

File No. 100429

Committee Item No. 5

Board Item No. _____

COMMITTEE/BOARD OF SUPERVISORS

AGENDA PACKET CONTENTS LIST

Committee: Land Use and Economic Development Date May 10, 2010

Board of Supervisors Meeting Date _____

Cmte Board

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| <input type="checkbox"/> | <input type="checkbox"/> | Motion |
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | Resolution |
| <input type="checkbox"/> | <input type="checkbox"/> | Ordinance |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Digest |
| <input type="checkbox"/> | <input type="checkbox"/> | Budget Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Legislative Analyst Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Youth Commission Report |
| <input type="checkbox"/> | <input type="checkbox"/> | Introduction Form (for hearings) |
| <input type="checkbox"/> | <input type="checkbox"/> | Department/Agency Cover Letter and/or Report |
| <input type="checkbox"/> | <input type="checkbox"/> | MOU |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Information Form |
| <input type="checkbox"/> | <input type="checkbox"/> | Grant Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Subcontract Budget |
| <input type="checkbox"/> | <input type="checkbox"/> | Contract/Agreement |
| <input type="checkbox"/> | <input type="checkbox"/> | Form 126 – Ethics Commission |
| <input type="checkbox"/> | <input type="checkbox"/> | Award Letter |
| <input type="checkbox"/> | <input type="checkbox"/> | Application |
| <input type="checkbox"/> | <input type="checkbox"/> | Public Correspondence |

OTHER

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|---------------------------------------|--------------------------|---|
| <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Terms of Economic Development Conveyance Memorandum Agreement</u> |
| * <input checked="" type="checkbox"/> | <input type="checkbox"/> | <u>Economic & Workforce Development Summary (see Item 5: File 100428)</u> |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |
| <input type="checkbox"/> | <input type="checkbox"/> | _____ |

Completed by: Alisa Somera Date May 7, 2010

Completed by: _____ Date _____

* The asterisked item represents a document not included under this item, but is a part of the file. The document can be found under the separate noted item and in the file.

1 [Endorsement of Terms of Economic Development Conveyance Memorandum of Agreement
2 for Treasure Island]

3 **Resolution endorsing the Terms of Economic Development Conveyance Memorandum**
4 **of Agreement for the Transfer of Former Naval Station Treasure Island from the United**
5 **States Government to the Treasure Island Development Authority.**

6
7 WHEREAS, Former Naval Station Treasure Island is a military base located on
8 Treasure Island and Yerba Buena Island (together, the "Base" or the "Property"), which is
9 currently owned by the United States of America ("the Federal Government" or the "Navy");
10 and,

11 WHEREAS, Treasure Island was selected for closure and disposition by the Base
12 Realignment and Closure Commission ("BRAC") in 1993, acting under Public Law 101-510,
13 and its subsequent amendments; and,

14 WHEREAS, The United States Department of Defense designated the City and County
15 of San Francisco ("City") as the Local Reuse Authority ("LRA") responsible for the conversion
16 of the Base under the federal disposition process; and,

17 WHEREAS, In July 1996, after an extensive community planning effort, a draft reuse
18 plan for the Base (the "Reuse Plan") was unanimously endorsed by the Mayor, the Board of
19 Supervisors, the Planning Commission and the Treasure Island Citizens Reuse Committee;
20 and,

21 WHEREAS, The United States Department of Housing and Urban Development
22 approved the Reuse Plan on November 26, 1996; and,

23 WHEREAS, In 1997, the Base closed and the Authority was created to replace the City
24 as the LRA and to serve as a single entity responsible for the redevelopment of the Property;
25 and,

1 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended
2 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter
3 1333 of the Statutes of 1968 (the "Conversion Act"), the California Legislature (i) designated
4 the Authority as a redevelopment agency under California Community Redevelopment Law
5 with authority over the Property, and (ii) with respect to those portions of the Property that are
6 subject to the public trust for commerce, navigation and fisheries (the "Tidelands Trust"),
7 vested the authority to administer the Tidelands Trust as to such property in the Authority in
8 accordance with the terms of the Conversion Act; and,

9 WHEREAS, Under the Act and the Authority's Articles of Incorporation and Bylaws, the
10 Authority, acting by and through its Board of Directors (the "Authority Board"), has the power,
11 subject to applicable laws, to sell, lease, exchange, transfer, convey or otherwise grant
12 interests in or rights to use or occupy all or any portion of the Property; and,

13 WHEREAS, The Authority submitted to the Navy an EDC Application and Business
14 Plan for Naval Station Treasure Island dated June 19, 2000, as amended on July 1, 2003 (the
15 "EDC Application"), for an economic development conveyance ("EDC") of the Property; and,

16 WHEREAS, In 2003, after a competitive bid process, the Authority Board selected
17 Treasure Island Community Development, LLC ("TICD") as the proposed master developer of
18 the Property and entered into exclusive negotiations with TICD relating to a Disposition and
19 Development Agreement ("TICD DDA") and other transaction documents; and,

20 WHEREAS, Since endorsement of the Reuse Plan and selection of TICD as the
21 proposed master developer, the Authority has undertaken an extensive public process to
22 further refine the land use plan for the Property, which has included over 220 public meetings
23 before the Authority Board, the Treasure Island/Yerba Buena Island Citizens Advisory Board
24 ("TICAB"), the Board of Supervisors, the Planning Commission, and in other public forums;
25 and,

1 WHEREAS, In 2006, a Development Plan and Term Sheet for the Redevelopment of
2 Naval Station Treasure Island (as updated from time to time, the "Development Plan")
3 between the Authority and TICD was endorsed by the TICAB, the Authority Board and the
4 Board of Supervisors, which, among other things, describes the updated land use plan for the
5 proposed redevelopment of the Property (the "Project") and the basic terms of the proposed
6 TICD DDA; and,

7 WHEREAS, In 2007, the Authority submitted an amended and restated EDC
8 Application (the "Amended EDC Application") to the Navy based on the Development Plan;
9 and,

10 WHEREAS, The Amended EDC Application proposed a financial structure for
11 conveyance of the Property that included a profit participation mechanism that would include
12 compensation to the Navy based on the actual performance of the Project; and,

13 WHEREAS, In October 2009, the President signed the 2009 National Defense
14 Authorization Act, which included a provision specifically authorizing the Department of
15 Defense to accept consideration for the transfer of BRAC properties under an EDC in the form
16 of a profit participation component, which change enabled the Authority and the Navy in
17 December 2009 to negotiate the basic financial terms for the conveyance of the Property to
18 the Authority; and,

19 WHEREAS, Project Staff will update the Amended EDC Application to be consistent
20 with the current proposed development program and any updates to the Development Plan
21 endorsed by the Authority Board and the Board of Supervisors; and,

22 WHEREAS, The Authority and the Navy have been diligently and in good faith
23 negotiating the terms of a proposed Economic Development Conveyance Memorandum of
24 Agreement ("EDC MOA"), the approval and execution of which are subject to completion of
25

1 necessary environmental review under the California Environmental Quality Act ("CEQA")
2 and the National Environmental Policy Act ("NEPA"); and,

3 WHEREAS, Authority staff has prepared the Terms of Economic Development
4 Conveyance Memorandum of Agreement (the "EDC MOA Terms"), a copy of which is on file
5 with the Clerk of the Board of Supervisors in File No. 100429, which is hereby declared
6 to be a part of this resolution as if set forth fully herein; and,

7 WHEREAS, The EDC MOA Terms describes certain key terms of the proposed EDC
8 MOA, including the conveyance process, the consideration payable to the Navy, and certain
9 controls required by the Navy relating to the economic performance of the Project; and,

10 WHEREAS, The EDC MOA Terms was presented to the Authority Board at a duly
11 noticed public meeting April 7, 2010, and on April 7, 2010, the Authority Board voted
12 7 to 0 endorse the EDC MOA Terms; and,

13 WHEREAS, The EDC MOA Terms is not a binding agreement that commits the
14 Authority or the City to proceed with the approval or implementation of the Project or the
15 conveyance of the Property from the Navy, but it outlines the terms on which the Authority and
16 the Navy will negotiate in good faith to reach agreement on the final EDC MOA and other
17 transaction documents; and,

18 WHEREAS, The conveyance of the Property and the Project, as ultimately proposed
19 by the Authority and TICD, will be subject to a process of thorough public review and input
20 and all necessary and appropriate approvals; that process must include environmental review
21 under CEQA and, if applicable, NEPA, before the Authority or the City may consider
22 approving the EDC MOA or the Project; the Project will require discretionary approvals by a
23 number of government bodies after public hearings and environmental review, including by
24 the Authority Board and the City's Board of Supervisors; and,

1 WHEREAS, Nothing in this resolution commits, or shall be deemed to commit, the
2 Authority, the City, or any other public agency to approve or implement any project, and they
3 may not do so, until environmental review of the project as required under CEQA and, if
4 applicable, NEPA, has been completed; accordingly, the references to "the Project" (or the
5 like) in this resolution mean a proposed project subject to future environmental review and
6 consideration by the Authority, the City, and other public agencies; further, the Authority, the
7 City, and any other public agency with jurisdiction over any part of the Project each shall have
8 the absolute discretion before approving the Project to: (i) make such modifications to the
9 Project as may be necessary to mitigate significant environmental impacts; (ii) select other
10 feasible alternatives to avoid or substantially reduce significant environmental impacts; (iii)
11 require the implementation of specific measures to mitigate any specific impacts of the
12 Project; (iv) balance the benefits of the Project against any significant environmental impacts
13 before taking final action if such significant impacts cannot otherwise be avoided; or (v)
14 determine whether or not to proceed with the Project; now, therefore, be it

15 RESOLVED, That the Board of Supervisors hereby endorses the EDC MOA Terms
16 and urges City and Authority staff, including the Planning Department and the Office of
17 Economic and Workforce Development, to continue environmental review and planning for the
18 Project and the negotiation of the EDC MOA and other transaction documents consistent with
19 the EDC MOA; and, be it

20 FURTHER RESOLVED, That any and all actions taken by City and Authority staff
21 consistent with the intent of this resolution are hereby ratified and approved.
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1 to be used and redeveloped in accordance with the "Draft Reuse Plan for Naval Station Treasure
2 Island" ("**Reuse Plan**") as endorsed by the City Planning Commission and Board of Supervisors
3 in July 1996 and approved by the United States Department of Housing and Urban Development
4 on November 26, 1996, and as shown on the "**Illustrative Land Use Plan**" attached hereto as
5 Exhibit B.

