which will permit the  
36 economic redevelopment of the Navy Real Property. Accordingly, the Parties agree that time is  
37 of the essence in this Agreement.

38  
39 10.2 Postponement. A party who is subject to Excusable Delay in the performance of  
40 an obligation hereunder (including, without limitation, compliance with the Conveyance  
41 Schedule), or in the satisfaction of a condition to the other Party's performance hereunder, shall

1 be entitled to a postponement of the time for performance of such obligation or satisfaction of  
2 such condition during the period of enforced delay attributable to an event of Excusable Delay.

3  
4 10.2.1 Notice of Excusable Delay. The Excusable Delay provisions of this  
5 Section shall not apply unless (~~x~~1) the Party seeking to rely upon such provisions shall have given  
6 notice to the other Party as soon as reasonably possible, but in no event later than the earlier of (i)  
7 thirty (30) days after obtaining knowledge of the beginning of an Excusable Delay or (ii) the  
8 deadline for performance of the term, covenant or condition of this Agreement that is subject to  
9 the Excusable Delay, of such delay and the cause or causes thereof, to the extent known, and (~~y~~2)  
10 the Party claiming the Excusable Delay must at all times be acting diligently and in good faith to  
11 avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a  
12 reasonable alternative means of performance. Notwithstanding the foregoing, no later than thirty  
13 (30) days after the execution of this Agreement, the Parties shall provide notice to the other of any  
14 event of Excusable Delay that may exist as of the date of execution but may have arisen prior to  
15 the execution hereof.

16  
17 10.2.2 Extensions. Either Party may extend time for the other Party's  
18 performance of any term, covenant or condition of this Agreement or permit the curing of any  
19 default upon such terms and conditions as it determines appropriate; provided, however, that  
20 any such extension or permissive curing of any particular default shall not operate to release  
21 any of the other Party's obligations, nor constitute a waiver of the extending Party's rights with  
22 respect to any other term, covenant or condition of this Agreement or any other breach of this  
23 Agreement. The Parties may extend the time for performance by either or both Parties of any  
24 term, covenant or condition of this Agreement by a written instrument signed by authorized  
25 representatives of both Parties without the execution of an amendment to this Agreement.

26  
27 **ARTICLE 11**  
28 **ENVIRONMENTAL REPORTS**  
29

30 11.1 From and after the Effective Date, the Navy will make available to the Authority  
31 all known Environmental Reports prepared by or for the Navy with respect to the Navy Real  
32 Property that is subject to the Closing. The Authority and its agents, its successors, and its  
33 transferees, at their own expense, shall have the right to inspect, review, and copy any or all of  
34 the Environmental Reports within a reasonable timeframe of providing notice to the Navy.

35  
36 11.2 The CERCLA administrative record component of the Environmental Reports  
37 shall be indexed and an up-to-date copy of the index and the location of the records shall be  
38 provided to the Authority prior to each Closing, at no cost to the Authority. The administrative  
39 record shall be maintained by the Navy in the San Diego area or at another location at or  
40 proximate to the Navy Real Property.

1 11.3 The CERCLA administrative record will be maintained by the Navy for a period  
2 of ten (10) years following the date that the last Parcel is transferred to the Authority.

3  
4 **ARTICLE 12**  
5 **DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS**  
6

7 12.1 From and after the Effective Date, the Navy will make available to the Authority  
8 for inspection and copying those surveys, soils and geological reports, studies, assessments, test  
9 results, well close-out reports, leases, licenses, easements, permits, contracts and other  
10 documents relating to the physical or structural composition of the Navy Real Property including  
11 plans and specifications for buildings and other improvements, drawings of underground utility  
12 systems (including gas, sewer, water, electrical, and telephone), personal property (including  
13 executed and completed motor vehicle transfer of ownership forms) and any and all other  
14 documents of material significance to the ownership, use, management or operation of the Navy  
15 Real Property (“**Navy Real Property Documents**”) which are physically located at the  
16 following repositories: (1) Building 1, Treasure Island, and (2) Southwest Division of the Naval  
17 Facilities Engineering Command, San Diego, California. The Navy shall permit access to the  
18 Authority to the identified repositories and such other locations that may be subsequently  
19 identified for inspection and copying of any Navy Real Property Documents available to the  
20 Navy that are identified by the Authority related to the Navy Real Property. The Authority and  
21 its transferees and agents, at their own expense, shall have the right to inspect, review, and copy  
22 any or all of the Navy Real Property Documents with reasonable prior notice to the Navy.  
23 Nothing herein shall require the Navy to release information, documents, or databases to the  
24 Authority or other parties that would be contrary to the Freedom of Information Act, that are  
25 privileged, or that would ~~in~~ be in violation of federal law.

26  
27 **ARTICLE 13**  
28 **NAVY ~~CARETAKER SITE~~ OFFICE**  
29

30 13.1 Commencing on the date of the Initial Closing and continuing until the date that is  
31 seven (7) years after the Initial Closing (unless terminated earlier by Navy), the Navy shall have  
32 the right to occupy up to three thousand five hundred (3,500) square feet of office space and up  
33 to two thousand (2,000) square feet of space for file storage, which file storage may be located  
34 in non-contiguous or non-adjacent spaces, for the Navy caretaker site office (the “**Navy Office**”)  
35 and six reserved parking spaces. At the Initial Closing, the Navy Office will continue to be  
36 located in Building 1, as more particularly shown on Exhibit K-1 attached hereto and to the  
37 extent practicable, Navy shall be permitted to remain in its presently existing office space until  
38 such space is required for implementation of the Project. The terms of occupancy for the Navy  
39 Office ~~shall be substantially in the form of~~ are set forth in Exhibit K-2 attached hereto (“**Navy**  
40 **Office Agreement Provisions**”). Navy shall be responsible for its cost of utilities serving the  
41 Navy Office, but the Navy Office Agreement Provisions shall otherwise be rent free for the seven  
42 (7) year period. The Authority shall have the right, from time to time during the Navy Office  
43 Agreement Provision term, to relocate the Navy Office to another location within Building 1 or to  
44 one of the buildings known as the Great Whites as more particularly shown on Exhibit K-3  
45 attached hereto, or to any other adequate location on Treasure Island or Yerba Buena Island, by

1 giving Navy no less than ~~threesix~~ (36) months' prior written notice. The relocation premises  
2 shall be substantially equivalent in size, general quality, and dimensions to the then-existing  
3 premises but while the office space shall be contiguous, the relocated storage space may be  
4 located in one or more non-contiguous spaces. The Authority shall bear ~~any~~all reasonable costs  
5 incurred by the Authority to physically relocate Navy to any relocation space, and shall be  
6 responsible for the cost of standard tenant improvements for the relocation consistent in quality  
7 with the Navy's current space in Building 1. Reasonable costs and standard tenant  
8 improvements, as those terms are used herein, shall include but not be limited to the cost of a  
9 dedicated T1 transmission line at any relocation space and the cost of establishing Navy and  
10 Marine Corp Intranet (NMCI) connectivity to the relocation space. The Navy Office Provisions  
11 further outlines the requirements of the Authority and the Navy. Navy shall be entitled at any  
12 time upon thirty (30) days prior written notice to terminate the Navy Office Provisions. At the  
13 expiration of the initial seven (7) year occupancy period, the Navy may elect to terminate ~~the~~  
14 ~~Navy Office Agreement~~its occupancy, or to renew its occupancy under the same terms as the  
15 Navy Office ~~Agreement~~Provisions provided that consideration for any renewal period will be at  
16 fair market rent, to be determined by the Authority based on the highest and best use permitted  
17 for the occupied space, supported by documented market examples at Treasure Island, if  
18 available. The Authority shall have the right to assign its interest in Building 1, or the building  
19 to which the Navy is relocated, to Developer or its successors or assigns, by leasehold or other  
20 instrument, so long as the Authority retains rights under such leasehold or other instrument that  
21 will enable the Authority to satisfy its obligations to provide the Navy Office and the six  
22 reserved parking spaces in accordance with the terms of this Section and the Navy Office  
23 Provisions.

24  
25 13.2 All personal property associated with the Navy Office shall be excluded from  
26 transfer until such time as the Navy Office ~~Agreement~~Provisions is terminated. Upon Navy  
27 Office ~~Agreement~~Provisions termination, the Navy upon its sole right shall determine excess  
28 personal property to be made available to the Authority.

29  
30 **ARTICLE 14**  
31 **NAVY REPRESENTATIONS**  
32

33 14.1 The Navy hereby represents to the Authority on and as of the Effective Date and  
34 will represent as of the date of each Closing as follows:

35  
36 14.1.1 Execution of Agreement. That the Navy has full capacity, right, power and  
37 authority to execute, deliver and perform this Agreement and all documents to be executed by the  
38 Navy pursuant hereto, and all required action and approvals ~~therefor~~therefore have been duly  
39 taken and obtained for the execution of this Agreement. The Navy further represents to the  
40 Authority that as of the date of Closing, the Navy shall have full capacity, right, power and  
41 authority to execute, deliver and perform this Agreement and all documents to be executed by the  
42 Navy pursuant hereto for the Closing unless subsequently prohibited by law. This Agreement and  
43 all documents to be executed pursuant hereto by the Navy are and shall be binding upon and  
44 enforceable against the Navy in accordance with their respective terms.



1  
2 14.1.2 Complete Information. All known relevant Environmental Reports and  
3 Navy Real Property Documents of material significance have been made available to the  
4 Authority for inspection and copying.

