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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**

26  
27 **BETWEEN**

28  
29 **THE UNITED STATES OF AMERICA**

30  
31 **AND**

32  
33 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

34  
35 **FOR THE CONVEYANCE OF**

36  
37 **THE NAVAL STATION TREASURE ISLAND**  
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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 \_\_\_\_\_, 2014 (the “**Effective Date**”), between the **UNITED STATES OF AMERICA**,  
12 acting by and through the Department of the Navy (the “**Navy**”), and the **TREASURE ISLAND**  
13 **DEVELOPMENT AUTHORITY** (the “**Authority**”), recognized as the Local Redevelopment  
14 Authority by the Office of Economic Adjustment on behalf of the Secretary of Defense with  
15 regard to the disposition and conveyance of portions of Naval Station Treasure Island, San  
16 Francisco, California. The Navy and the Authority are each sometimes referred to herein  
17 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 eighty-seven (1,187) acres of real property, together with the buildings,  
27 improvements and related and other personal property located thereon and all rights, easements  
28 and appurtenances thereto.  
29

30 2. (a) Pursuant to the power and authority provided by § 2905(b)(4) of the  
31 Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the  
32 implementing regulations of the Department of Defense (32 C.F.R. Part 174), the Secretary of  
33 the Navy is authorized to convey surplus property at a closing installation to the Local  
34 Redevelopment Authority for economic development purposes. By its “EDC Application and  
35 Business Plan for Naval Station Treasure Island” dated June 19, 2000, as amended on July 1,  
36 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its  
37 application dated June 30, 2010, as further amended on August 16, 2011, the Authority applied  
38 for an Economic Development Conveyance (“**EDC**”) of approximately one thousand one  
39 hundred and eight (1,108) acres of Treasure Island (“**EDC Application Property**”) together  
40 with existing Navy owned off-site utilities serving Treasure Island (the “**EDC Application**”), to  
41 be used and redeveloped in accordance with the “Draft Reuse Plan for Naval Station Treasure  
42 Island” (“**Reuse Plan**”) as endorsed by the City Planning Commission and the City’s Board of  
43 Supervisors in July 1996 and approved by the United States Department of Housing and Urban  
44 Development on November 26, 1996.  
45

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

13  
14 (c) The Navy approved the Authority's EDC Application on October 7, 2011,  
15 attached hereto as Exhibit AA.

16  
17 (d) The consideration for conveyance of the Navy Property, as set forth  
18 herein, has been structured to achieve an amount at least equal to the fair market value of the  
19 Navy Property.

20  
21 3. In accordance with the provisions of the Community Environmental Response  
22 Facilitation Act, the Navy prepared Environmental Baseline Surveys ("**EBSs**") for Treasure  
23 Island, copies of which have been provided to the Authority. Subsequently, the Navy prepared a  
24 Supplemental Environmental Baseline Survey ("**SEBS**") inclusive of the EDC Application  
25 Property dated July 8, 2005, a copy of which has been provided to the Authority. The Navy  
26 prepared Finding of Suitability to Transfer ("**FOST**") documents dated February 15, 2006,  
27 March 22, 2006, and January 3, 2012, copies of which have been provided to the Authority.

28  
29 4. For purposes of this Agreement, the Parties shall treat the Navy Real Property as  
30 two (2) separate parcels (that may be further subdivided into sub-parcels). Said parcels are  
31 identified as the "**FOST Parcel**", substantially as described on Exhibit B-2, and the  
32 "**Remainder Parcel**" substantially as described on Exhibit B-3 (collectively, the "**Parcels**", and  
33 each a "**Parcel**").

34  
35 5. In accordance with the provisions of the National Environmental Policy Act  
36 ("**NEPA**") of 1969, as amended, the Navy prepared an Environmental Impact Statement ("**EIS**")  
37 for the disposal and reuse of Treasure Island. A Record of Decision ("**NEPA ROD**") regarding  
38 the disposal and reuse of Treasure Island was issued on the 26th day of October, 2005 and is  
39 attached to this Agreement as Exhibit G.