6
7 (b) The Illustrative Land Use Plan reflects refinements to the Reuse Plan
8 described in the Development Plan and Term Sheet for the Redevelopment of Former Naval
9 Station Treasure Island endorsed by the Authority's Board of Directors in October 2006 and the
10 San Francisco Board of Supervisors in December 2006, as updated by the proposed Update to
11 Development Plan and Term Sheet for the Redevelopment of Former Naval Station Treasure
12 Island that the Authority is submitting to the Authority's Board of Directors and the Board of
13 Supervisors for endorsement concurrently herewith. The Illustrative Land Use Plan provides for
14 a development program consisting of up to 8,000 residential units, approximately 500 hotel
15 rooms, and commercial space of approximately 511,000 square feet, among other things. The
16 Board of Supervisors will consider legislation creating a new redevelopment area and rezoning
17 the property to permit the development of the Property in accordance with the Illustrative Land
18 Use Plan and will consider a Disposition and Development Agreement by and between the
19 Authority and Treasure Island Community Developers, LLC, and its successors and assigns
20 (collectively, the "**Developer**"), for the development of the Property in accordance with the
21 Illustrative Land Use Plan.

22
23 4. In accordance with *DOD Policy on the Environmental Review Process to Reach a*
24 *Finding of Suitability to Transfer ("FOST") for Property Where Release or Disposal Has*
25 *Occurred*, the Government prepared a FOST dated February 15, 2006 for a portion of the
26 Property on Treasure Island and a FOST dated March 22, 2006 for a portion of the Property on
27 Yerba Buena Island. The Government will prepare FOSTs for the remainder of the Property as
28 the remediation and other actions necessary for preparation of the FOSTs have been completed.

29
30 5. This Term Sheet outlines the basic understanding of the Parties which will be the
31 subject of further negotiation and documentation in the final EDC MOA between the Authority
32 and the Government relating to the transfer of the Property to the Authority, subject to the
33 completion of environmental review under the National Environmental Policy Act ("**NEPA**") of
34 1969, as amended, and the California Environmental Quality Act ("**CEQA**") as amended.

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39 **ARTICLE 1**
40 **DEFINITIONS**

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42 1.1 The definitions are attached hereto as Exhibit A and are hereby incorporated by
43 reference as if fully set forth herein.
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ARTICLE 2
ECONOMIC DEVELOPMENT CONVEYANCE

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2.1 Pursuant to §2905(b)(4) of the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. § 2687 note), as amended, and 32 CFR 174, the Government will transfer and convey the Property to the Authority under a fair market value economic development conveyance, and the Authority will acquire such Property, in accordance with the terms of the EDC MOA to be negotiated between the Parties, the basic terms of which are described in this Term Sheet.

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ARTICLE 3
CONVEYANCE SCHEDULE AND TRANSFERS

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3.1 Property to be Conveyed. The Government will convey to the Authority, and the Authority will accept from the Government, the following property (collectively, the "Property") in accordance with a conveyance schedule for each of the parcels to be conveyed to the Authority (the "Parcels") that will be attached to the EDC MOA (the "Conveyance Schedule"). The Conveyance Schedule will be consistent with the dates in the site remediation schedule provided by the Navy and as agreed to by the Parties. It will contain milestones regarding remediation (the "Remediation Milestones") and identify specific dates when certain remediation steps will be completed. The Property is not anticipated to include the Yerba Buena Island Viaducts and Ramps, which are proposed to be transferred by a separate agreement.

3.1.1 The real property consisting of approximately 996 acres of uplands, tidelands and submerged lands located within the bounds of the former Naval Station Treasure Island, as depicted on Exhibit C, attached hereto, which will include, but not be limited to, any right, title or interest the Government may have in the following (collectively referred to herein as the "Real Property"):

3.1.1.1 All buildings, facilities, roadways and other infrastructure including the storm drainage systems and the utility system infrastructure, and any other improvements thereon (including all replacements and additions thereto between the date of the EDC MOA and the date of conveyance of all the Real Property to the Authority).

3.1.1.2 Certain easements to be described in the EDC MOA.

3.1.1.3 The hereditaments and tenements in and/or to the Real Property and reversions, remainders, issues, profits, privileges and other rights belonging or related thereto.

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

3.1.2 The Utility Infrastructure consisting of all utilities and related support infrastructure located on and off the Real Property that serve the Real Property such as electrical, water, sewer, gas, storm drainage and telecommunications lines (including all

1 replacements and additions thereto between the date of the EDC MOA and the date of
2 conveyance of all the Real Property to the Authority).

3
4 3.1.3 The Personal Property consisting of the personal property owned by the
5 Government located on or used in connection with the ownership, use and operation of the
6 Real Property as of the date of the EDC MOA, which will be more particularly described in the
7 EDC MOA.

8
9 3.2 Sequence of Conveyances. At the Initial Closing, the Government will transfer
10 and convey to the Authority only such portion of the Property for which the Closing Conditions
11 set forth in Section 3.4 have been satisfied or waived, and will convey the remainder of the
12 Property in one or more subsequent conveyances and Closings.

13
14 3.3 FOST Conveyances. The Government will convey the Parcels to the Authority
15 by Quitclaim Deed(s) with all required CERCLA warranties and covenants after a written FOST
16 determination is made with respect to the applicable Parcel(s).

17
18 3.4 Title to Property. At the Initial Closing and each Subsequent Closing, the
19 Government will convey to the Authority marketable and insurable fee simple title to the
20 applicable Parcel subject to the Closing, by duly executed and acknowledged Quitclaim Deed,
21 subject only to the conditions of title approved by the Authority.

22
23 3.4.1 Closing Conditions. The Authority will be obligated to accept title to
24 any Parcel tendered to the Authority if at the time of the tender of such Parcel all of the closing
25 conditions described in the EDC MOA are satisfied (together the “Closing Conditions”),
26 which will include (i) the execution of a FOST for such Parcel, (ii) the receipt of all necessary
27 third party consents for the assignment of any non-assignable easements that will be described
28 in the EDC MOA, (iii) the procurement of certain offsite easements that will be described in
29 the EDC MOA, (iv) the insurability of fee simple marketable title to the Real Property; (v) the
30 transactions contemplated in this Term Sheet having been approved by the Authority’s Board
31 of Directors and, if required, the City’s Board of Supervisors and Mayor in their sole and
32 absolute discretion, and (vi) other conditions described in the EDC MOA.

33
34 3.5 Failure to Satisfy Closing Conditions. If any Closing Conditions are not satisfied
35 prior to or on the date that the Government is required to convey a Parcel to the Authority in
36 accordance with the Conveyance Schedule, then the Authority will have the right in its sole and
37 absolute discretion to (i) waive in writing the Closing Condition in question and proceed with
38 Closing, or (ii) extend the Closing for such Parcel for a reasonable period of time specified by
39 the Authority to allow all of the Closing Conditions applicable to such Parcel to be satisfied. If a
40 dispute arises between the Parties regarding whether a Closing Condition has been satisfied, such
41 dispute will be subject to a dispute resolution procedure agreed upon by the Parties in the EDC
42 MOA.

43
44 3.6 Early Transfer Negotiations. At any time, the Parties may enter into early transfer
45 negotiations for the conveyance of any Parcel or agreed upon sub-parcel with a covenant deferral

1 pursuant to Section 120(h)(3)(c) of CERCLA and the terms of a mutually acceptable Early
2 Transfer Cooperative Agreement.

3
4 3.7 Conveyance Schedule and Remediation Milestones. The Parties will agree to
5 meet at such times as requested by a Party, but no less than annually, to discuss the status of the
6 Conveyance Schedule and the Remediation Milestones. During such meeting, the Parties may
7 mutually agree, in each Party's sole and absolute discretion, to amend the Conveyance Schedule
8 or the Remediation Milestones.

9
10 **ARTICLE 4**
11 **CONSIDERATION**

12
13 4.1 Consideration. In consideration for the conveyance of the Property, the Authority
14 will pay to the Government (i) an initial purchase price of Fifty Five Million Dollars
15 (\$55,000,000) (the "**Initial Consideration**"), payable over a term of ten (10) years (as such term
16 may be extended as described in Section 4.2.2 below) (the "**Initial Consideration Term**") and
17 (ii) Additional Consideration based on Unleveraged Cash Flow generated from the Property.
18 The DDA will provide that all payments of the Initial Consideration and the Additional
19 Consideration may be made directly by the Developer to the Government.

20
21 4.2 Initial Consideration.