5  
6 **ARTICLE 15**  
7 **AUTHORITY REPRESENTATIONS**  
8

9 15.1 The Authority hereby represents to the Navy that on and as of the Effective Date,  
10 the Authority has full capacity, right, power and authority to execute, deliver and perform this  
11 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
12 action and approvals ~~therefor~~therefore have been duly taken and obtained for the execution of  
13 this Agreement. The Authority further represents to the Navy that as of each Closing, the  
14 Authority shall have full capacity, right, power and authority to execute, deliver and perform this  
15 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
16 action and approvals will have been duly taken and obtained for the Closing. The individuals  
17 signing this Agreement and all other documents executed or to be executed pursuant hereto on  
18 behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to  
19 bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by  
20 the Authority are and shall be binding upon and enforceable against the Authority in accordance  
21 with their respective terms.

22  
23 **ARTICLE 16**  
24 **TITLE AND NAVY COVENANTS**  
25

26 16.1 From the Effective Date to the Closing, the Navy shall not do, permit, or agree to  
27 sell, encumber or grant any interest in the Navy Property or any part thereof in any form or  
28 manner whatsoever or otherwise perform or permit any act which will diminish or otherwise  
29 affect the Authority's interest under this Agreement or in or to the Navy Property or which will  
30 prevent the Navy's full performance of its obligations hereunder, without the prior written  
31 consent of the Authority except environmental restrictions or land use covenants consistent with  
32 Section 3.4.2 as may be designated in the CERCLA Record of Decision, an approved Corrective  
33 Action Plan or the FOST.

34  
35 16.2 The Navy shall not remove or alter any Navy Personal Property or Utility  
36 Infrastructure that is intended to be transferred by this Agreement to the Authority, without the  
37 prior written consent of the Authority, except when such removals or alterations are in  
38 association with the Navy's continuing obligations under CERCLA, 42 U.S.C. § 9601, et seq.

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**ARTICLE 17**  
**ENVIRONMENTAL PROVISIONS**

17.1 Navy Obligations Under 42 U.S.C. § 9620(h) of CERCLA. The Navy Real Property shall be conveyed subject to the Navy's obligations with regard to Hazardous Substances as set forth in CERCLA at 42 U.S.C. § 9620(h)(3).

17.2 CERCLA Access. The Quitclaim Deeds shall include a clause granting the United States access rights to the Navy Real Property pursuant to Section 120(h)(3)(A)(iii) of CERCLA at 42 U.S.C. § 9620(h)(3)(A)(iii) in any case in which remedial action or corrective action is found to be necessary after the date of ~~Transfer~~transfer.

17.3 Lead-Based Paint. The Quitclaim Deeds shall incorporate the Lead-Based Paint (hereinafter referred to as "LBP") Disclosure and restrictions required by 40 CFR § 745.113, if applicable, and other applicable authority. The Parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the State of California whereby once the LBP is removed from the Navy Real Property in compliance with Federal and State standards, the LBP Disclosure and restrictions can be removed from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to cooperate with such procedure upon approval by the State of California, and, if applicable, sign all amended Quitclaim Deeds as necessary.

17.4 Asbestos. The Quitclaim Deeds shall include any notifications or restrictions concerning asbestos or asbestos-containing materials ("ACM") that have been found on the Navy Real Property, as described in the ~~report name~~ dated the \_\_\_ day of \_\_\_, 20XX, Final 2009 Asbestos Reevaluation Report for Treasure Island and Yerba Buena Island dated February 2011, if applicable. The Parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the State of California, whereby once the ACM is removed from the Navy Real Property in compliance with Federal and State standards, the ACM notification and any other ACM reference can be removed from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to cooperate with such procedure upon approval by the State of California, and, upon removal, if applicable, sign all amended Quitclaim Deeds as necessary.

17.5 Radiological Contamination. If additional screening, investigation or remediation related to radiological contamination (other than employee health and safety plan screening to be conducted by a contractor prior to or during construction) is required by applicable law or regulation for any portion of the real property previously conveyed by the Navy to the Authority, the Navy will undertake such additional screening, investigation, and/or remediation pursuant to such applicable laws and regulations. If any portion of Navy owned property not yet conveyed to the Authority is identified as impacted by radiological contamination, and as a consequence the Navy fails to convey such portion of the Navy Real Property by the applicable date set forth in the Conveyance Schedule ("Delayed Parcel"), within ten (10) days of a written request from the Authority, the Navy shall deliver to the Authority information describing (i) the current status

1 of the remediation of the Delayed Parcel, (ii) the estimated cost to complete the remediation of  
2 the Delayed Parcel, and (iii) the estimated date when the Delayed Parcel can be conveyed to the  
3 Authority in the condition required by this Agreement. Nothing in this Agreement transfers  
4 responsibility for the screening, investigation, management, or remediation of any potential  
5 radiological contamination caused by the Navy or its agents to the Authority, or any third party  
6 claims relating thereto, and the Navy retains such responsibility in accordance with applicable  
7 laws and regulations. If requested by the Authority, the Parties shall meet and explore the  
8 potential for utilizing an agreement pursuant to 10 U.S.C. 2701(d) under which the Navy shall  
9 have the option, but not the obligation, of allowing the amount of the Initial or Additional  
10 Consideration then remaining payable to the Navy to fund the performance of environmental  
11 remediation on the Delayed Parcel in accordance with the scope and cost agreed to by the Parties  
12 in the agreement in lieu of direct payment of such consideration to the Navy.

13  
14 **ARTICLE 18**  
15 **PETROLEUM CORRECTIVE ACTION**  
16

17 18.1 The Navy represents that as of the Effective Date, it has satisfied all requirements,  
18 obligations and objectives included in the FFSRA and the current Petroleum Corrective Action  
19 Plan as they relate to petroleum products, underground and above ground storage tanks and  
20 related piping, petroleum derivatives, fractions and daughter products (collectively, “**Petroleum**  
21 **Products**”), except for ~~YF-3, Site 25~~ and Site 6, which shall be governed by ~~Section~~Sections  
22 18.2 and 18.3 hereof.

23  
24 18.2 The Navy shall satisfy all requirements, obligations and objectives included in the  
25 FFSRA and the current Petroleum Corrective Action Plan as they relate to Petroleum Products  
26 related to ~~YF-3, Site 25 and~~ Site 6 prior to Closing for ~~those parcels~~that parcel.

27  
28 18.3 YF-3 may be conveyed prior to the completion of the petroleum corrective action  
29 identified in the FFSRA and the current Petroleum Corrective Action Plan; provided, however,  
30 that the Navy will continue to be the responsible party to complete the corrective action and  
31 obtain regulatory closure for YF-3.

32  
33 **ARTICLE 19**  
34 **COVENANT AGAINST CONTINGENT FEES**  
35

36 19.1 The Authority warrants that no person or agency has been employed or retained to  
37 solicit or secure this Agreement upon an agreement or understanding for a commission,  
38 percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established  
39 commercial agencies maintained by the Authority for the purpose of securing the successful  
40 purchase of the Navy Property by the Authority. “Bona fide established commercial agencies”  
41 has been construed to include licensed real estate brokers engaged in the business generally. For

1 breach or violation of the warranty, Navy has the right to annul this Agreement without liability  
2 or in its discretion to require the Authority to pay, in addition to the consideration, the full  
3 amount of such commission, percentage, brokerage, or contingent fee.

4  
5 **ARTICLE 20**  
6 **NOTICES**  
7

8 20.1 Notices shall be deemed sufficient under this Agreement if made in writing and  
9 delivered personally (including by messenger) or sent by United States registered or certified  
10 mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to  
11 the Parties at their respective addresses set forth below (or to any new or substitute address  
12 hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure  
13 set forth herein by the intended recipient of such notice), and the same shall be effective upon  
14 receipt, if delivered personally or by messenger, or two (2) business days after deposit in the mail  
15 if mailed:

16  
17 If to the Authority: Treasure Island Development Authority  
18 ~~City and County of San Francisco~~ One Avenue of the  
19 Palms, Suite 241  
20 ~~City Hall, Room 448~~ Treasure Island  
21 ~~1 Dr. Carlton B. Goodlett Place~~ San Francisco, CA ~~94102-~~  
22 ~~410~~ 94130  
23 Attn: ~~Rieh Hillis~~ Treasure Island Project Director  
24 Telephone: (415) ~~554-4082~~ 274-0662  
25 Facsimile: (415) 274-0299  
26 Email: ~~Rieh.Hillis2~~ bob.beck@sfgov.org  
27

28 With a copy to: Office of the City Attorney  
29 City and County of San Francisco  
30 City Hall, Room ~~448~~ 234  
31 1 Dr. Carlton B. Goodlett Place  
32 San Francisco, CA 94102  
33 Attn: ~~Eileen Malley, Deputy City Attorney~~ Real Estate  
34 Team Leader  
35 Telephone: (415) 554-~~6781~~ 4735  
36 Facsimile: (415) 554-4755  
37 Email: ~~eileen.malley~~ charles.sullivan@sfgov.org  
38

39 With a copy to: George R. Schlossberg, Esq.  
40 Kutak Rock LLP  
41 1101 Connecticut Avenue, N.W.  
42 Suite 1000  
43 Washington, DC 20036  
44 Telephone: (202) 828-2418  
45 Facsimile: (202) 828-2488

1 Email: [george.schlossberg@kutakrock.com](mailto:george.schlossberg@kutakrock.com)

2  
3 If to the Navy: [NAVFAC HQ](#) Base Realignment and Closure  
4 Program Management Office West  
5 1455 Frazee Road  
6 Suite 900  
7 San Diego, California 92108-4310  
8 Attn: Director  
9 Telephone: (619) 532-0992  
10 Facsimile: (619) 532-0983  
11 ~~Email:~~

12  
13 With a copy to: [NAVFAC HQ](#) Base Realignment and Closure  
14 Office of Counsel  
15 1455 Frazee Road  
16 Suite 900  
17 San Diego, California 92108-4310  
18 ~~Attn:~~  
19 ~~Telephone:~~  
20 ~~Facsimile:~~  
21 ~~Email:~~

22  
23 20.2 Either Party may direct in writing that any notices be sent to additional parties.  
24 The provision of notice to additional parties shall not make such additional parties third party  
25 beneficiaries of this Agreement.