40  
41 6. In accordance with the provisions of the California Environmental Quality Act  
42 ("**CEQA**"), as amended, the Authority and the City, as co-lead agencies, have prepared a  
43 project-level Environmental Impact Report ("**EIR**") for the DDA Land Use Plan and related  
44 documents and actions. The Authority certified the EIR as complete and the Planning  
45 Commission certified the EIR as complete on April 21, 2011 (collectively, the "**Certification**").  
46 The Certification resolutions are attached hereto as Exhibit P.



1  
2 7. In accordance with the provisions of the National Historic Preservation Act, the  
3 Navy determined that the disposal of Treasure Island, as hereinafter defined, will have an effect  
4 upon those portions of Treasure Island that are listed in the National Register of Historic Places.  
5 A Memorandum of Agreement between the Department of the Navy and the California State  
6 Historic Preservation Officer (“SHPO”) was executed on the 28<sup>th</sup> day of May, 2003 (attached  
7 hereto as Exhibit Q-1), and, together with the Memorandum of Agreement between the  
8 California Department of Transportation and SHPO, dated the 19<sup>th</sup> day of May, 2011 (attached  
9 hereto as Exhibit Q-2), takes into account the effect of the undertaking on historic properties in  
10 accordance with the National Historic Preservation Act and implementing regulations.  
11

12 8. In accordance with the provisions of that certain Base Caretaker Cooperative  
13 Agreement first dated March 12, 1997 and as further modified (“Caretaker Agreement”) and  
14 those certain Master Leases by and between the Authority and the Navy described on Exhibit  
15 LL, the Authority has maintained the physical condition of Treasure Island, including certain  
16 infrastructure as set forth in the Caretaker Agreement. The physical condition of the Treasure  
17 Island is subject to reasonable wear and may have been altered by the Authority under the terms  
18 of the Caretaker Agreement and the Master Leases, and/or the Navy where remedial activities  
19 have been required.  
20

## 21 AGREEMENTS

22  
23 **NOW, THEREFORE**, in consideration of the foregoing and the respective  
24 representations, agreements, covenants and conditions herein contained, and other good and  
25 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Navy  
26 and the Authority agree as follows:  
27

### 28 **ARTICLE 1** 29 **DEFINITIONS**

30  
31 1.1 The definitions are attached hereto as Exhibit A and are hereby incorporated by  
32 reference as if fully set forth herein.  
33

### 34 **ARTICLE 2** 35 **ECONOMIC DEVELOPMENT CONVEYANCE**

36  
37 2.1 Pursuant to § 2905(b)(4) of the Defense Base Closure and Realignment Act of  
38 1990 (10 U.S.C. § 2687 note), as amended, and 32 C.F.R. Part 174, the Navy agrees to transfer  
39 and convey all of the Navy’s right, title, and interest in the Navy Property to the Authority under  
40 a fair market value economic development conveyance, and the Authority agrees to acquire such  
41 Navy Property in consideration of the covenants, conditions and restrictions contained herein and  
42 other good and valuable consideration, subject to the terms, conditions and general provisions set  
43 forth in this Agreement.  
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**ARTICLE 3**  
**CONVEYANCE SCHEDULE AND TRANSFERS**

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

3.1.1 The real property consisting of the EDC Application Property located within the bounds of the former Naval Station Treasure Island, as more particularly described and delineated in Exhibit B-2 and Exhibit B-3, attached hereto, less any real property appropriated permanently by the Federal Highway Administration, which shall include, but not be limited to, any right, title or interest the Navy may have in the following (collectively referred to herein as the "**Navy Real Property**"), except as otherwise provided for in this Agreement:

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 this Agreement and the date of conveyance of all the Navy Real Property to the Authority).