22
23 4.2.1 Commencing on the Initial Closing, the Authority will pay the Initial
24 Consideration in U.S. Dollars in ten (10) equal annual installments of Five Million Five
25 Hundred Thousand Dollars (\$5,500,000) (each, an "**Installment Payment**") plus interest if and
26 when due. The first payment of Five Million Five Hundred Thousand Dollars (\$5,500,000)
27 will be paid at the Initial Closing. Each subsequent Installment Payment will be made on the
28 Anniversary Date of the Initial Closing and will consist of (i) the amount of the Installment
29 Payment then due, plus (ii) the Interest Rate multiplied by the amount of the Initial
30 Consideration that had not yet been paid as of the beginning of the prior year (i.e., the Initial
31 Consideration minus the total of Installment Payments that were actually paid through the prior
32 year). The Parties intend that so long as all of the Property has been conveyed and subject to
33 Section 4.2.2 below, all of the Initial Consideration and applicable interest will have become
34 due and payable by the expiration of the Initial Consideration Term.

35
36 4.2.2 Tolling of Initial Consideration. If the Government fails to meet the
37 Conveyance Schedule for any Parcel (a "**Late Conveyance Parcel**") for any reason, including
38 an Unavoidable Delay, then the Authority's obligation to pay any future Installment Payment
39 on the Anniversary Date of the Initial Closing will be tolled for the same number of days
40 occurring between the applicable Conveyance Schedule date and the date on which the
41 Conveyance of the applicable Parcel actually occurs. In the event of such tolling, the due date
42 for all future Installment Payments will become the Anniversary Date of the Initial Closing
43 adjusted for the period of tolling. For example, if the Conveyance Schedule required a Parcel
44 to be delivered on October 1, 2013, the next subsequent Installment Payment was due on
45 January 1, 2014, and the Government failed to deliver the Parcel until September 1, 2014 (a
46 delay of 335 days), then the next Installment Payment would be due on December 2, 2014 (i.e.

1 335 days from the original Anniversary Date of January 1, 2014), and all future Installment
2 Payments would be due on December 2 of subsequent years in the Initial Consideration Term
3 unless further tolled.
4

5 4.2.2.1 If the Government fails for any reason to convey a Parcel in
6 accordance with the Conveyance Schedule, which failure continues for a period of more than
7 two (2) years, the Parties will meet and confer in good faith to determine whether or not it is
8 reasonably foreseeable that the Government will be able to convey the Parcel. If the Parties
9 determine that the reasons for the delay can be overcome through the good faith and diligent
10 efforts of the Government and will likely result in the conveyance of the Parcel, the Parties may
11 by mutual agreement adjust the Conveyance Schedule to account for the delay, subject to
12 continued tolling of the Installment Payments in accordance with this Section. If the Parties
13 conclude that there is a reasonable likelihood that the Parcel will not be subject to conveyance
14 due to an Unavoidable Delay that is not reasonably capable of being remedied through the good
15 faith and diligent efforts of the Government, the Parties will work together in good faith to adjust
16 the amount of the Initial Consideration and the amount of the Installment Payments to reflect the
17 reduction in Property to be conveyed.
18

19 4.2.3 Security for Initial Consideration. The Authority will deliver to the
20 Government through escrow at the Initial Closing a Promissory Note in the principal amount of
21 the Initial Consideration. The Promissory Note will bear interest and be payable in
22 installments as more particularly described in Section 4.2.1 above. The Promissory Note will
23 be secured by (i) an Assignment of Rents encumbering the rents, issues and profits payable
24 under all interim subleases for the Property including, but not limited to, the Sublease,
25 Development, Marketing and Property Management Agreement between the Authority and the
26 John Stewart Company, as amended from time to time, and any successor interim subleases or
27 leases relating to the Property, and (ii) to the extent the rents, issues and profits assigned under
28 the Assignment of Rents are not sufficient to cover the unpaid principal and interest due under
29 the Promissory Note, a Subordinate Pledge of Net Available Tax Increment Revenues
30 generated from the Property. The Subordinate Pledge will be subordinate to the pledge of all
31 tax increment revenues pledged from time to time to the holders of any bonded indebtedness
32 secured by such tax increment revenues and other amounts legally available to the Authority.
33 "Net Available Tax Increment Revenues" means the tax increment revenues arising under
34 the Treasure Island/Yerba Buena Island Redevelopment Plan and received by the Authority,
35 exclusive of (a) the tax increment revenues required under California Community
36 Redevelopment Law ("CRL") to be set aside for housing, (b) tax increment revenues required
37 under CRL to be paid to other taxing agencies, and (c) tax increment revenues needed to pay
38 Authority costs not otherwise paid from other sources. The forms of the Promissory Note,
39 Assignment of Rents, and the Subordinate Pledge will be attached as exhibits to the EDC
40 MOA.
41

42 4.3 Additional Consideration. 43

44 4.3.1 Amount of Additional Consideration. The Authority will pay the
45 Government additional consideration consisting of (1) all Unleveraged Cash Flow generated by
46 the Project in excess of a Developer 18% IRR until the Government has received Fifty Million

1 Dollars (\$50,000,000) (the “**First Tier Participation**”), as more fully described below; and (2)
2 35% of Unleveraged Cash Flow generated by the Project in excess of a Developer 22.5% IRR
3 (the “**Second Tier Participation**”), as more fully described below. The First Tier Participation
4 and Second Tier Participation are collectively referred to herein as the “**Additional**
5 **Consideration.**” The DDA will provide that all payments of Additional Consideration may be
6 made directly by Developer to Government.
7

8 4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the
9 expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five
10 (45) days after the expiration of each subsequent Quarter during the Term of the EDC MOA,
11 the Authority will require the Developer to submit a reasonably detailed statement to the
12 Authority and the Government (the “**IRR Statement**”) showing (i) the IRR as of the last day
13 of each of the eight (8) immediately prior Quarters for any IRR Statement provided during the
14 Initial Consideration Term, and (ii) the IRR as of the last day of each of the six (6) prior
15 Quarters for any IRR Statement provided after expiration of the Initial Consideration Term (the
16 eight or six Quarter Period, as applicable, the “**Reporting Period**”). The IRR Statement will
17 also calculate the average IRR over the Reporting Period, calculated by adding the IRR as of
18 the last day of each Quarter in the Reporting Period and dividing the total by the number of
19 Quarters in the Reporting Period. If the IRR Statement shows that Developer has achieved an
20 average of more than 18.00% over the Reporting Period, then concurrent with the submittal of
21 the IRR Statement, the DDA will require the Developer to pay the Government an amount that
22 would reduce the IRR to 18.00% as of the last day of the immediately preceding Reporting
23 Period (each, a “**First Tier Payment**”) provided that the total First Tier Payments made to the
24 Government will not exceed Fifty Million Dollars (\$50,000,000). The DDA will require the
25 Developer to continue to make First Tier Payments until the total of all First Tier Payments
26 equals Fifty Million Dollars (\$50,000,000).
27

28 4.3.3 Payment of Second Tier Participation. After all First Tier Payments
29 have been made, the Authority will require Developer to continue to submit the IRR Statement
30 through the Termination Date. If an IRR Statement shows that Developer has achieved an
31 average IRR of more than 22.5% within any Reporting Period occurring after all First Tier
32 Payments have been made, then concurrent with the submittal of the IRR Statement, and
33 provided that the IRR is maintained at all times at a minimum of 22.5%, the DDA will require
34 the Developer to pay the Government 35% of the Unleveraged Cash Flow (each, a “**Second**
35 **Tier Payment**”). The DDA will require the Developer to continue to make Second Tier
36 Payments until such time as Developer has ceased to make distributions of Unleveraged Cash
37 Flow to Developer (the “**Termination Date**”).
38

39 4.3.4 Late Payments and Default. Any failure to pay Initial Consideration or
40 Additional Consideration when due, which failure to pay is not cured within ten (10) days after
41 the Government provides written notice to the Authority with a copy to Developer that the
42 payment is due and remains unpaid, will be considered late (“**Late Payment**”). Any Late
43 Payment will incur a late payment penalty equal to two percent (2%) of the payment due.
44 Failure to make any required payment under the EDC MOA in full within thirty (30) calendar
45 days of a payment due date will constitute default under the EDC MOA and in addition to any

1 other rights and remedies provided thereunder, any such payment (other than the payment of
2 the Initial Consideration) will accrue interest at the Interest Rate from the due date until paid.
3

4 4.3.5 Accounting. The Authority will include a provision in the DDA that
5 will require the Developer to maintain accurate books and records setting forth all components
6 used for determining the Additional Consideration, including, without limitation, each
7 component of Unleveraged Cash Flow. On an annual basis, and with each payment of
8 Additional Consideration, the DDA will require the Developer to furnish a complete
9 accounting and computations setting forth the basis of each Additional Consideration payment
10 theretofore paid, including the Gross Revenues and Development Costs for the relevant
11 determination period, together with a narrative description of the methodology employed to
12 calculate each Additional Consideration Payment (the "Accounting"). The Accounting will be
13 in conformance with generally accepted accounting principals consistently applied ("GAAP").
14 The Government and the Authority upon receipt of the Accounting may determine to exercise
15 its audit rights pursuant to Section 4.3.6, in which case any payment described in this Section
16 will become due and payable thirty (30) days after receipt of the Government's or Authority's
17 audit by the Developer.
18

19 4.3.6 Audit Rights. The DDA will provide that the Government will be
20 entitled from time to time to audit the Developer's books, records, and accounts pertaining to
21 the Unleveraged Cash Flow and all components thereof and the payment of Additional
22 Consideration. Such audit will be conducted during normal business hours upon ten (10)
23 business days notice at the principal place of business of the Developer and other places where
24 records are kept. The Government will provide the Developer with copies of any audit
25 performed. If it is determined as a result of such audit that there has been a deficiency in the
26 payment of any Additional Consideration, the Developer will immediately pay any such
27 deficiency with interest at the Interest Rate. In addition, if it is determined as a result of such
28 audit that an Accounting has understated the Unleveraged Cash Flow for the applicable period
29 by more than five percent (5%), the DDA will require the Developer to pay, in addition to
30 interest as aforesaid, all of the Government's costs and expenses connected with the audit or
31 review of Developer's accounts and records for the Project. The DDA will require that all
32 such payments will be paid by the Developer within thirty (30) days of receipt of written notice
33 to Developer of such underpayment.
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37 **ARTICLE 5** 38 **CONTROLS** 39