26  
27 **ARTICLE 21**  
28 **PRIOR LIABILITIES**  
29

30 21.1 To the extent provided by law, the Navy shall remain responsible for all  
31 liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, “**Pre-**  
32 **Closing Obligations**”) against the Navy attributable to the Navy’s construction, installation,  
33 placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and  
34 equipment and land during the period prior to the conveyance of the Navy Real Property to the  
35 Authority pursuant to this Agreement, and with regard to a separate lease, contract for caretaker  
36 services, or other agreement, the Navy’s responsibility and the Authority’s responsibility for Pre-  
37 Closing Obligations will be as set forth in those documents. Except as otherwise provided in the  
38 Quitclaim Deeds, the Authority shall notify the Navy of the existence or occurrence of any such  
39 Pre-Closing Obligations of which it has knowledge sufficiently in advance of the scheduled  
40 Closing date to allow disposition thereof, if necessary, and shall cooperate with the Navy in the  
41 disposition thereof prior to the scheduled Closing date.

1 **ARTICLE 22**  
2 **AUTHORITY'S AVAILABILITY OF FUNDS**  
3

4 22.1 Except for the Authority's recoupment obligations as set forth in Section 5.13.3  
5 and the Authority's obligation to provide security for the payment of the Initial Consideration as  
6 set forth in Section ~~4.2.6~~[4.2.11](#) of this Agreement, there shall be no obligation for the payment or  
7 expenditure of money by the Authority under this Agreement unless there is a valid  
8 appropriation from which the expenditure may be made and that unencumbered funds are  
9 available from the appropriation for the expenditure.

10  
11 [22.2 The Navy understands and agrees that this Agreement does not create a debt of](#)  
12 [the City and County of San Francisco, and the City's General Fund shall not have liability for the](#)  
13 [Authority's obligations under this Agreement.](#)

14 **ARTICLE 23**  
15 **FINALITY OF CONVEYANCE**  
16

17  
18 23.1 Possession. Upon each Closing, the Navy shall immediately deliver to the  
19 Authority possession of the Navy Real Property conveyed at the Closing.

20  
21 23.2 No Right of Rescission. There shall be no right of rescission in the Navy as to the  
22 Navy Real Property, or any portion thereof, once conveyed to the Authority. The foregoing shall  
23 not be interpreted to limit any future exercise of the power of eminent domain by the Navy.

24 **ARTICLE 24**  
25 **LIABILITY FOR ENVIRONMENTAL CONTAMINATION**  
26

27  
28 24.1 Notwithstanding any other provision of this Agreement, and except as set forth  
29 specifically in any Quitclaim Deeds, leases, licenses, and the Caretaker Agreement, or other  
30 agreement between the Authority and the Government, the Authority does not hereby assume  
31 any liability or responsibility for environmental impacts and damage caused by the use of  
32 Hazardous Substances and petroleum products by the United States, its contractors, agents or  
33 assignees, on any Parcel or adjacent to it prior to the date of conveyance. The Authority has no  
34 obligation under this Agreement to undertake the defense of any claim or action, whether in  
35 existence now or brought in the future, or to conduct any cleanup or remediation action arising  
36 out of the use or release of any Hazardous Substances or petroleum products, on or from any part  
37 of the Property to the extent such claim or action arises out of activity by: (i) the United States  
38 on the Property or adjacent to it, or (ii) during the United States' ownership of the Property  
39 except as provided under leases, licenses, and the Caretaker Agreement entered into between the  
40 Authority and the Navy prior to the Effective Date; nor does the Authority hereby waive or  
41 release any rights it may have under applicable law against the Government with respect to such  
42 claims, actions, cleanup or remedial action.

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**ARTICLE 25**  
**SHORT FORM NOTICE**

5           25.1 Upon execution of this Agreement, the Authority and Navy shall execute the  
6 Short Form Notice of Conveyance attached hereto as Exhibit M. The Short Form Notice of  
7 Conveyance shall be recorded in the Official Records of the City of San Francisco  
8 ~~immediately~~promptly following the execution of this Agreement. The Short Form Notice of  
9 Conveyance shall include the following language: From the Effective Date of this Agreement  
10 through the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to sell,  
11 encumber or grant any interest in the Navy Real Property or any part thereof in any form or  
12 manner whatsoever, or otherwise perform or permit any act that will diminish or otherwise affect  
13 the Authority's interest under this Agreement or to the Navy Real Property, or which will  
14 prevent the Navy's full performance of its obligations hereunder, without the written consent of  
15 the Authority, except environmental restrictions or land use covenants consistent with the  
16 Agreement as may be designated in the CERCLA Record of Decision, an approved Corrective  
17 Action Plan or the FOST.

18  
19  
20  
21

**ARTICLE 26**  
**FURTHER ASSURANCES**

22           26.1 The Parties acknowledge that it is their mutual intent to effectuate an orderly,  
23 amicable, and expeditious transfer of the Navy Real Property from Navy to the Authority and  
24 that, toward that end, (i) any or all ambiguities herein shall, to the extent practicable, be  
25 construed in the way most liberally conducive to the aforesaid conveyance, (ii) neither Party  
26 shall be considered the drafter of this Agreement or any of its provisions for the purposes of any  
27 statute, case law, or rule of interpretation or construction, that would or might cause any  
28 provision to be construed against the drafter of the Agreement, and (iii) the Parties agree to  
29 execute, deliver and perform under the terms of such other documents as their respective legal  
30 counsel may deem necessary or appropriate to effect the purposes of this Agreement.

31  
32  
33  
34

**ARTICLE 27**  
**DISPUTE RESOLUTION PROCEDURES**

35           27.1 Resolution of Certain Disputes. Any other provision of this Agreement  
36 notwithstanding, (i) disputes identified in Section 27.3.2 shall be resolved by non-binding  
37 arbitration in accordance with the expedited dispute resolution procedure set forth in Section  
38 27.3.2, and (ii) such other disputes under this Agreement shall be resolved either by non-binding  
39 arbitration in accordance with the non-binding arbitration procedures set forth in Section 27.3.3  
40 if the Parties mutually agree, or barring such mutual agreement as to a particular other dispute, in  
41 accordance with this Agreement and all applicable laws.

1           27.2   Good Faith Meet and Confer Requirement.

2  
3           27.2.1 With respect to any dispute regarding a matter identified in Section 27.3.2,  
4 the Parties shall make a good faith effort to resolve the dispute prior to non-binding arbitration.  
5 Within five (5) business days after a request to confer regarding an identified matter,  
6 representatives of the Parties who are vested with decision-making authority shall meet to resolve  
7 the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall  
8 immediately be submitted to the expedited dispute resolution process set forth in Section 27.3.2.

9  
10          27.2.2 With respect to any other dispute arising hereunder, the Parties shall make  
11 a good faith effort to resolve the dispute in the most expeditious manner possible. Within five (5)  
12 business days after receipt of the notice of dispute, representatives of the affected Parties shall  
13 meet to resolve the dispute. If the Parties are unable to resolve the dispute in good faith within  
14 ten (10) business days after receipt of the notice of dispute, the Parties shall either agree within  
15 ten (10) business days after receipt of the notice of dispute to proceed with the non-binding  
16 arbitration procedures set forth in Section 27.3.3, or barring such agreement, either Party may  
17 proceed unilaterally as permitted by this Agreement or by law.

18  
19          27.3   Dispute Resolution Procedures.

20  
21          27.3.1   Arbiters. The non-binding arbitrator (“**Arbiter**”) will be selected by  
22 mutual agreement of the parties to be determined no later than thirty (30) days prior to the Initial  
23 Closing from a list of at least six (6) and up to ten (10) pre-approved Arbiters from the list  
24 attached hereto as Exhibit GG (the “**Pre-Approved Arbiters List**”). The Arbiter will hear all  
25 disputes under this Agreement unless the Arbiter is not available to meet the time schedule set  
26 forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on the  
27 Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, the parties  
28 shall mutually agree on the selection of an Arbiter to serve for the purposes of this dispute. The  
29 Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiters’ Qualifications**” shall  
30 be defined as at least ten (10) years experience in a real property professional capacity, such as a  
31 real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The Parties shall  
32 review the Pre-Approved Arbiters List on an annual basis, determine the continued availability  
33 and willingness to serve of each Arbiter, and may at that time or from time to time, seek to add or  
34 subtract arbiters from the Pre-Approved Arbiter List, by notice in writing to the other Party. Any  
35 such notice will be accompanied by supporting documentation of the new proposed Arbiter’s  
36 qualifications or with the reasons for seeking to remove an Arbiter from the Pre-Approved  
37 Arbiters List, as applicable. The other Party shall have fifteen (15) business days to respond in  
38 writing to such request, and failure to respond shall be deemed consent. If the other Party objects,  
39 the Parties shall confer pursuant to Section 27.2.2 and thereafter such disputes (if still unresolved  
40 after conferring) shall be referred to arbitration pursuant to Section 27.3.2. Notwithstanding the  
41 foregoing, if based upon the annual review or at any time during the Term, the Parties become  
42 aware that an Arbiter has become unavailable to serve in any prospective Arbitration or has



1 expressed an unwillingness to continue to serve, the Parties shall replace that Arbiter with a new  
2 Arbiter mutually agreed-upon by the Parties.