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

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

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 Navy Real Property that serve the Navy Real Property such as electrical, water, sewer, gas, storm drainage and telecommunications lines (including all replacements and additions thereto between the date of this Agreement and the date of conveyance of all the Navy Real Property to the Authority), as more particularly described on Exhibit H-2 attached hereto.

3.1.3 The Navy Personal Property consisting of the Navy's right, title, and interest in all personal property located on or used in connection with the ownership, use, or operation of the specific portion of the Navy Real Property to be transferred to the Authority at each Closing, substantially in the form of and pursuant to the terms and conditions of the Bill of Sale as more particularly described in Exhibit H-1, attached hereto, except for items identified in Article 13 relating to the Navy Office. The Navy shall retain responsibility for all excluded personal property under the cognizance of the Navy Office.

1           3.2    Sequence of Conveyances. The Navy shall convey the Navy Real Property by  
2   Quitclaim Deed to the Authority, and the Authority shall accept, in Multiple Conveyances in  
3   accordance with the Conveyance Schedule attached hereto as Exhibit R, such portion of the  
4   Navy Real Property for which the Closing Conditions set forth in Section 3.7 have been satisfied  
5   or waived, subject to the following requirements:  
6

7           3.2.1 The Navy Real Property shall be conveyed and accepted within sixty (60)  
8   days after the Closing Conditions have been satisfied for the portion of the Navy Real Property  
9   subject to the applicable conveyance.  
10

11           3.2.2 RESERVED  
12

13           3.2.3 The Parties agree to meet at such times as requested by a Party, but no less  
14   than annually, to discuss the status of the Conveyance Schedule. Prior to each such meeting, the  
15   Authority shall deliver to the Navy a general phasing schedule that describes the anticipated  
16   schedule of development on the Navy Real Property for the next twenty-four (24) months.  
17   During such meeting, the Parties may mutually agree, in each Party's sole and absolute discretion,  
18   to amend the Conveyance Schedule, including the Navy Real Property to be conveyed as part of  
19   the Initial Closing or any subsequent Closing.  
20

21           3.3    Conveyance Process.  
22

23           3.3.1 FOST Parcel. On the Initial Closing, the Navy shall convey to the  
24   Authority, and the Authority shall accept, a parcel that is substantially similar to the portion of the  
25   Navy Real Property that is more particularly described and delineated as the FOST Parcel on  
26   Exhibit B-2, attached hereto (the parcel to be conveyed, hereinafter referred to as the "**FOST**  
27   **Parcel**"), as further modified as necessary to remove any real property that may be deemed  
28   radiologically impacted and therefore require further investigation as set forth in the Final  
29   Historical Radiological Assessment – Supplemental Technical Memorandum anticipated to be  
30   completed by the Navy in April 2014, in accordance with the process provided herein, so long as  
31   the Authority has approved any differences between the boundaries of the FOST Parcel and the  
32   parcel or parcels delineated in Exhibit B-2 and the Closing Conditions for the transfer of the  
33   FOST Parcel have been satisfied.  
34

35           3.3.2 Remainder Parcel. Upon satisfaction of the Closing Conditions for the  
36   transfer of the Remainder Parcel or applicable portions thereof, the Navy shall convey to the  
37   Authority, and the Authority shall accept, the portions of the Navy Real Property that are more  
38   particularly described and delineated as the Remainder Parcel on Exhibit B-3, attached hereto, as  
39   further modified as necessary to reflect the conclusions of the Final Historical Radiological  
40   Assessment – Supplemental Technical Memorandum, or portions of such Remainder Parcel, in  
41   accordance with the process otherwise provided herein so long as the Authority has approved any  
42   differences between the boundaries of the Navy Real Property to be conveyed as part of a  
43   subsequent Closing and the parcel or parcels listed in Exhibit R. The Remainder Parcel shall  
44   include any portion of the FOST Parcel not conveyed at the Initial Closing.  
45