40 5.1 Horizontal Pad Development Process. The Parties acknowledge that the DDA
41 will require the Developer to (among other things) construct certain infrastructure improvements
42 and otherwise prepare the Property to be divided into Parcels which will be offered for sale for
43 the development of the vertical improvements. As described below, the sale price will be
44 determined as follows: (1) commercial space will be determined by appraisal or other process
45 agreed upon by the Parties in the EDC MOA; (2) residential land for eighty percent (80%) of the
46 residential units identified by the Land Use Plan as appropriate for the development of

1 predominantly market rate residential units (the “**Market Rate Units**”) will be determined by
2 appraisal; and (3) residential land for the remaining approximately twenty percent (20%) of the
3 Market Rate Units will be determined by a real estate auction managed by a qualified real estate
4 broker in a manner consistent with industry practice for a non-distressed offering of quality real
5 estate that provides at a minimum: (i) commercially standard due diligence information and
6 access, including, without limitation, information regarding the site and entitlements; (ii)
7 iterative rounds of bidding by qualified bidders; and (iii) commercially standard closing
8 conditions and processes (collectively, the “**Auction**”). Successful Auction Bids will be used as
9 a comparable in the appraisal process along with other relevant data as set forth in the appraisal
10 instructions, as described below. The appraisal process, including qualifications and selection of
11 a pool of appraisers and appraisal instructions, will be set forth in the EDC MOA and, as more
12 specifically described below, the Authority will cause the DDA to incorporate such terms.
13

14 5.2 The DDA Appraisal Process. The DDA will contain similar provisions as
15 described in this Term Sheet governing the appraisal of parcels for sale and the auctioning of, or
16 application of the Auction to, certain parcels (the “**DDA Appraisal Process**”). The DDA
17 Appraisal Process will apply to those parcels identified by the Land Use Plan as appropriate for
18 the development of Market Rate Units (collectively, the “**Market Rate Parcels**”) and, if agreed
19 to by the Parties in the EDC MOA, Commercial Parcels. The DDA will provide that the
20 Developer will have the right, but not the obligation, to purchase Market Rate Parcels for up to
21 sixty percent (60%) of the Market Rate Units at a purchase price established by the DDA
22 Appraisal Process (collectively, the “**Developer Pads**”). The DDA will further provide that
23 Market Rate Parcels for approximately twenty percent (20%) of the Market Rate Units will be
24 available for purchase at a purchase price established by the DDA Appraisal Process by joint
25 ventures in which the Developer or its affiliates have no more than a fifty percent (50%)
26 ownership interest and under which a non-affiliated joint venture partner exercises management
27 control as the “managing partner” (or member, as the case may be) of the joint venture entity
28 (collectively, the “**JV Pads**”). No potential or actual investor or lender will be prohibited by an
29 exclusivity agreement between the Developer and other investors or lenders from participating
30 in any financing of any Market Rate Parcel. The DDA will provide that the Authority and the
31 Developer will confer and select an appraiser from the Qualified Appraiser Pool for each
32 Developer Pad or JV Pad to be appraised, as well as each Commercial Parcel, if the Parties so
33 agree in the EDC MOA. An appraisal used for the purpose of determining the parcel sale price
34 will be updated if a sales contract for such parcel has not been executed within one (1) year from
35 the date of the appraisal.
36

37 5.2.1 Developer Pads. The DDA will further provide that no more than one-
38 third of the Developer Pads (which also equals 20% of the Market Rate Parcels) can be sold
39 directly to Developer and that the balance of the Developer Pads may be sold to an entity or
40 entities comprised of some or all of the same partners as Developer, but having a different
41 management or capital structure than Developer, in accordance with the DDA Appraisal
42 Process. The DDA will also provide that, prior to the close of any sale directly to Developer,
43 Developer or Authority will provide to the Government a letter from a real estate broker or
44 licensed real estate professional familiar with the Bay Area market, finding that acquisition and
45 development of the Market Rate Parcel by the Developer is appropriate in the context of then-
46 existing market conditions; the basis of such findings could include, but is not limited to,

1 establishing a new product type, initiating or establishing the development of a new phase in
2 the Project, responding to changes in market conditions, or other similar market-based factors.

3 5.2.2 Qualified Appraiser Pool. The DDA will provide that appraisals of the
4 Developer Pads and JV Pads will be conducted by a qualified appraiser, which for purposes of
5 the EDC MOA and the DDA will be defined as an appraiser licensed in the State of California
6 as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute,
7 practicing or working for at least ten (10) years in either a national firm, or regional firm based
8 in California, with no affiliation with the City or Developer, with experience in large master
9 planned communities in coastal California cities and with particular experience with the
10 product type that is the subject of the appraisal. The Parties will agree on a list of pre-qualified
11 appraisers, which list will be attached to the EDC MOA (the “**Qualified Appraiser Pool**”).
12 From time to time, either Party may propose in writing to add additional persons meeting the
13 above qualifications to the Qualified Appraiser Pool or to subtract appraisers from the
14 Qualified Appraiser Pool. Disputes regarding any proposed addition or subtraction will be
15 subject to a dispute resolution procedure agreed upon by the Parties in the EDC MOA.
16

17 5.2.3 Appraisal Instructions. The DDA will provide that the selected
18 appraiser will appraise the applicable pad utilizing appraisal instructions by appropriate
19 product type substantially in the form to be attached as an exhibit to the EDC MOA, as the
20 Parties may agree to amend from time to time, which agreement will not be unreasonably
21 withheld, conditioned or delayed. If an Excess Land Appreciation Structure is established in a
22 Major Phase by product type, such structure will be deemed to apply to all Market Rate
23 Parcels, and the appraisal instructions will incorporate such terms. If material changes are
24 proposed to appraisal instructions, including assumptions, special assumptions, limiting
25 conditions, hypothetical conditions, and other special instructions, the requesting Party will
26 propose such amendment in writing, and the changes will be subject to a dispute resolution
27 procedure agreed upon by the Parties in the EDC MOA.
28

29 5.2.4 Notification of Appraisal. The Authority will provide to the
30 Government documentation of appraiser selection, appraisal instructions and the complete
31 appraisal promptly following completion of all appraisals. If the Government believes that any
32 appraisal has not been performed in accordance with the terms of the EDC MOA and the
33 Appraisal Process, the Government will so notify the Authority in writing within fifteen (15)
34 calendar days of receipt of such documentation and such disputes will be subject to a dispute
35 resolution procedure agreed upon by the parties in the EDC MOA.
36

37 5.3 The DDA Benchmarking Process. In order to ensure that the Developer Pads and
38 JV Pads are sold at fair market value, the Authority will establish a mechanism in the DDA to
39 achieve adequate benchmarking for the appraisal process by causing the DDA to provide that
40 Market Rate Parcels for approximately twenty percent (20%) of the Market Rate Units will be
41 offered for sale via an Auction as described above (collectively, the “**Auction Pads**”). The EDC
42 MOA will describe the Auction process, including the selection of brokerage firms to conduct
43 the Auctions, the discretion given to the brokerage firms to determine the most appropriate
44 Auction format, given the parcels selected for Auction, their proposed uses, bidder interest and
45 current market conditions, and incentives to be provided to the brokerage firms to conduct a
46 successful Auction and to generate the highest possible sales prices. In the event no qualified

1 third party bids are received at or above the minimum bid price (as described in Section 5.4.3),
2 Developer and/or its affiliates will have the option to purchase such Auction Pad(s) at the
3 minimum bid price and any pads so acquired by Developer will not be deemed to apply against
4 the percentage limits otherwise applicable to the Developer Pads or the JV Pads. If Developer
5 does not exercise the option to purchase unsold Auction Pad(s), the Authority and Developer will
6 mutually agree upon a new minimum bid price to be used in a new Auction (the “**Re-Setting of**
7 **the Minimum Bid Price**”). The Re-Setting of the Minimum Bid Price may take the form of
8 adjustment to the Pro Forma minimum bid price or an appraisal. All costs associated with the
9 Auction will be treated as Project Costs.

10
11 5.3.1 Timing of Auction Pads Selection. The Auction Pads will be selected by
12 mutual agreement by the Authority and the Developer prior to close of escrow for each Major
13 Phase.

14
15 5.3.2 Auction Pads as Benchmarks. The Auction Pad sales prices and other
16 relevant market data will be used as comparables in the appraisal process for the Developer
17 Pads and JV Pads. The DDA will provide that the mix of product types subject to Auction will
18 roughly mirror that of the parcels to be allocated and sold in that Major Phase, with a goal of
19 selecting at least one representative parcel for each product type offered in that Major Phase.
20 For the purposes of the EDC MOA and the DDA, “product types” will be defined as a
21 residential building with a typical unit count and building typology that allows general
22 assumptions of construction costs. Examples of such product types are townhomes; low rise
23 (up to [76’/85’] in height); mid rise (above 76’/85’ and up to 120’ in height) and towers (
24 above 120’ in height).

25
26 5.3.3 Guidelines for Auction Pads Selection. The DDA will provide that the
27 distribution and selection of the Auction Pads will be based on a principle of
28 nondiscrimination. The selected Auction Pads will be generally representative of the average
29 advantages and disadvantages of parcels to be developed in that Major Phase. Factors to be
30 considered in such selection are parcel size, views, proximity to parks, proximity to the transit
31 center, proximity to the Job Corps site, proximity to the Bay Bridge, proximity to the retail
32 core and exposure to wind (collectively, the “**Guidelines for Auction Pad Selection**”).