3  
4           27.3.2 Expedited Dispute Resolution Procedure. The Parties hereby agree that the  
5 following disputes shall be subject to this expedited dispute resolution procedure: (i) Major Phase  
6 Decisions (pursuant to Section 5.6 hereof); (ii) proposed amendments to appraisal instructions  
7 (pursuant to Section 5.4 hereof); (iii) proposed additions or subtractions to the Qualified  
8 Appraiser Pool (pursuant to Section 5.4.1 hereof); (iv) proposed additions or subtractions to the  
9 Pre-Approved Arbiters List (pursuant to Section 27.3.1); (v) disputes related to Redesign Work  
10 Program and Costs (pursuant to Section ~~4.2.44.2.9~~); or (vi) ~~valuation of the Pre-Closing Parcel~~  
11 ~~(pursuant to Section 4.3.5.1); or (vii)~~ any matter the Authority in its reasonable discretion believes  
12 has the potential to materially delay the Project.

13  
14           27.3.2.1 The Party(ies) disputing any matter subject to this  
15 expedited dispute resolution procedure shall, within five (5) business days after  
16 submittal of the dispute to non-binding arbitration, submit a brief with all supporting  
17 evidence to the Arbiter with copies to all Parties. Evidence may include, but is not  
18 limited to, expert or consultant opinions, any form of graphic evidence, including  
19 photos, maps or graphs and any other evidence the Parties may choose to submit in  
20 their discretion to assist the Arbiter in resolving the dispute. In either case, any  
21 interested Party may submit an additional brief within three (3) business days after  
22 distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing  
23 and issue a decision in the matter promptly, but in any event within ten (10) business  
24 days after the initiation of the non-binding arbitration, unless the Arbiter determines  
25 that further briefing is necessary, in which case the additional brief(s) addressing only  
26 those items or issues identified by the Arbiter shall be submitted to the Arbiter (with  
27 copies to all Parties) within five (5) business days after the Arbiter's request, and  
28 thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly  
29 but in any event within two (2) business days after submission of such additional  
30 briefs, and no later than seventeen (17) business days after the initiation of the non-  
31 binding arbitration. Each Party will give due consideration to the Arbiter's decision  
32 prior to pursuing further legal action, which decision to pursue further legal action  
33 shall be made in each Party's sole and absolute discretion.

34

1                   27.3.3 Non-Binding Arbitration Process for Other Disputes.

2  
3                   27.3.3.1 Election to Participate in Non-Binding Arbitration.

4 If the dispute is arising under this Agreement and is not otherwise subject to Section  
5 27.3.2, and the Parties so agree in accordance with Section 27.2.2, the Parties shall  
6 submit the dispute to non-binding arbitration by notifying the Arbiter (selected as  
7 described in Section 27.3.1) of the dispute within ten (10) business days after  
8 expiration of the good faith meet and confer provisions of Section 27.2. Thereafter,  
9 within ten (10) business days, each Party to the dispute shall submit to the Arbiter and  
10 serve on the other Party to the non-binding arbitration a short statement of the dispute  
11 and a proposed discovery and hearing schedule.

12  
13                   27.3.3.2 Preliminary Hearing. Within twenty (20) business

14 days after notice of the election to participate in non-binding arbitration, the Arbiter  
15 shall conduct, either telephonically or in-person, a preliminary hearing. At the  
16 preliminary hearing the Arbiter shall decide discovery and briefing issues and set  
17 dates, including a hearing date. In resolving discovery issues, the Arbiter shall  
18 consider expediency, cost effectiveness, fairness, and the needs of the Parties for  
19 adequate information with respect to the dispute.

20  
21                   27.3.3.3 Retention of Consultants. The Parties by mutual

22 agreement may retain consultants to assist the Arbiter in the course of Arbitration, if  
23 requested by the Arbiter. In his or her request, the Arbiter shall provide to all Parties  
24 to the dispute an explanation for the need for the consultant, the consultant's identity,  
25 hourly rate, and the estimated costs of the service. All Parties to the dispute must  
26 approve the retention of the consultant and, if retention of the consultant is approved,  
27 Authority, or Developer on behalf of Authority, shall contract with, if necessary, and  
28 pay the costs of the consultant, subject to the provisions regarding fees and costs set  
29 forth in Section 27.3.5 below. The consultant's cost shall not exceed \$10,000 without  
30 the prior written consent of the Parties to the dispute. All consultant costs paid by  
31 Authority that are not credited against Initial or Additional Consideration in  
32 accordance with Section 27.3.5 below shall be included as Development Costs in  
33 calculating the Additional Consideration.

34  
35                   27.3.3.4 Commencement of Non-Binding Arbitration. The

36 non-binding arbitration hearing shall commence no later than sixty (60) days after the  
37 initial preliminary hearing, unless the Parties to the dispute mutually agree to extend  
38 the date or the Arbiter extends the date.

39  
40                   27.3.3.5 Additional Procedural Requirements. The

41 procedural rules of the non-binding arbitration under Section 27.3.3 shall be  
42 supplemented by any non-conflicting non-binding arbitration procedures of other

1 alternative dispute resolution providers as may be mutually agreed upon by the  
2 Parties from time to time, applicable to commercial non-binding arbitration, and may  
3 be modified by agreement of the Parties.

4  
5 27.3.3.6 Decision of Arbitrator. The Arbitrator shall make a  
6 written non-binding advisory decision, specifying the reasons for the decision, within  
7 twenty (20) calendar days after the hearing. Each Party will give due consideration to  
8 the Arbitrator's decision prior to pursuing further legal action, which decision to pursue  
9 further legal action shall be made in each Party's sole and absolute discretion.

10  
11 27.3.3.7 Time Period to Complete Non-binding Binding  
12 Arbitration. The non-binding arbitration shall be completed within eighty (80)  
13 calendar days of the preliminary hearing, unless the parties to the dispute mutually  
14 agree to extend the date or the Arbitrator extends the date.

15  
16 27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

17  
18 27.3.4.1 Disputes Involving Arbitrability of Disputes. The  
19 Arbitrator shall decide any dispute involving either the right to have a disputed matter  
20 submitted to non-binding arbitration or whether the matter is properly the subject of  
21 the expedited dispute resolution procedure pursuant to Section 27.3.2. The Parties to  
22 such dispute shall provide notice of the dispute and submit in writing their respective  
23 positions regarding the dispute to the Arbitrator. No such submission shall exceed ten  
24 double spaced pages. The Arbitrator shall make his or her decision within five (5) days  
25 of the last submission.

26  
27 27.3.4.2 No Res Judicata or Collateral Estoppel Effect. Any  
28 determination or finding of any non-binding arbitration conducted pursuant to this  
29 Article shall not have any res judicata or collateral estoppel effect in any other non-  
30 binding arbitration conducted pursuant to this Article, or in any other action  
31 commenced by any person(s) or entity(ies) whomsoever in state or federal court,  
32 whether or not Parties to this Agreement.

33  
34 27.3.4.3 No Ex Parte Communications. No Party or anyone  
35 acting on its behalf shall have any ex parte communication with the Arbitrator with  
36 regard to any matters in issue. Communications concerning procedural matters such  
37 as scheduling shall not be included in this prohibition.

38

1 27.3.4.4 Submission. Unless otherwise directed by the  
2 Arbitrator or agreed by the Parties to a given dispute, the Parties involved in the dispute  
3 shall strive to make joint submissions to the Arbitrator. The Arbitrator shall determine the  
4 schedule for the Parties' submissions, the page and form limitations for the  
5 submissions, and the schedule and form of any hearing(s).

6  
7 27.3.4.5 Governing Law. The Arbitrator shall apply Federal  
8 laws and the laws of the State of California, provided that in the event of a conflict  
9 between Federal law and the laws of the State of California, the Federal law shall  
10 govern.

11  
12 27.3.5 Fees and Costs. Initially, Authority, or Developer on behalf of Authority,  
13 shall contract directly with the selected Arbitrator and shall be responsible for payment of the fees  
14 and costs of the Arbitrator. The Authority shall have the right to credit against the next payment of  
15 Initial Consideration (or if no payment of Initial Consideration ~~remain~~remains due, then at the  
16 next payment of Additional Consideration), fifty percent (50%) of the full amount of the Arbitrator's  
17 fees and costs, including the Arbitrator's consultant costs. Costs of the Arbitration incurred by the  
18 Authority and not credited against Initial or Additional Consideration shall be included as Project  
19 costs in calculating the Additional Consideration.

20  
21 27.3.6 No Cessation of Work Pending Resolution of a Dispute. Pending the  
22 decision of the Arbitrator of any dispute submitted to the Dispute Resolution Procedure hereunder,  
23 the Parties agree that time is of the essence under this Agreement and the DDA and the Project  
24 shall not cease or be delayed, unless Authority in its reasonable discretion elects not to proceed  
25 until such dispute is resolved. If Authority elects not to proceed with any aspect of the Project  
26 during the pendency of a dispute, Authority shall notify the Navy of such election promptly in  
27 writing. If Authority proceeds pending a decision of the Arbitrator, then, if the parties mutually elect  
28 to accept the decision of the Arbitrator, the Parties shall prepare a written reconciliation of the  
29 amounts paid by the Parties that should have been paid in accordance with the decision of the  
30 Arbitrator, and the Parties shall then make any necessary adjustments between them based on the  
31 reconciliation.

32  
33 27.4 Institution of Legal Actions. Either Party may institute legal action to cure,  
34 correct or remedy any default, to seek resolution of any dispute under this Agreement or to  
35 obtain any other remedy consistent with the terms of this Agreement.

36  
37 **ARTICLE 28**  
38 **SURVIVAL AND BENEFIT**  
39

40 28.1 Continuing rights, interests, and obligations of the Parties pursuant to this  
41 Agreement shall survive Closing as provided in this Agreement and the same shall inure to the

1 benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in  
2 this Agreement otherwise shall be construed as creating any rights of enforcement by any person  
3 or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any  
4 entity or person other than the Parties hereto. The Authority may assign its rights, interests, and  
5 obligations under this Agreement to the City of San Francisco if the City of San Francisco  
6 replaces the Authority as the designated and federally approved Local Redevelopment Authority  
7 under the Defense Base Closure and Realignment Act of 1990, as amended.