46           3.3.3 RESERVED

1  
2           3.4    FOST Conveyances.  
3

4           3.4.1   The Navy shall convey the Navy Real Property to the Authority by  
5 Quitclaim Deed(s) with all required CERCLA warranties and covenants after a FOST is executed  
6 with respect to the applicable portion of the Navy Real Property. Unless otherwise mutually  
7 agreed by the Parties, the Navy shall provide to the Authority for review and comment copies of  
8 all draft FOSTs, any amendments to any existing FOSTs, and the contents of any proposed land  
9 use covenants as they become available, provided, however, that the Navy shall not execute any  
10 final FOST or execute or record any land use covenants related to the Navy Real Property for at  
11 least forty-five (45) days after the applicable draft FOST or land use covenant is provided to the  
12 Authority. The Navy shall promptly provide updates or revisions of such draft FOSTs or land use  
13 covenants to the Authority as soon as any updates are available to the Navy. Unless otherwise  
14 mutually agreed by the Parties, the revised draft final FOST or land use covenant, as the case may  
15 be, must be provided to the Authority at least fifteen (15) days prior to the Navy's execution or  
16 recordation of the applicable final FOST or land use covenant.  
17

18           3.4.2   The FOST(s) shall summarize how applicable requirements and  
19 notifications related to hazardous substances, petroleum products and other regulated materials  
20 have been satisfied. The FOST(s) may prescribe land use restrictions or covenants.

21           3.5    Title to Property.  
22

23           3.5.1   Conveyance by Quitclaim Deed. At the Initial Closing, the Navy shall  
24 convey to the Authority all of its right, title and interest in and to the FOST Parcel by duly  
25 executed and acknowledged Quitclaim Deed substantially in the form attached hereto as Exhibit  
26 D. At each subsequent Closing, the Navy shall convey to the Authority all of its right, title and  
27 interest in and to the applicable portion of the Remainder Parcel by duly executed and  
28 acknowledged Quitclaim Deed substantially in the form of Exhibit D.  
29

30           3.5.2   Condition of Title.  
31

32                   3.5.2.1   Attached hereto as Exhibit T is a preliminary title  
33 report that identifies the liens, exceptions to title and encumbrances recorded against  
34 the Navy Real Property as of the Effective Date of this Agreement. Any title  
35 insurance that may be desired by the Authority shall be procured at its sole cost and  
36 expense. The Navy shall cooperate with the Authority or its authorized agent and  
37 shall permit examination and inspection of any documents relating to the title of the  
38 Navy Real Property as it may have available. While, except as set forth in Section  
39 3.5.2.2, the Navy is not obligated to clear any of the title exceptions listed on Exhibit  
40 U, the Navy agrees to assist the Authority, as appropriate, to have the title exceptions  
41 listed on Exhibit U attached hereto, and any subsequently discovered title exceptions  
42 that appear to be in error or are of concern to the Authority, removed, released or  
43 insured over.  
44

45                   3.5.2.2   From the Effective Date of this Agreement through  
46 the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to

1 sell, encumber or grant any interest in the Navy Real Property or any part thereof in  
2 any form or manner whatsoever, or otherwise perform or permit any act that will  
3 diminish or otherwise affect the Authority's interest under this Agreement or to the  
4 Navy Real Property, or which will prevent the Navy's full performance of its  
5 obligations hereunder, without the written consent of the Authority, except  
6 environmental restrictions or land use covenants consistent with Section 3.4 as may  
7 be designated in any CERCLA Record of Decision, an approved Corrective Action  
8 Plan or a FOST.  
9