33 5.4 Major Phase Decisions. The DDA will provide that prior to the close of escrow
34 of each Major Phase the following decisions (collectively, the “**Major Phase Decisions**”) will be
35 agreed upon by the Authority and the Developer and notice thereof will be provided to the
36 Government as more fully described in Section 5.5 below:

37 5.4.1 The proposed location of Auction Pads within that Major Phase.

38 5.4.2 The qualifications of Auction Pad bidders by product type for that Major
39 Phase.

40
41 5.4.3 Minimum bid prices for the Auction Pads which will be based on the pro
42 forma, as updated prior to the close of escrow for such Major Phase, as well as any Re-Setting
43 of the Minimum Bid Price, as described above.
44

1 5.4.4 The “**Excess Land Appreciation Structure**,” for purposes of the EDC
2 MOA and the DDA, will be defined as the structure, procedures and metrics of the then-
3 prevailing, industry standard market based participation in home price appreciation greater
4 than forecast at the time of such pad sale (if any) for horizontal development land sellers, prior
5 to close of escrow for that Major Phase for each product type in such Major Phase, as well as
6 any re-evaluation of the Excess Land Appreciation Structure during any Major Phase.
7

8 5.5 Government Objection Rights to Major Phase Decisions.
9

10 5.5.1 Notice. The Authority will send a notice to the Government in writing
11 providing the details of the Major Phase Decisions (the “**Major Phase Decision Notice**”). The
12 Government will have the right to reasonably object to any of the Major Phase Decisions (or
13 any component part thereof) if the Government believes any of the following is true with
14 respect to the Major Phase Decision at issue: (i) the mix of product types for the Auction Pads
15 were not sufficient to achieve adequate benchmarking for that Major Phase; or (ii) the
16 Guidelines for Auction Pad Selection were not followed; or (iii) the Excess Land Appreciation
17 Structure is not commensurate with industry practice, market based participations for that
18 product type in such Major Phase; or (iv) the Auction Bidder Selection Guidelines were not
19 followed.
20

21 5.5.2 Right to Object. The Government will have ten (10) business days from
22 receipt of the Major Phase Decision Notice to object in writing, and any such objection will
23 state with specificity the item or items to which the Government objects. Failure to so object
24 in writing within such ten (10) business day period will be deemed consent. The Authority will
25 have five (5) business days to respond to the objection or to seek to confer with the other Party.
26 If the Authority responds and the Parties do not reach agreement with one another after such
27 response, either Party can request to confer. If a conference is requested, the Parties will
28 confer and attempt to resolve the outstanding objections within five (5) business days of the
29 conference request. Failure to reach agreement at such meeting will be referred to a dispute
30 resolution procedure to be agreed upon by the Parties in the EDC MOA.

31 5.6 Audit Rights and Reporting. The Authority will submit to the Government annual
32 audited financial statements within thirty (30) calendar days of completion. The Government
33 will have commercially reasonable access to the Developer’s auditors if the Government needs
34 clarifications relating to the financial statements.

35 5.7 DDA Audit Rights and Reporting. The Authority will provide the Government
36 with copies of the DDA Reports (defined below) and any audits promptly upon their receipt by
37 the Authority and the DDA will provide the following audit rights and reporting requirements for
38 the benefit of the Authority and the Government:

39 5.7.1 The Developer will provide to the Authority and the Government annual
40 reports of project revenues and project expenses, including net project revenues, specified by
41 Major Phases and including a cumulative project level summary, executed by the Developer’s
42 Chief Financial Officer, certified by the Developer and reviewed by an independent accounting
43 firm.

1 5.7.2 A pro forma budget will be attached to the DDA as an exhibit and the
2 budget will be updated by the Developer prior to the close of each Major Phase and submitted
3 to the Authority and the Government for its review to confirm that the Developer has sufficient
4 financial capacity to perform the work anticipated in that upcoming Major Phase.

5 5.7.3 The pro forma budget will be updated by the Developer and submitted to
6 the Authority and the Government annually.

7 5.7.4 The DDA will provide the Authority and the Government the right, but
8 not the obligation, to audit the books and accounts of the Developer no more frequently than
9 once per twelve (12) month period, unless such audit reveals a discrepancy in the calculation of
10 project revenues and/or project expenses or the Developer is otherwise in material default of its
11 financial obligations under the DDA. The Authority, or the Government, as the case may be,
12 will bear all costs of such audit unless the results of the audit demonstrate more than a five
13 percent (5%) discrepancy between the results of the audit and the annual financial statements
14 provided by the Developer. All such reports and audits are subject to the Authority's
15 obligation to treat such information as confidential to the full extent permitted by law. The
16 Government will treat such information as confidential as long as such confidentiality does not
17 in any way limit the Government's remedies.

18
19 5.8 DDA Timelines. The DDA will include a Schedule of Performance establishing
20 commercially reasonable timelines for completion of each major phase, subject to industry
21 standard force majeure provisions, including regulatory and litigation force majeure.

22
23 5.9 Limit on Soft Costs. Except for a reasonable limit on Developer management and
24 overhead fees, Developer Soft Costs will not be capped, but will be subject to a "reasonableness"
25 standard, certain approval rights by the Authority, and subject to audit by the Authority. The
26 DDA will define "reasonable" Developer's Soft Costs as "incurred in a manner that is consistent
27 with an efficient, well-managed project of comparable scope, duration and complexity and is
28 commensurate with market-based charges by third party providers for similar projects."
29 Developer management and overhead fees will not exceed market-based charges by third party
30 providers for similar projects.

31
32 5.10 Limit on City Fees and Exactions. The DDA will limit City fees and exactions to
33 those fees and exactions as set forth in the DDA, at the rate or amounts in effect as of the date of
34 the DDA for a period of time specified in the DDA. The Redevelopment Plan will fix the agreed
35 upon development fees and exactions for the Project for a specified period of time and will limit
36 the application of new fees and exactions and changes in City regulations over the life of the
37 Redevelopment Plan. The Redevelopment Plan will include certain limits on the authority of the
38 City and the Authority to impose new or amend City laws and regulations that would have a
39 material adverse effect on the horizontal or vertical development by the Developer or Vertical
40 Builders or the rights and obligations of the Developer or any vertical developer under the
41 Redevelopment Plan and the DDA or other applicable transactional documents.

42
43 5.11 Economic Development Purposes. Any proceeds from a sale, lease, or equivalent
44 use of the Property (i.e., any mechanism that serves to accomplish the same purposes of a sale or
45 lease such as licenses, permits, concession agreements, etc.) received by the Authority for the

1 Property during the first seven (7) years after the recordation of the first Quitclaim Deed for a
2 part of the Real Property, that are not used to pay the Government the Initial Consideration will
3 be used to support long-term job creation and the economic redevelopment of, or related to, the
4 Property. Tax revenues will not be construed to be proceeds from a sale, lease, or equivalent use
5 of the Property.
6

7 5.11.1 Examples of Allowable Uses of Proceeds. Allowable uses of proceeds
8 pursuant to Section 5.11 include payment for, or offsetting the costs of public investment, for
9 the following purposes:

- 10 5.11.1.1 Land acquisition;
- 11 5.11.1.2 Road construction;
- 12 5.11.1.3 Transportation management facilities;
- 13 5.11.1.4 Storm and sanitary sewer construction;
- 14 5.11.1.5 Police and fire protection facilities and other public facilities;
- 15 5.11.1.6 Utility construction;
- 16 5.11.1.7 Building rehabilitation;
- 17 5.11.1.8 Historic property preservation;
- 18 5.11.1.9 Pollution prevention equipment or facilities;
- 19 5.11.1.10 Demolition;
- 20 5.11.1.11 Disposal of hazardous materials generated by demolition;
- 21 5.11.1.12 Landscaping, grading, and other site or public improvements;
- 22 5.11.1.13 Planning for or the marketing of the redevelopment and reuse

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39 Other activities on the Property that are related to those listed above (for example, new
40 construction related to job creation and economic redevelopment, environmental remediation of
41 the Property, environmental insurance, capital improvements, and management and leasing of
42 the Property needed to market its redevelopment and reuse) would also be considered an
43 appropriate, allowable use of such proceeds. In order for investments made off of the Property to
44 be considered allowable uses of such proceeds, the Authority will submit appropriate
45 documentation to the Government for its approval which demonstrates that such investments are
46 related to those listed above and directly benefit the Authority's economic redevelopment and

1 long-term job generation efforts on the Property. The Government will notify the Authority of
2 its receipt of the Authority's request within thirty (30) calendar days of receipt of the Authority's
3 request and will use its best efforts to notify the Authority of its decision within sixty (60)
4 calendar days of the date of the Government's initial notification of receipt.
5

6 5.11.2 Records. Consistent with standard accounting practices for tax purposes,
7 the Authority will maintain adequate records and books of account for income and expenses
8 related to the redevelopment of the Property detailing transactions described in Section 5.11
9 and Section 5.11.1. The Authority will provide the Government with access to such records
10 and books of account and proper facilities for inspection thereof at all reasonable times.
11

12 5.11.3 Recoupment of Proceeds. The Government may recoup all proceeds
13 described in Section 5.11, which have not been reinvested in allowable uses described in
14 Section 5.11 or Section 5.11.1. If recoupment is desired after review of annual financial
15 statements, the Government will notify the Authority in writing that it intends to recoup
16 proceeds in a specific amount, describing why it believes that those proceeds have not been
17 reinvested as required by Section 5.11 or Section 5.11.1. Within thirty (30) days of receipt of
18 such notification, the Authority will submit its response to the Government. Within thirty (30)
19 days of receipt of the Authority's response or within thirty (30) days of the date the Authority's
20 response was due under this Section, the Government will issue its decision on the matter,
21 which will be final and binding on the Authority, subject to a dispute resolution procedure to
22 be agreed upon by the Parties in the EDC MOA. The Authority will pay the amount of
23 recoupment due within sixty (60) days of final resolution of the dispute.
24
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26 ARTICLE 6 27 CLOSING AND SETTLEMENT 28