8  
9 **ARTICLE 29**  
10 **INTERPRETATION**

11  
12 29.1 The headings and captions herein are inserted for convenient reference only and  
13 the same shall not limit or construe the paragraphs or sections to which they apply or otherwise  
14 affect the interpretation hereof.

15  
16 29.2 The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar  
17 terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term  
18 “heretofore” shall mean before, the date of this Agreement.

19  
20 29.3 Words of the masculine, feminine or neuter gender shall mean and include the  
21 correlative words of other genders, and words importing the singular number shall mean and  
22 include the plural number and vice versa.

23  
24 29.4 Words importing persons shall include firms, associations, partnerships (including  
25 limited partnerships), trusts, corporations and other legal entities, including public bodies, as well  
26 as natural persons.

27  
28 29.5 The terms “include,” “including” and similar terms shall be construed as if  
29 followed by the phrase “without being limited to.”

30  
31 29.6 This Agreement shall be governed by and construed in accordance with Federal  
32 law and the laws of the State of California, provided, that in the event of a conflict between  
33 Federal law and the laws of the State of California, the Federal law shall govern.

34  
35 29.7 Whenever under the terms of this Agreement the time for performance of a  
36 covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing  
37 party, such time for performance shall be extended to the next business day. Otherwise all  
38 references herein to “days” shall mean calendar days.

1           29.8 If any term or provision of this Agreement or the application thereof to any person  
2 or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this  
3 Agreement, or the application of such term or provision to persons or circumstances other than  
4 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such  
5 term and provision of this Agreement shall be valid and be enforced to the fullest extent  
6 permitted by law.

7  
8           29.9 Each and all of the recitals set forth at the beginning of this instrument, and any  
9 exhibits referenced herein and attached hereto, are incorporated herein by this reference.

10  
11   **ARTICLE 30**  
12   **NON-DISCRIMINATION**  
13

14           30.1 The Authority covenants for itself, its successors and assigns and every successor  
15 in interest to the Property hereby conveyed, or any part thereof, that the Authority and such  
16 successors and assigns shall not discriminate upon the basis of race, color, sex, religion, or  
17 national origin in the use, occupancy, sale or lease of the Navy Real Property, or in their  
18 employment practices conducted thereon. This covenant shall not apply, however, to the lease or  
19 rental of a room or rooms within a family dwelling unit; nor shall it apply with respect to  
20 premises used primarily for religious purposes. The United States of America shall be deemed a  
21 beneficiary of this covenant without regard to whether it remains the owner of any land or  
22 interest therein in the locality of the Navy Real Property hereby conveyed and shall have the sole  
23 right to enforce this covenant in any court of competent jurisdiction.

24  
25   **ARTICLE 31**  
26   **AVAILABILITY OF FUNDS**  
27

28           31.1 The Navy's obligations under this Agreement are subject to the availability of  
29 funds appropriated for such purpose. Nothing in this Agreement shall be construed as or  
30 constitute a commitment or requirement that the Navy obligate or pay funds in contravention of  
31 the Anti-Deficiency Act, 31 U.S.C. Section 1341, or that Congress, at a later time, will  
32 appropriate funds sufficient to meet deficiencies.

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**ARTICLE 32  
MODIFICATION; WAIVERS**

32.1 This Agreement, together with all Exhibits hereto, contains the entire agreement and understanding of the parties in respect to the purchase and sale of the Navy Real Property, and may not be amended, modified or discharged nor may any of its terms be waived except by an instrument in writing signed by the Parties. A waiver by a Party of a specific provision shall not be deemed a waiver of any subsequent provision. The Parties hereto shall not be bound by any terms, conditions, statements, warranties or representations, oral or written, not contained herein.

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14

**ARTICLE 33  
REMEDIES FOR NONPERFORMANCE**

33.1 In the event a Party hereto fails to observe or perform any of its obligations under this Agreement or otherwise breaches this Agreement, after having been provided written notice and failing to cure the default within thirty (30) days after such notice, the other Party will be entitled to exercise any and all of the remedies for breach which are provided herein, as well as any other remedies to which the Party is entitled at law or in equity. Notwithstanding the foregoing, the Authority shall not be liable for monetary damages if it does not accept conveyance of the Navy Real Property in a timely manner. Notwithstanding the foregoing, the sole and exclusive remedies for failure to satisfy a Closing Condition as described in Section 3.7, shall be as set out in Section ~~3.8.1~~3.8.1, 3.8.2, and ~~3.8.2~~3.8.4. Notwithstanding the foregoing, the sole remedy for failure by the Navy to meet a ~~Site 12~~ Performance Benchmark shall be set out in Sections ~~4.2.2.2 and 4.2.3~~4.2.4 through ~~4.2.5~~4.2.10, above.

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29

**ARTICLE 34  
FAILURE TO INSIST ON COMPLIANCE**

34.1 The failure of either Party to insist, in any one or more instances, upon strict performance of any of the terms of this Agreement shall not be construed as a waiver or relinquishment of such Party's right to future performance of this Agreement, but the obligations of the other Party with respect to such future performance shall continue in full force and effect. Whenever the terms of this Agreement call for one Party to approve an action or make a determination before the other Party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

1 **ARTICLE 35**  
2 **RISK OF LOSS**

3  
4 35.1 From the ~~effective date~~Effective Date of this Agreement, the Party then owning a  
5 Parcel shall bear all risks of loss and damage due to casualty that may be suffered by the  
6 Parcel(s), provided, however, that the Navy shall not be liable for any loss, damage or repair to  
7 utilities, roads or structures due to acts of God, enemy action, civil commotion, fire, flood,  
8 earthquake or other casualty. Notwithstanding any such loss or damage, each and all of the  
9 provisions of this Agreement shall remain unimpaired and in full force and effect.

10  
11 **ARTICLE 36**  
12 **COUNTERPARTS**

13  
14 36.1 This Agreement may be executed in multiple counterparts and/or with the  
15 signatures of the Parties set forth on different signature sheets and all such counterparts, when  
16 taken together, shall be deemed one original.

17  
18 **[SIGNATURE PAGE FOLLOWS]**  
19



1           **IN WITNESS WHEREOF**, the Parties, intending to be legally bound hereby, have  
2 caused their duly appointed representatives to execute this Agreement as of the Effective Date  
3 set forth above.  
4

5  
6 WITNESS/ATTEST:

**THE UNITED STATES OF AMERICA**

7  
8  
9  
10  
11 By: \_\_\_\_\_

Name:  
Title:

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

\_\_\_\_\_  
Real Estate Contracting Officer

12  
13  
14  
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18  
19 **WITNESS/ATTEST:** \_\_\_\_\_  
20 ~~THE~~ **TREASURE ISLAND**  
21 **DEVELOPMENT AUTHORITY**, a  
22 California non-profit public benefit  
23 corporation

24  
25  
26  
27  
28 By: \_\_\_\_\_

29 **By:** \_\_\_\_\_

30 **Name:** \_\_\_\_\_

31 **Title:** \_\_\_\_\_

32 \_\_\_\_\_

33 \_\_\_\_\_

34  
35  
36  
37 Approved as to form:  
38 DENNIS J. HERRERA,  
39 City Attorney

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

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

42 Deputy City Attorney

43  
44 Authorized by Authority  
45 Resolution No. 11-19-04/21  
46 Adopted April 21, 2011

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Authorized by Board of Supervisors  
Resolution No. 242-11  
Adopted June 7, 2011

## EXHIBITS

1 **EXHIBIT A**

2 **DEFINITIONS**

3  
4  
5 “**Accounting**” has the meaning set forth in Section 4.3.6.1.

6  
7 “**ACM**” has the meaning set forth in Section 17.4.

8  
9 “**Additional Consideration**” has the meaning set forth in Section 4.3.1.

10  
11 “**Agreement**” has the meaning set forth in the Preamble.

12  
13 “**Anniversary Date**” means the first anniversary of the Initial Closing and each  
14 anniversary of such date thereafter; provided, however, that if any Anniversary Date falls on  
15 other than a business day, then the Anniversary Date for that year shall be the first business day  
16 after the Anniversary Date.

17  
18 “**Annual**” means a calendar year beginning on the Initial Closing date and commencing  
19 on each successive Anniversary Date and continuing until the Termination Date hereof.

20  
21 “**Appraisal Process**” has the meaning set forth in Section 5.4.

22  
23 “**Arbiter**” has the meaning set forth in Section 27.3.1.

24  
25 “**Arbiters’ Qualifications**” has the meaning set forth in Section 27.3.1.1.

26  
27 “**Assignable Easements, Contracts and Permits**” has the meaning set forth in Section  
28 ~~7.1.3-7.3.3~~.

29  
30 “**Assignment of Rents**” has the meaning set forth in Section 4.2.6.

31 ~~“**Assumed Contracts**” means the contracts, licenses and permits listed in Section 6.1.~~

32  
33 “**Auction**” means any arm’s length transaction designed to maximize revenues from the  
34 sale of parcels to qualified bidders. Auction formats may include any industry standard  
35 marketing approach or typical auction formats as outcry, sealed bid, sealed bid convertible or  
36 online and may be left to the discretion of the auction broker to determine the most appropriate  
37 format given current market conditions. In no case shall an absolute auction, in which a parcel is  
38 sold to the highest bidder regardless of price, or a reserve auction, in which the seller reserves the  
39 right to accept or reject the highest bid, be utilized unless agreed upon in advance by all Parties.  
40 The Auction shall be managed by a qualified third party real estate broker unrelated to the  
41 Developer or Authority, in a manner consistent with industry practice for a non-distressed

1 offering of quality real estate that provides at a minimum: (i) commercially standard due  
2 diligence information and access, including, without limitation, information regarding the site  
3 and entitlements; (ii) iterative rounds of bidding by qualified bidders; and (iii) commercially  
4 standard closing conditions and processes.

5  
6 **“Authority”** means the Treasure Island Development Authority and its successors and  
7 assigns.

8  
9 **“Authority Access Easements”** has the meaning set forth in Section ~~7.1.1.1~~7.3.1.1.

10  
11 **“Authority Closing Documents”** has the meaning set forth in Section 8.3.

12  
13 **“Authority Costs Payment”** means the Authority’s costs paid by Developer in  
14 accordance with the terms of the DDA. Because the Authority will use Marina Revenues to fund  
15 the Authority’s costs, Developer’s obligation under the DDA to pay for the Authority’s costs will  
16 be reduced by Marina Revenues as more particularly described in the DDA.

17  
18 **“Authority Option”** has the meaning set forth in Section 3.8.7.

19  
20 **“Building 233 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

21  
22 **“Building 3 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

23  
24 **“Caretaker Agreement”** has the meaning set forth in the eighth Recital and is set forth  
25 in Exhibit LL.

26  
27 **“CDPH”** means the California Department of Public Health.

28  
29 **“CEQA”** has the meaning set forth in the sixth Recital.

30  
31 **“CERCLA”** means the Comprehensive Environmental Response, Compensation and  
32 Liability Act, 42 U.S.C. § 9601, et seq.

33  
34 **“Certification”** has the meaning set forth in the sixth Recital.

35  
36 **“City”** has the meaning set forth in the first Recital.

37  
38 **“Closing”** means the transactions by which the Navy Real Property, or a portion thereof,  
39 is conveyed by Quitclaim Deed by the Navy to the Authority.

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“Closing Conditions” has the meaning set forth in Section 3.7.

“Coast Guard” has the meaning set forth in Section 9.3.3.

“Coast Guard Installation” has the meaning set forth in Section 9.3.3.

“Commercial Lot” has the meaning set forth in Section 5.2.1.

~~“Contract Assumption List” has the meaning set forth in Section 6.1.~~

“Conveyance Schedule” means the schedule for conveyance of the Navy Real Property to the Authority that is set forth in Exhibit R.

“Credit Commencement Date” has the meaning set forth in Section ~~4.2.5~~ 4.2.6

“Critical Commercial Lot” has the meaning set forth in Section 5.2.1.

“Critical Commercial Lots Payment” has the meaning set forth in Section 5.2.1.

“DDA” means the Disposition and Development Agreement entered into by and between the Authority and the Developer, dated as of ~~\_\_\_\_\_~~, ~~20\_\_~~ June 28, 2011.

“DDA Land Use Plan” means the Land Use Plan attached to the DDA and hereto as Exhibit Z-2, as described in the second Recital.

“DDA Reports” means, collectively, the items set forth in Section 5.9, Section 5.13.2, and Section 5.13.3.

“Default Interest Rate” means an interest rate of three hundred (300) basis points above the Interest Rate.

“Delayed Parcel” has the meaning set forth in Section 17.5.

“Developed Critical Commercial Lot” has the meaning set forth in Section 5.2.2.

“Developer” means Treasure Island Community Development, LLC and its successors and assigns, or other such entity that is the master developer, and expressly excludes the Marina Developer.

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“**Development Agreement**” means the Development Agreement entered into by and between the Authority and the City, dated as of \_\_\_\_\_, 20\_\_\_\_, June 28, 2011.

“**Development Costs**” means all Hard Costs, Soft Costs, and Pre-Development Costs, except to the extent specifically excluded under this Agreement and specifically excluding any costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

“**Developer Lots**” has the meaning set forth in Section 5.3.

“**DTSC**” means the California Department of Toxic Substances Control.

“**Easement Area**” has the meaning set forth in Section 9.5.

“**Easements**” means the interests in real property as set forth in Article ~~7.7~~ and in Section 9.5.

“**EBSs**” has the meaning set forth in the third Recital.

“**EDC**” has the meaning set forth in the second Recital.

“**EDC Application**” has the meaning set forth in the second Recital.

“**EDC Application Property**” has the meaning set forth in the second Recital.

“**Effective Date**” has the meaning set forth in the Preamble.

“**EIR**” has the meaning set forth in the sixth Recital.

“**EIS**” has the meaning set forth in the fifth Recital.

“**Entitlements**” means all land use approvals and entitlements, including all conditions of approval and CEQA mitigation measures legally required by the Authority, City or any other

1 Regulatory Authority as a condition to the subdivision of the Navy Real Property and  
2 development of the Navy Real Property in accordance with the DDA.

3  
4 **“Environmental Reports”** means the documents included in the CERCLA  
5 administrative record for Treasure Island and Environmental Baseline Surveys (EBSs), FOSTs,  
6 FOSETs, and any ~~Environmental Services Cooperative Agreements~~ agreements pursuant to 10  
7 U.S.C. 2701(d), which documents include Toxic Substances Control Act 15 U.S.C. § 2601 et  
8 seq. documents, radiological materials documents, petroleum corrective action program  
9 documents, any lead-based paint and asbestos surveys relating to the improvements on the  
10 Property and any regulatory order or consent agreement, and any supporting documents  
11 specifically referenced therein.

12  
13 **“Excess Land Appreciation Structure”** has the meaning set forth in Section 5.6.4.

14  
15 ~~**“Excluded Personal Property”** has the meaning set forth in Section 3.1.3.~~

16  
17 **“Excusable Delay”** means a delay in a Party’s performance of its obligations hereunder  
18 that is caused by (a) acts of God, enemy action, civil commotion, fire, flood, earthquake or other  
19 casualty; (b) strikes or other labor disputes (to the extent not resulting from the labor practices of  
20 the Party claiming the benefit of the Excusable Delay); (c) material shortages of or inability to  
21 obtain labor or materials beyond the reasonable control of the Party claiming the benefit of  
22 Excusable Delay (except to the extent caused by the negligent act or omission or willful  
23 misconduct of the Party claiming the benefit of Excusable Delay); (d) unanticipated breakage or  
24 accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; (e)  
25 materially adverse weather conditions to the extent that such conditions could not be reasonably  
26 predicted or anticipated; (f) a delay caused by federally-imposed increased security measures that  
27 require upgrades in threat condition or combating terrorism on the Property; (g) Litigation  
28 Excusable Delays; and (h) Regulatory Excusable Delays.

29  
30 **“Exempt Transferee”** has the meaning set forth in Section 3.8.7.

31  
32 **“FFSRA”** means Federal Facilities Site Remediation Agreement dated September 29,  
33 1992, as may be amended, between the Navy and the State of California Department of Toxic  
34 Substances Control (“**DTSC**”) and San Francisco Regional Water Quality Control Board  
35 (“**RWQCB**”) setting forth the Navy’s obligations to investigate and remediate sites at the Navy  
36 Real Property subject to the availability of funds and other provisions of the FFSRA. In  
37 addition, the FFSRA establishes the terms and conditions for DTSC and RWQCB approved  
38 changes to schedules and penalties for failure to meet environmental remediation schedules. ~~The~~  
39 ~~current FFSRA is attached hereto as Exhibit O.~~



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“**Final IRR**” has the meaning set forth in Section 4.3.7.1.

“**First Tier Participation**” has the meaning set forth in Section 4.3.1.

“**First Tier Payment**” has the meaning set forth in Section 4.3.2.

“**FOST**” means a written determination by the Navy that a Parcel may be transferred by a Quitclaim Deed to the Authority in full compliance with 42 U.S.C. § 9620(h)(3)(A) or § 9620(h)(4) of CERCLA ~~and described in the third Recital. The FOST for the FOST Parcel is set forth in Exhibit J, attached hereto and made a part hereof.~~

“**FOST Parcel**” has the meaning set forth in the fourth Recital.

~~“**FSSR**” has the meaning set forth in Section 3.7.1.2.~~

“**GAAP**” has the meaning set forth in Section 4.3.6.

“**Government**” means the United States of America.

“**Government Real Property**” means the real property owned by the United States of America which includes real property under the jurisdiction, custody or control of the United States Coast Guard, the United States Department of Labor, and the Federal Highway Administration, and specifically excludes the real property, easements, rights of access or other interests under the jurisdiction, custody, or control of the Navy as specified in Section 3.1.1; and (ii) real property owned by the State of California Department of Transportation.

“**Gross Revenues**” means, for any period, all cash revenues received by the Developer from any source whatsoever, and whether collected through or outside of escrow in connection with all or any part of the Project, in each case for such period, which shall include, the gross proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to Developer as the master landlord under any ground lease or as a property manager under an interim management agreement with the Authority for existing facilities and open space;

1 proceeds from the first sale of ground leases or refinancing intended to capitalize ground value;  
2 any damage recoveries, insurance payments or condemnation proceeds payable to the Developer  
3 with respect to the Project to the extent not otherwise used for repair or reconstruction of the  
4 Property, all revenues derived from agreements to which the Developer is a party pursuant to  
5 which the Developer participates in the proceeds of the operation or sale of any portion of the  
6 Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special  
7 tax districts formed for purposes of providing funds for costs associated with the Project, and  
8 amounts paid to Developer from tax increment financing or other public financing, and grants  
9 and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross  
10 Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by  
11 its partners or members or the proceeds of any loan made to the Developer.

12  
13 **“Guidelines for Residential Auction Lot Selection”** has the meaning set forth in  
14 Section 5.5.3.

15  
16 **“Hard Costs”** means Developer’s reasonable out-of-pocket costs actually incurred in  
17 connection with the construction of the Horizontal Improvements (which include, without  
18 limitation, construction of improvements by Developer on the Critical Commercial Lots to the  
19 extent required under the DDA). Hard Costs include, without limitation, necessary permit fees,  
20 bond premiums and similar fees and charges required for the construction of the Horizontal  
21 Improvements.