29 6.1 Opening of Escrow. The Parties will open escrow by depositing an executed copy
30 of the EDC MOA with Title Company. The Parties will jointly develop escrow instructions for
31 the Initial Closing and each Subsequent Closing, as necessary.
32

33 6.2 Deliveries into Escrow. The EDC MOA will described the specific documents
34 that the Government and the Authority will deliver to escrow for the Initial Closing and the
35 Subsequent Closing.
36

37 6.3 Title Insurance. Any title insurance that may be desired by the Authority will be
38 procured at its sole cost and expense. The Government will cooperate with the Authority or its
39 authorized agent and will permit examination and inspection of any documents relating to the
40 title of the Property as it may have available.
41

42 ARTICLE 7 43 UTILITIES AGREEMENT 44

45 7.1 The Parties will execute and enter into an agreement that addresses ownership and
46 use of existing utilities by the Parties in light of the Parties separate ownership of the different

1 Parcels of the Real Property (a "Utilities Agreement"). The EDC MOA will describe the terms
2 of the Utilities Agreement.
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4 **ARTICLE 8**
5 **TIME OF THE ESSENCE**
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7 8.1 Time is of the Essence. The EDC MOA will include the Parties'
8 acknowledgement that a fundamental component of the EDC MOA is the timely disposal of the
9 Property by the Government, which will permit the economic redevelopment of the Property,
10 and accordingly, time is of the essence.
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13 **ARTICLE 9**
14 **ENVIRONMENTAL PROVISIONS AND PETROLEUM CORRECTIVE ACTION**
15

16 9.1 Government Obligations. The EDC MOA will include provisions that address the
17 Government's obligations with regard to (i) Hazardous Substances as set forth in CERCLA at 42
18 U.S.C. § 9620(h)(3); and the Government's obligation regarding indemnification of transferees
19 of closing Department of Defense property pursuant to §330 of the National Defense
20 Authorization Act of 1993 (Pub. L. No. 102-484), as amended, (ii) any required action to address
21 and remediate petroleum products, underground and above ground storage tanks, petroleum
22 derivatives, fractions and daughter products, and (iii) cooperation with the Authority regarding
23 the removal of any lead-based paint ("LBP") disclosure required by 40 CFR §745.113, if
24 applicable, and/or asbestos or asbestos-containing materials ("ACM") notifications, once the
25 LBP and ACM are removed from the Property in compliance with Federal and State standards.
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28 **ARTICLE 10**
29 **LIABILITY FOR ENVIRONMENTAL CONTAMINATION**
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31 10.1 Except as set forth specifically in the Quitclaim Deeds, the Authority will not
32 assume any liability or responsibility for environmental impacts and damage caused by the use of
33 Hazardous Materials by the Government, its contractors, agents or assignees, on any portion of
34 the Property prior to the date of conveyance. The Authority will have no obligation under the
35 EDC MOA to undertake the defense of any claim or action, whether in existence now or brought
36 in the future, or to conduct any cleanup or remediation action solely arising out of the use or
37 release of any Hazardous Materials, on or from any part of the Property: (i) due to activity on the
38 Property by the Government, or (ii) during the Government's ownership of the Property except
39 as provided under leases entered into between the Authority and the Government prior to the
40 effective date of the EDC MOA.
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ARTICLE 11
DISPUTE RESOLUTION PROCEDURES

11.1 Arbitration of Certain Disputes. The EDC MOA will include an expedited dispute resolution procedure to resolve disputes relating to (i) Major Phase Decisions (pursuant to Section 5.4 hereof); (ii) proposed amendments to appraisal instructions (pursuant to Section 5.2.3 hereof); (iii) proposed additions or subtractions to the Qualified Appraiser Pool (pursuant to Section 5.2.2 hereof); (iv) or any matter the Authority in its reasonable discretion believes has the potential to materially delay the Project. The EDC MOA will also include a general dispute resolution procedure to govern other disputes identified in the EDC MOA as subject to the general dispute resolution procedure.

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ARTICLE 12
REMEDIES FOR NONPERFORMANCE

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12.1 General Remedies. In the event either of the Parties fail to observe or perform any of its obligations under the EDC MOA or otherwise breach the EDC MOA, 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 in the EDC MOA, as well as any other remedies to which the Party is entitled at law or in equity. Notwithstanding the foregoing, the Authority will not be liable for monetary damages if it does not accept conveyance of the Property in a timely manner.

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12.2 Specific Remedies Relating to the Conveyance Schedule and Remediation Milestones. The EDC MOA will include specific remedies available to the Authority in the event the Government fails to complete a Remediation Milestone or convey a Parcel to the Authority in accordance with the Conveyance Schedule, subject to events of force majeure or unavoidable delay that will be defined in the EDC MOA.

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ARTICLE 13
AGREEMENT SUBJECT TO CEQA AND NEPA

13.1 This Term Sheet does not constitute approval of the proposed EDC MOA or any other agreements between the Parties. The Authority's Board of Directors and the Board of Supervisors will consider the final EDC MOA after completion of environmental review under CEQA and, if applicable, NEPA. While this Term Sheet strives to summarize certain basic terms essential to that agreement, it is not intended to be, and will not become, contractually binding on the Authority or the Government, and no legal obligation will exist under this Term Sheet, unless and until the parties have negotiated, executed and delivered a mutually acceptable agreement based upon information produced from the CEQA and, if applicable, NEPA process and other public review and hearing processes and subject to all applicable governmental approvals.

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13.2 Before entering into the final EDC MOA, the Authority and the City, in their independent authority, retain the absolute discretion to (a) make modifications to the proposed Project and the proposed EDC MOA as are deemed necessary to mitigate significant environmental impacts, (b) select feasible alternatives that avoid significant adverse impacts, (c) reject the proposed EDC MOA as proposed if the economic and social benefits of the EDC MOA do not outweigh otherwise unavoidable significant adverse impacts of the proposed Project, (d) approve the proposed EDC MOA upon a finding that the economic and social benefits of the proposed Project and the EDC MOA outweigh otherwise unavoidable adverse impacts of the proposed Project and the EDC MOA, or (e) determine not to proceed with the proposed conveyance of the Property and Project based upon the information generated by the environmental review process.

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EXHIBIT A

DEFINITIONS

“Accounting” has the meaning set forth in Section 4.3.5.

“ACM” has the meaning set forth in Section 9.1.

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

“Anniversary Date” means the first anniversary of the Initial Closing and each anniversary of such date thereafter; provided, however, that if the Initial Closing is other than the first day of a month, then the first Anniversary Date will be the first day of the thirteenth month after the Initial Closing.

“Auction” has the meaning set forth in Section 5.1.

“Auction Pads” has the meaning set forth in Section 5.3.

“Authority” means the Treasure Island Development Authority.

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

“CEQA” has the meaning set forth in the fifth Recital.

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

“Closing” means the transactions by which the Property, or a portion thereof, is conveyed by Quitclaim Deed by the Government to the Authority.

“Closing Conditions” has the meaning set forth in Section 3.4.1.

“Conveyance Schedule” has the meaning set forth in Section 3.1.

“CRL” has the meaning set forth in Section 4.2.3.

“DDA” means the Disposition and Development Agreement proposed to be entered into by and between the Authority and the Developer.

“DDA Appraisal Process” has the meaning set forth in Section 5.2.

“DDA Reports” means, collectively, the items set forth in Section 5.7.1, Section 5.7.2, and Section 5.7.3.

1 **“Developer”** means Treasure Island Community Development, LLC and its successors
2 and assigns under the DDA, or other such entity that is the master developer, and expressly
3 excludes the Marina Developer.
4

5 **“Developer Pads”** has the meaning set forth in Section 5.2.
6

7 **“Development Costs”** means all Hard Costs, Soft Costs, and Predevelopment Costs.
8

9 **“EDC”** has the meaning set forth in the third Recital.
10

11 **“EDC Application”** has the meaning set forth in the third Recital.
12

13 **“EDC MOA”** has the meaning set forth in the Preamble.
14

15 **“Entitlements”** means all land use approvals and entitlements, including all conditions
16 of approval and CEQA mitigation measures legally required by the Authority, City or any other
17 governmental authority as a condition to subdivision of the Property and development of the
18 Property in accordance with the DDA.
19

20 **“Excess Land Appreciation Structure”** has the meaning set forth in Section 5.4.4.
21

22 **“First Tier Participation”** has the meaning set forth in Section 4.3.1.
23

24 **“First Tier Payment”** has the meaning set forth in Section 4.3.2.
25

26 **“FOST”** means a written determination by the Government that a Parcel may be
27 transferred by a Quitclaim Deed to the Authority in full compliance with 42 U.S.C.
28 §9620(h)(3)(A) or §9620(h)(4) of CERCLA.
29

30 **“GAAP”** has the meaning set forth in Section 4.3.5.
31

32 **“Government”** means the United States of America, acting by and through the
33 Department of the Navy.
34

35 **“Gross Revenues”** means, for any period, all cash revenues received by the Developer
36 from any source whatsoever and whether collected through or outside of escrow in connection
37 with all or any part of the Project, in each case for such period, which will include, the gross
38 proceeds of sale of the Lots or any portion thereof, rents or other payments paid to Developer as
39 the master landlord under any ground lease or as a property manager under an interim
40 management agreement with the Authority for existing facilities and open space; proceeds from
41 the first sale of ground leases or refinancing intended to capitalize ground value; any damage
42 recoveries, insurance payments or condemnation proceeds payable to the Developer with respect
43 to the Project to the extent not otherwise used for repair or reconstruction of the Property, all
44 revenues derived from agreements to which the Developer is a party pursuant to which the
45 Developer participates in the proceeds of the operation or sale of any portion of the Property sold

1 to a Vertical Builder, the proceeds of and proceeds from any assessment or special tax districts
2 formed for purposes of providing funds for costs associated with the Project, and amounts paid to
3 Developer from tax increment financing or other public financing, and grants and tax credits to
4 reimburse Developer for Infrastructure or other qualifying costs. Gross Revenues will
5 specifically exclude the proceeds of any capital contributed to the Developer by its partners or
6 members or the proceeds of any loan made to the Developer.