22  
23 **“Hazardous Substance”** means (A) any substance designated pursuant to section  
24 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated  
25 pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified  
26 under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but  
27 not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.  
28 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under  
29 section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean  
30 Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with  
31 respect to which the Administrator of the Environmental Protection Agency has taken action  
32 pursuant to section 2606 of title 15. The term does not include natural gas, natural gas liquids,  
33 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such  
34 synthetic gas).

35  
36 ~~**“Historic District”** means that certain real property described in [Exhibit B-8](#), including~~  
37 ~~those buildings commonly known as [Quarters 10](#) and [Building 267](#).~~

38  
39 **“Horizontal Improvements”** means demolition, grading, geotechnical improvements,  
40 environmental investigation, environmental characterization, regulatory agency coordination and  
41 negotiation and environmental remediation for which Developer’s costs are not reimbursed  
42 through an ~~[Environmental Services Cooperative Agreement](#)~~ [agreement pursuant to 10 U.S.C.](#)  
43 [2701\(d\)](#) or other Navy funds, infrastructure and utilities, and all other improvements and related

1 costs required to be performed or installed by Developer pursuant to the terms of the DDA,  
2 including but not limited to, the preparation of land for vertical development, public service and  
3 community improvements, transportation program improvements and subsidies, [stormwater](#)  
4 [management controls](#), facilities and equipment, open space and parks improvements and  
5 maintenance, rehabilitation of historic buildings, affordable housing program and transition  
6 housing improvements.

7  
8 ~~“**Illustrative Land Use Plan**” means the Illustrative Land Use Plan attached hereto as~~  
9 ~~Exhibit Z and described in the second Recital.~~

10  
11 **“Infrastructure Financing District”** means an Infrastructure Financing District  
12 formed in accordance with the Infrastructure Financing District Act (California Government  
13 Code Section 53395 et seq.), as amended from time to time.

14  
15 [“\*\*Initial Closing\*\*” means the date on which the first conveyance of all or any of the FOST](#)  
16 [Parcel by Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3](#)  
17 [hereof.](#)

18  
19 **“Initial Consideration”** has the meaning set forth in Section 4.1.

20  
21 **“Initial Consideration Term”** has the meaning set forth in Section 4.1.

22  
23 ~~“**Initial Closing**” means the date on which the first conveyance of the FOST Parcel by~~  
24 ~~Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3 hereof.~~

25  
26 **“Installment Payment”** has the meaning set forth in Section 4.2.1.

27  
28 **“Interest Rate”** means an annual interest rate of     %, which equals the interest rate  
29 payable on ten year (10) Treasury Notes in effect as of the ~~month~~[date](#) that this Agreement is  
30 entered into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for  
31 the duration of this Agreement.

32  
33 **“IRR”** means the internal rate of return, annualized, calculated on the Project’s Net Cash  
34 Flow by the Excel 2007 “IRR” function using quarterly Net Cash Flows. The Project’s Net Cash  
35 Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the  
36 quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An  
37 example of the IRR calculation is attached hereto as [Exhibit DD](#).

38  
39 **“IRR Statement”** has the meaning set forth in Section 4.3.2.

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“JV Lots” has the meaning set forth in Section 5.3.

[“Key Infrastructure” has the meaning set forth in Section 9.5.](#)

“Land Use Covenant” means that certain land use covenant(s) entitled “Covenant to Restrict Use of Property; Environmental Restrictions” regarding environmental restrictions, entered into by the Authority and the State of California Department of Toxic Substances Control, that may be executed for a given Parcel.

“Late Payment” has the meaning set forth in Section 4.3.4.

“LBP” has the meaning set forth in Section 17.3.

“LIFO” has the meaning set forth in Section 3.8.1.

“Litigation Excusable Delay” means any action or proceeding before any court, tribunal, or other judicial, adjudicative or legislative decision-making body, including any administrative appeal, brought by plaintiffs unaffiliated with the Party claiming the benefit of Excusable Delay which both (1) (x) seeks to challenge the validity of any action taken by the Party claiming the benefit of Excusable Delay, including the Party’s approval, execution, and delivery of this Agreement and its performance hereunder, or the performance of any action required or permitted to be performed by the Party hereunder, or (y) seeks to challenge the failure of any Regulatory Authority to issue, the conditions of, or the validity of any other permit required to conduct the Party’s obligations under this Agreement, and (2) is reasonably likely to prevent the Parties from timely performing its obligations under this Agreement. Performance by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation Excusable Delay during the pendency thereof, and until a judgment, order, or other decision resolving such matter in favor of the Party whose performance is delayed has become final and unappealable. The Parties shall each proceed with due diligence and shall cooperate with one another to defend the action or proceeding or take other measures to resolve the dispute that is the subject of such action or proceeding.

“Lots” means a building site to be prepared by Developer and conveyed for consideration to a third party or Developer affiliate pursuant to the terms of the DDA, including, without limitation, the Commercial Lots.

“Major Phase” means each Major Phase of development identified in the phasing plan attached to the DDA.

1  
2           **“Major Phase Decision Notice”** has the meaning set forth in Section 5.7.1.  
3

4           **“Major Phase Decisions”** has the meaning set forth in Section 5.6.

5  
6           **“Marina Developer”** means Treasure Island Enterprises, LLC, its successors and  
7 assigns, or such other entity that is the master tenant and developer of the Treasure Island  
8 Marina.  
9

10           **“Marina Project”** means the redevelopment and operation of the Treasure Island Marina  
11 in accordance with a Lease Disposition and Development Agreement and a Ground Lease  
12 between the Authority and the Marina Developer.  
13

14           **“Marina Property”** means the property described in Exhibit F attached hereto which  
15 will be used for the Marina Project.  
16

17           **“Marina Revenues”** means minimum rent, percentage rent and any proceeds from  
18 refinancings, sales or subleases for the Marina Project that are actually received by the Authority  
19 under the terms of the Marina Ground Lease and/or the Marina Lease Disposition and  
20 Development Agreement. Marina Revenues shall not include the amount of any rent credits that  
21 the Marina Developer is entitled to receive under the terms of the Marina Ground Lease.  
22

23           **“Market Rate Lots”** has the meaning set forth in Section 5.3.  
24

25           **“Market Rate Units”** has the meaning set forth in Section 5.3.

26  
27           **“Multiple Conveyances”** means a series of Partial Conveyances.  
28

29           **“Navy”** has the meaning set forth in the Preamble.  
30

31           **“Navy Access Easements”** has the meaning set forth in Section ~~7.1.1.2~~7.3.1.2.  
32

33           **“Navy Closing Documents”** has the meaning set forth in Section 8.2.

34  
35           **“Navy Office”** has the meaning set forth in Section 13.1.  
36

37           **“Navy Office ~~Agreement~~Provisions”** has the meaning set forth in Section 13.1 and is  
38 attached as Exhibit K-2.  
39

40           **“Navy Personal Property”** has the meaning set forth in Section 3.1.3.

1  
2           **“Navy Property”** means, collectively, the Navy Personal Property and the Navy Real  
3 Property.

4  
5           **“Navy Real Property”** ~~means real property owned by the United States of America~~  
6 ~~under the jurisdiction, custody, and control of the Navy as specified~~ has the meaning set forth in  
7 Section 3.1.1, and specifically excludes the real property, easements, rights of access or other  
8 interests under the jurisdiction, custody, and control of the United States Coast Guard, the United  
9 States Department of Labor, the Federal Highway Administration, and the California Department  
10 of Transportation.

11  
12           **“Navy Real Property Documents”** has the meaning set forth in Section 12.1.

13  
14           **“Navy Reserved Access Easement”** has the meaning set forth in Section ~~7.1.1.2~~ 7.3.1.2.

15  
16           **“NEPA”** has the meaning set forth in the fifth Recital.

17  
18           **“NEPA ROD”** has the meaning set forth in the fifth Recital.

19  
20           **“Net Available Tax Increment Revenues”** has the meaning set forth in Section  
21 ~~4.2.6~~ 4.2.7.2.

22  
23           **“Net Cash Flow”** means Gross Revenues received by the Developer from the Project  
24 less Development Costs paid by the Developer.

25  
26           **“Non-Assignable Easements, Contracts and Permits”** has the meaning set forth in  
27 Section 3.6.

28  
29           **“Non-Critical Commercial Lot”** has the meaning set forth in Section 5.2.1.

30  
31           **“Non-Developer Critical Commercial Lot”** has the meaning set forth in Section 5.2.2.

32  
33           **“Open Space Acres”** means those portions of the Navy Real Property identified in the  
34 ~~Illustrative~~ DDA Land Use Plan as ‘Open Space’ or ‘Public Services, Civic, Institutional’,  
35 consisting of approximately 300 acres.

36  
37           **“Option Notice”** has the meaning set forth in Section 3.8.7.

38  
39           **“Option Property”** has the meaning set forth in Section 3.8.7.

40  
41           **“Owner Property”** has the meaning set forth in Section ~~7.1.1.3.3~~ 7.3.1.3.3.

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“Parcel” or “Parcels” has the meaning set forth in the fourth Recital.

“Parcel 9.b” means that property identified on Exhibit B-4 attached hereto.

“Parcel 21 Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Parcel 24A Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Parcel 30 Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Parcel 30N Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Parcel 30S Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Parcel 31 Performance Benchmark” has the meaning set forth in Section 4.2.3.

“Partial Conveyance” means a conveyance by deed from the Navy to the Authority of any number of Parcels comprising less than the entire Navy Real Property.

“Party” or “Parties” has the meaning set forth in the Preamble.

~~“Performance Benchmark” has the meaning set forth in Section 4.2.2.~~

“Permissible Financing Costs” means debt service and required reserves for Mello-Roos Bonds that are not withheld in such Mello-Roos Bonds issuances; and debt service and all other related financing costs, including, without limitation, bond issuance costs and fees, legal fees, and bond marketing costs, actually incurred and paid by Developer to pay for certain public facilities to be constructed on the Property, including a fire/police station and public parking garages, to the extent financed using public finance vehicles such as certificates of participation or revenue bonds.

1  
2           **“Pre-Approved Arbiters List”** has the meaning set forth in Section 27.3.1.  
3

4           ~~**“Pre-Closing Parcel”** means that parcel of Navy Real Property conveyed to the~~  
5 ~~Authority in advance of the Initial Closing for general government, transportation and~~  
6 ~~infrastructure purposes.~~  
7

8           ~~**“Pre-Closing Parcel Consideration”** means the value of the Pre-Closing Parcel~~  
9 ~~established pursuant to Section 4.3.5.~~  
10

11           **“Pre-Closing Obligations”** has the meaning set forth in Section 21.1.  
12

13           **“Pre-Development Costs”** means reasonable costs actually incurred and paid and  
14 directly related to the development, Entitlement, acquisition and implementation of the Project  
15 incurred by Developer between the execution of the Exclusive Negotiating Agreement between  
16 Authority and Developer and the Initial Closing, including architectural, engineering,  
17 environmental, consultant, community outreach, legal and other professional fees; real property  
18 taxes and assessments; insurance expenses; title and survey, sales and marketing expenses;  
19 project management costs, security and site maintenance; fees and charges for bonds and  
20 permits; and City cost reimbursements. The following shall not constitute “Pre-Development  
21 Costs”: (1) Repayment of the principal, fees and interest of any loan or other expense that is not  
22 also a Permissible Financing Cost; or (2) distributions, preferred return or other capital return to  
23 the members of the Developer. Pre-Development Costs also include a compound return on all  
24 such costs equal to 20% per annum. An example of the calculation of Pre-Development Costs  
25 incurred prior to the Initial Closing is attached hereto as Exhibit KK.

26  
27           **“Product Types”** has the meaning set forth in Section 5.5.2.

28  
29           **“Project”** means the mixed use development more particularly described in the DDA,  
30 and expressly excludes the Marina Project.  
31

32           **“Property”** means, collectively, the Government Real Property and the Navy Property.

33  
34           **“Qualified Appraiser Pool”** has the meaning set forth in Section 5.4.1.

35  
36           **“Quarter”** means a three-month period commencing on the first day of the Initial  
37 Closing and continuing until the Termination Date hereof.  
38



1           **“Quitclaim Deed(s)”** means those certain recordable quitclaim deeds conveying the  
2 Navy’s right, title, and interest to the Navy Real Property, ~~the Easements, or the Pre-Closing~~  
3 ~~Parcel~~ to the Authority, substantially in the formsform attached hereto and made a part hereof as  
4 Exhibit D-1, Exhibit D-2, and Exhibit D-3.

5  
6           **“RACR”** has the meaning set forth in Section 3.7.1.4.

7  
8           **“Redesign Budget”** has the meaning set forth in Section ~~4.2.4.4.2.5.~~

9  
10          **“Redesign Costs”** has the meaning set forth in Section ~~4.2.4.4.2.5.~~

11  
12          **“Redesign Plan”** has the meaning set forth in Section ~~4.2.3.4.2.4.~~

13  
14          **“Redesign Trigger Event”** has the meaning set forth in Section ~~4.2.3.4.2.4.~~

15  
16          **“Regulatory Authority”** means any governmental agency having regulatory jurisdiction  
17 over the Property to issue any required authorization, approval or permit.

18  
19          **“Regulatory Excusable Delay”** means delays by Regulatory Authorities in issuing  
20 requisite approvals or consents beyond the reasonable control of the Party claiming the benefit of  
21 Regulatory Excusable Delay, provided that the Party claiming the benefit of Regulatory  
22 Excusable Delay is diligently proceeding to obtain all necessary approvals from Regulatory  
23 Authorities. Without limiting the foregoing, Regulatory Excusable Delays shall not include  
24 delays resulting from (i) the Party’s failure to timely respond to requests for information or (ii)  
25 the Party’s failure to take actions or proceed in a manner requested by the Regulatory Authority  
26 that is consistent with industry standard practices and Regulatory Authority requirements as  
27 commonly applied for the intended land use for property within the jurisdiction of the applicable  
28 Regulatory Authority.

29  
30          **“Remainder Parcel”** has the meaning set forth in the fourth Recital.

31  
32          **“Reporting Period”** has the meaning set forth in Section 4.3.2.

33  
34          **“Re-Setting of the Minimum Bid Price”** has the meaning set forth in Section 5.5.

35  
36          **“Residential Auction Lots”** has the meaning set forth in Section 5.3.

37  
38          **“Reuse Plan”** has the meaning set forth in the second Recital.

39  
40          ~~**“Road Easement”** has the meaning set forth in Section 7.1.1.1.~~

41  
42          **“SEBS”** has the meaning set forth in the third Recital.

1  
2       **“Second Tier Participation”** has the meaning set forth in Section 4.3.1.

3  
4       **“Second Tier Payment”** has the meaning set forth in Section 4.3.3.

5  
6       **“Site 12 Development Parcel”** has the meaning set forth in Section 4.2.2.

7  
8       **“Site 12 Performance Benchmark”** has the meaning set forth in Section ~~4.2.2.1~~4.2.2.

9  
10       **“Site 12 ROD”** ~~has the meaning set forth in Section 4.2.2.1.1.~~ ~~“Site 12 ROD~~  
11 ~~Notice”~~ has the meaning set forth in Section 4.2.2.1.

12  
13       **“SHPO”** has the meaning set forth in the seventh Recital.

14  
15       **“Soft Costs”** means Developer’s reasonable out-of-pocket costs actually incurred and  
16 paid on or after the Initial Closing (except as otherwise provided below or in Section 5.13) and  
17 attributable to the following: designing the Horizontal Improvements and improvements on the  
18 Critical Commercial Lots; marketing and selling the Lots, including Auction costs; Entitlements;  
19 architectural, engineering, consultants, community outreach, attorney and other professional  
20 fees; real property taxes and assessments; Permissible Financing Costs; insurance expenses,  
21 including environmental insurance; sales and marketing expenses; security and site maintenance;  
22 customary closing costs incurred in connection with sales of the Lots; Authority Costs Payments;  
23 costs and subsidies incurred pursuant to the DDA, including, without limitation: costs and  
24 subsidies not otherwise included in Hard Costs related to implementation of the transportation  
25 program, affordable housing and transition housing program, rehabilitation of the historic  
26 buildings, development of the Critical Commercial Lots, development of the parks and open  
27 space, and public art; any Initial Consideration, including interest payments on the Initial  
28 Consideration, any First Tier Payment, any Second Tier Payment, and expenses incurred by  
29 Developer related to management of existing facilities and open space under a management  
30 agreement with the Authority. Without limiting the foregoing, the following shall not constitute  
31 “Soft Costs”: (1) repayment of the principal and interest, fees or costs of any loan, investment or  
32 financing other than Permissible Financing Costs; and (2) distributions, preferred return or other  
33 capital return to the members of Developer; and (3) costs and fees related to compliance and  
34 reporting to lenders other than those required for any financing allowed under Permissible  
35 Financing Costs.

36  
37       **“Subordinate Pledge”** has the meaning set forth in Section 4.2.6.

1           **“Sub-Phase”** means each Sub-Phase of development as identified in the phasing plan  
2 attached as an exhibit to the DDA.  
3

4           **“Term”** means the term of this Agreement, commencing on the Effective Date and  
5 expiring on the Termination Date unless terminated earlier as otherwise provided for herein.  
6

7           **“Termination Date”** means the date twenty five (25) years from the Initial Closing or as  
8 adjusted by mutual agreement of all Parties based on the annually updated pro forma.

9  
10           **“Third Party Access Easement”** has the meaning set forth in Section ~~7.1.1.2~~[7.3.1.2](#).

11           **“Title Company”** means such title insurance company as the Authority shall from time  
12 to time designate.  
13

14  
15           **“Tolling Event”** has the meaning set forth in Section [4.2.3](#).

16  
17           **“Treasure Island”** has the meaning set forth in the first Recital.  
18  
19

20           **“UC1 Utility Corridor Performance Benchmark”** has the meaning set forth in Section  
21 [4.2.3](#).

22  
23           **“UC2 Utility Corridor Performance Benchmark”** has the meaning set forth in Section  
24 [4.2.3](#).

25           **“Unperfected Easements, Contracts and Permits”** has the meaning set forth in Section  
26 3.6.  
27

28  
29           **“Utilities Agreement”** has the meaning set forth in Section 9.1.  
30

31           **“Utility Easements”** has the meaning set forth in Section ~~7.1.2~~[7.3.2](#).  
32

1           **“Utility Infrastructure”** means all utilities and related support infrastructure located on  
2 and off the Navy Real Property that are assignable or transferable by the Navy such as electrical,  
3 water, sewer, gas, and storm drainage lines to be transferred to the Authority under this  
4 Agreement pursuant to the terms and conditions set forth in a Bill of Sale in the form attached  
5 hereto and made a part hereof as Exhibit H-2 or the Quitclaim Deeds substantially in the form  
6 attached hereto and made a part hereof as ~~Exhibit D-1~~ or ~~Exhibit D-2~~.

7  
8           **“Vertical Builder”** means the successor owner of a Lot pursuant to a transfer permitted  
9 under the DDA who is building Vertical Improvements.

10  
11           **“Vertical DDA”** means a disposition and development agreement entered into among the  
12 Authority, Developer and a Vertical Builder in accordance with the DDA relating to the  
13 construction of Vertical Improvements.

14  
15           **“Vertical Improvements”** means buildings and structures that are not part of the  
16 Horizontal Improvements constructed on Lots transferred to a Vertical Builder.

17  
18           **“Work Program”** has the meaning set forth in Section ~~4.2.4~~4.2.5.  
19

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