7
8 **“Guidelines for Auction Pad Selection”** has the meaning set forth in Section 5.3.3.

9
10 **“Hard Costs”** means Developer’s reasonable out-of-pocket costs actually incurred in
11 connection with the construction of the Horizontal Improvements. Hard Costs include, without
12 limitation, necessary permit fees, bond premiums and similar fees and charges required for the
13 construction of the Horizontal Improvements.

14
15 **“Horizontal Improvements”** means demolition, grading, geotechnical improvements,
16 environmental investigation, environmental characterization, regulatory agency coordination and
17 negotiation and environmental remediation for which Developer’s costs are not reimbursed
18 through an Environmental Services Cooperative Agreement or other Government funds,
19 infrastructure and utilities, and all other improvements and related costs required to be performed
20 or installed by Developer pursuant to the terms of the DDA, including but not limited to, the
21 preparation of land for vertical development, public service and community improvements,
22 transportation program improvements and subsidies, facilities and equipment, open space and
23 parks improvements and maintenance, rehabilitation of historic buildings, affordable housing
24 program and transition housing improvements.

25
26 **“Illustrative Land Use Plan”** has the meaning set forth in the third Recital.

27
28 **“Initial Consideration”** has the meaning set forth in Section 4.1.

29
30 **“Initial Consideration Term”** has the meaning set forth in Section 4.1.

31
32 **“Initial Closing”** means the date on which the first conveyance of a FOST Parcel by
33 deed from the Government to the Authority occurs in accordance with Article 3 hereof.

34
35 **“Installment Payment”** has the meaning set forth in Section 4.2.1.

36
37 **“Interest Rate”** means an annual interest rate equal to the interest rate payable on ten
38 year (10) Treasury Notes in effect as of the month that the EDC MOA is entered into plus one
39 hundred fifty basis points (150 bps), which Interest Rate will be locked for the duration of the
40 EDC MOA.

41
42 **“IRR”** means the annual internal rate of return calculated on the Project’s Unleveraged
43 Cash Flow by the Excel 2007 “IRR” function using annual unleveraged cash flows, commencing
44 on June 1, 2003. The Project’s Unleveraged Cash Flow will be adjusted to show all costs
45 incurred when paid and all revenues received in the appropriate period.

1
2 **“IRR Statement”** has the meaning set forth in Section 4.3.2.

3
4 **“JV Pads”** has the meaning set forth in Section 5.2.

5
6 **“Late Conveyance Parcel”** has the meaning set forth in Section 4.2.2.

7
8 **“Late Payment”** has the meaning set forth in Section 4.3.4.

9
10 **“LBP”** has the meaning set forth in Section 9.1.

11
12 **“Litigation Unavoidable Delay”** means any action or proceeding before any court,
13 tribunal, or other judicial, adjudicative or legislative decision-making body, including any
14 administrative appeal, brought by plaintiffs unaffiliated with the Party claiming the benefit of
15 Unavoidable Delay which both (1) (x) seeks to challenge the validity of any action taken by the
16 Party claiming the benefit of Unavoidable Delay, including the Party’s approval, execution, and
17 delivery of the EDC MOA and its performance hereunder, or the performance of any action
18 required or permitted to be performed by the Party hereunder, or (y) seeks to challenge the
19 failure of any regulatory authority to issue, the conditions of, or the validity of any other permit
20 required to conduct the Party’s obligations under the EDC MOA, and (2) is reasonably likely to
21 prevent the parties from timely performing its obligations under the EDC MOA. Performance by
22 a party under the EDC MOA will be deemed delayed or made impossible by virtue of Litigation
23 Unavoidable Delay during the pendency thereof, and until a judgment, order, or other decision
24 resolving such matter in favor of the party whose performance is delayed has become final and
25 unappealable. The Parties will each proceed with due diligence and will cooperate with one
26 another to defend the action or proceeding or take other measures to resolve the dispute that is
27 the subject of such action or proceeding.

28
29 **“Lots”** means a building site to be prepared by Developer and conveyed for
30 consideration to a third party or Developer Affiliate pursuant to the terms of the DDA.

31
32 **“Major Phase Decision Notice”** has the meaning set forth in Section 5.5.1.

33
34 **“Major Phase Decisions”** has the meaning set forth in Section 5.4.

35
36 **“Marina Developer”** means Treasure Island Enterprises, LLC, its successors and
37 assigns, or such other entity that is the master tenant and developer of the Treasure Island
38 Marina.

39
40 **“Market Rate Parcels”** has the meaning set forth in Section 5.1.

41
42 **“Multiple Conveyances”** means a series of Partial Conveyances.

43
44 **“NEPA”** has the meaning set forth in the fifth Recital.

1 **“Net Available Tax Increment Revenues”** has the meaning set forth in Section 4.2.3.

2
3 **“Party”** or **“Parties”** has the meaning set forth in the Preamble.

4
5 **“Personal Property”** means that certain tangible personal property, including without
6 limitation, furnishings, furniture, machinery, equipment, tools, appliances, radiators, heaters,
7 radios, and vehicles to be transferred to the Authority under the EDC MOA.

8
9 **“Pre-Development Costs”** means reasonable costs actually incurred and paid and
10 directly related to the development, Entitlement, acquisition and implementation of the Project
11 incurred by Developer prior to the first conveyance of a Major Phase to Developer, including
12 architectural, engineering, environmental, consultant, community outreach, legal and other
13 professional fees; real property taxes and assessments; insurance expenses; title and survey, sales
14 and marketing expenses; project management costs, security and site maintenance; fees and
15 charges for bonds and permits; and City cost reimbursements. The following will not constitute
16 **“Pre-Development Costs”**: (1) Repayment of the principal, fees and interest of any loan; or (2)
17 distributions, preferred return or other capital return to the members of the Developer.

18
19 **“Property”** has the meaning set forth in Section 3.1.

20
21 **“Qualified Appraiser Pool”** has the meaning set forth in Section 5.2.2.

22
23 **“Quarter”** means a calendar quarter beginning on the first day of January, April, July,
24 and October of each year, commencing on the first day of the first full Quarter after the Initial
25 Closing and continuing until the Termination Date of the EDC MOA.

26
27 **“Quitclaim Deed(s)”** means those certain recordable quitclaim deeds conveying the
28 Government’s right, title, and interest to the Real Property and the Easements to the Authority, in
29 the forms to be attached to the EDC MOA.

30
31 **“Real Property”** has the meaning set forth in Section 3.1.1.

32
33 **“Regulatory Unavoidable Delay”** means delays by Regulatory Authorities in issuing
34 requisite approvals or consents beyond the reasonable control of the Party claiming the benefit of
35 Regulatory Unavoidable Delay, provided that the Party claiming the benefit of Regulatory
36 Unavoidable Delay is diligently proceeding to obtain all necessary approvals from regulatory
37 authorities. Without limiting the foregoing, Regulatory Unavoidable Delays will not include
38 delays resulting from (i) the Party’s failure to timely respond to requests for information or (ii)
39 the Party’s failure to take actions or proceed in a manner requested by the regulatory authority
40 that is consistent with industry standard practices and regulatory authority requirements as
41 commonly applied for the intended land use for property within the jurisdiction of the applicable
42 regulatory authority.

43
44 **“Reporting Period”** has the meaning set forth in Section 4.3.2.

1 **“Remediation Milestones”** means those remediation milestones that will be listed on the
2 Conveyance Schedule.

3
4 **“Re-Setting of the Minimum Bid Price”** has the meaning set forth in Section 5.3.

5
6 **“Reuse Plan”** has the meaning set forth in the third Recital.

7
8 **“Second Tier Participation”** has the meaning set forth in Section 4.3.1.

9
10 **“Second Tier Payment”** has the meaning set forth in Section 4.3.3.

11
12 **“Soft Costs”** means Developer’s reasonable out-of-pocket costs actually incurred and
13 paid on or after the first conveyance of a Major Phase to Developer (except as otherwise
14 provided below) and attributable to the following: designing the Horizontal Improvements;
15 marketing and selling the Lots; Entitlements; architectural, engineering, consultants, community
16 outreach, attorney and other professional fees; real property taxes and assessments; costs, debt
17 service and required reserves for Mello-Roos Bonds and other public financing that are not
18 withheld in such Mello-Roos Bonds and other public financing issuances; insurance expenses,
19 including environmental insurance; sales and marketing expenses; security and site maintenance;
20 customary closing costs incurred in connection with sales of the Lots; City cost reimbursements;
21 costs and subsidies incurred pursuant to the DDA, including, without limitation: costs and
22 subsidies not otherwise included in Hard Costs related to implementation of the transportation
23 program, affordable housing and transition housing program, rehabilitation of the historic
24 buildings, development of the parks and open space, and public art; any Initial Consideration,
25 Additional Consideration, and interest payments on both, whether made before or after
26 conveyance of the first Major Phase; and expenses incurred by Developer related to management
27 of existing facilities and open space under a management agreement with the Authority, whether
28 incurred before or after conveyance of the first Major Phase.

29
30 **“Subsequent Closing”** means the date(s) on which the subsequent conveyance of a
31 FOST Parcel by deed from the Government to the Authority occurs in accordance with Article 3
32 hereof.

33
34 **“Term Sheet”** has the meaning set forth in the Preamble.

35
36 **“Termination Date”** has the meaning set forth in Section 4.3.3.

37
38 **“Title Company”** means such title insurance company as the Authority designates from
39 time to time.

40
41 **“Treasure Island”** has the meaning set forth in the first Recital.

42
43 **“Unavoidable Delay”** means a delay in a Party’s performance of its obligations
44 hereunder that is caused by (a) acts of God, enemy action, civil commotion, fire, flood,
45 earthquake or other casualty, (b) strikes or other labor disputes (to the extent not resulting from

1 the labor practices of the Party claiming the benefit of the Unavoidable Delay), (c) material
2 shortages of or inability to obtain labor or materials beyond the reasonable control of the Party
3 claiming the benefit of Unavoidable Delay (except to the extent caused by the negligent act or
4 omission or willful misconduct of the Party claiming the benefit of Unavoidable Delay), (d)
5 Litigation Unavoidable Delays, and (e) Regulatory Unavoidable Delays.

6
7 **“Unleveraged Cash Flow”** means Gross Revenues received by the Developer from the
8 Project less Development Costs paid by the Developer.

9
10 **“Utilities Agreement”** has the meaning set forth in Section 7.1.

11
12 **“Utility Infrastructure”** means all utilities and related support infrastructure located on
13 and off the Real Property that are assignable or transferable by the Navy such as electrical, water,
14 sewer, gas, and storm drainage lines to be transferred to the Authority under the EDC MOA.

15
16 **“Vertical Builder”** means the successor owner of a Lot pursuant to a transfer permitted
17 under the DDA who is building vertical improvements.

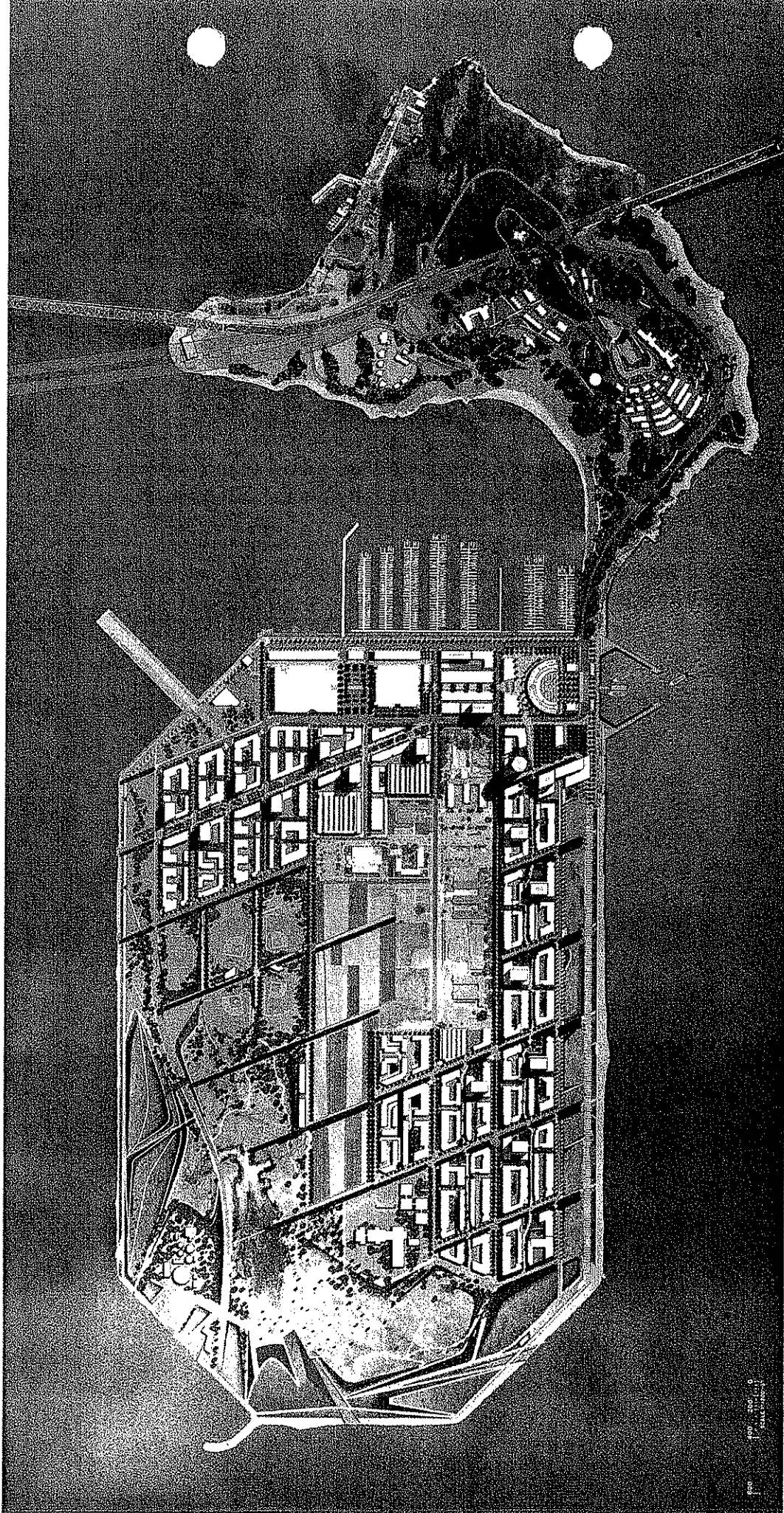


Exhibit B - Illustrative Land Use Plan

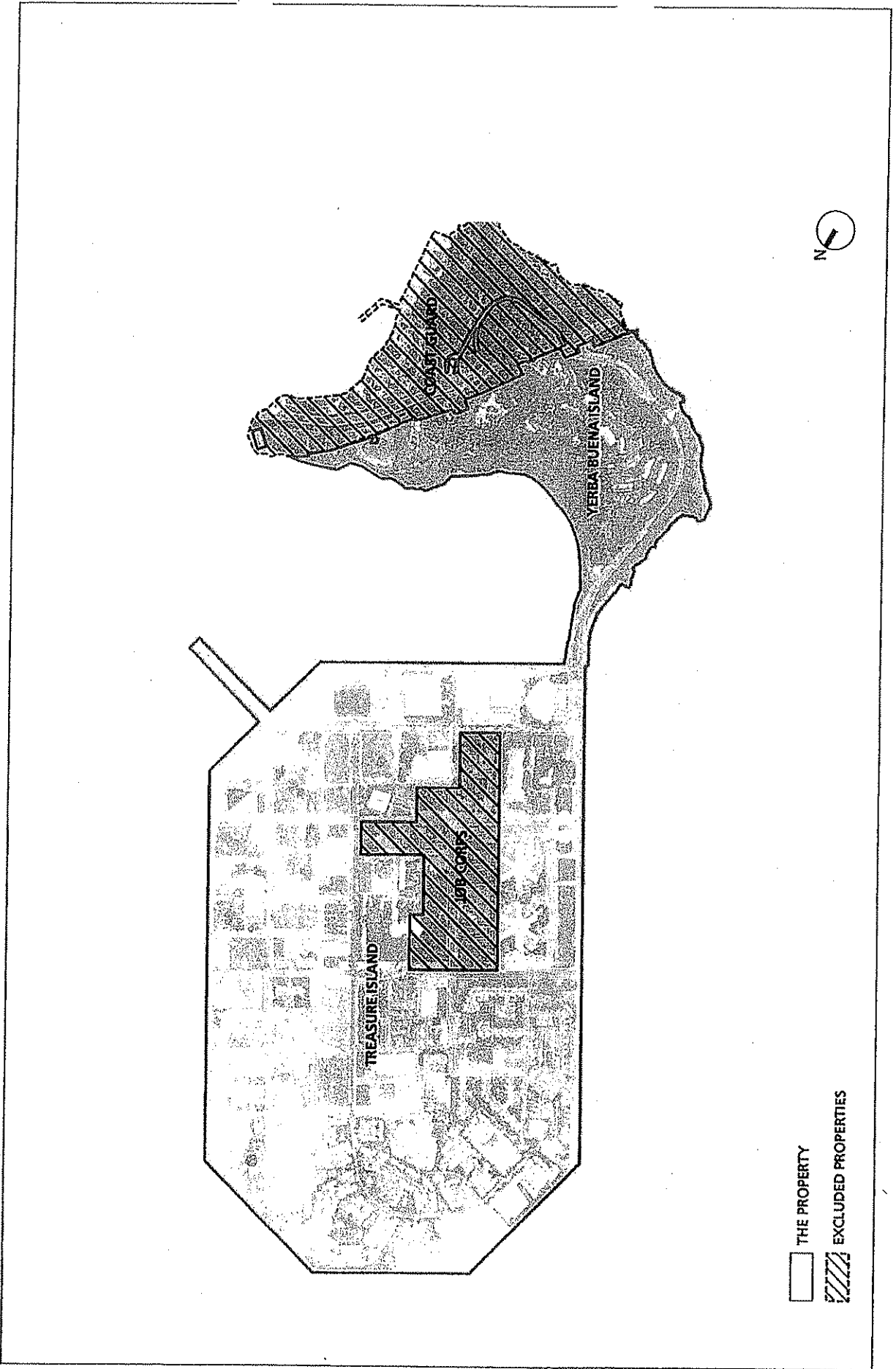


Exhibit C - Real Property