10 3.6 Non-Assignable and Unperfected Easements, Contracts and Permits. Attached  
11 hereto as Exhibit I-5 is a list of the easements, leases, licenses, encroachment permits, contracts,  
12 permits and other agreements that are necessary for the operation, maintenance or improvement  
13 of the Navy Real Property and are either not assignable (the "**Non-Assignable Easements,**  
14 **Contracts and Permits**") or not validly held by the Navy (the "**Unperfected Easements,**  
15 **Contracts and Permits**"). The Navy shall cooperate with the Authority or its authorized agent  
16 and shall permit examination and inspection of any documents relating to the Non-Assignable  
17 Easements, Contracts and Permits and Unperfected Easements, Contracts and Permits as it may  
18 have available. Navy agrees to assist the Authority, as appropriate, to obtain the consents or  
19 replacement agreements necessary to transfer the Navy's rights under the Non-Assignable  
20 Easements, Contracts and Permits and to assist the Authority as appropriate to obtain the  
21 easements, leases, licenses or encroachment permits necessary for perfecting and assigning the  
22 Unperfected Easements, Contracts and Permits.  
23

24 3.7 Closing Conditions. The Authority shall be obligated to accept title to any portion  
25 of the Navy Real Property tendered to the Authority within sixty (60) days after such portion of  
26 the Navy Real Property is tendered if, at the time of the tender, all of the following conditions are  
27 satisfied, or waived by the Authority in its sole discretion (together the "**Closing Conditions**"):  
28

29 3.7.1 With respect to the Initial Closing for the FOST Parcel:  
30

31 3.7.1.1 One or more FOST(s) have been executed covering  
32 the entirety of the FOST Parcel, and such FOST(s) have been concurred in by DTSC  
33 in writing, and the substance of any environmental restrictions or land use covenants  
34 whether contained in such FOST(s) or executed or recorded separately affecting all or  
35 any portion of the FOST Parcel does not prohibit the timely implementation of the  
36 Reuse Plan land uses. With respect to the FOST dated March 22, 2006, the DTSC  
37 letter dated May 22, 2006 satisfies the requirement for concurrence by DTSC, unless  
38 such FOST is further amended. With respect to the FOST dated January 3, 2012, the  
39 DTSC letter dated February 24, 2012 satisfies the requirement for concurrence by  
40 DTSC, unless such FOST is further amended.  
41

42 3.7.1.2 Building 233 located on the Building 233  
43 Development Parcel described on Exhibit B-6 has been demolished and (i) the CDPH  
44 and DTSC have approved a Final Status Survey Work Plan for Building 233  
45 sufficient to enable CDPH to issue a Free Release Letter, (ii) the CDPH and DTSC  
46 have approved the completed Final Status Survey Report submitted by the Navy, and

1 (iii) written assurance has been received from the appropriate Regulatory Authority or  
2 Authorities that no land use restrictions or covenants will be imposed on the Building  
3 233 Development Parcel that would prohibit timely development consistent with the  
4 DDA Land Use Plan.

5  
6 3.7.1.3 A Record of Decision has been issued for Site 21  
7 described on Exhibit B-3 and any land use restriction or covenants would allow for  
8 residential use on all habitable floors of a building to be constructed on Site 21.

9  
10 3.7.1.4 An Explanation of Significant Differences has been  
11 issued by the Navy and approved by DTSC for Site 33. The remedial action for Site  
12 33 and any resulting land use restrictions or covenants would allow residential use on  
13 all habitable floors of a building to be constructed on Site 33, and a Remedial Action  
14 Completion Report (“**RACR**”) has been approved by DTSC for Site 33. If Site 33 is  
15 identified by the Navy and the State of California as impacted by radiological  
16 contamination prior to the Initial Closing, and as a result the Navy must undertake  
17 additional actions related to radiological contamination, such additional action shall be  
18 completed and the Navy shall have obtained written assurance from the State of  
19 California that the environmental condition of such sites complies with all applicable  
20 laws and would not preclude the timely development of Site 33 in accordance with the  
21 DDA Land Use Plan.

22  
23 3.7.1.5 The Navy and the Authority are not in material  
24 default of any of their material obligations hereunder related to the transfer of the  
25 FOST Parcel pursuant to this Agreement, unless waived by the Party not in material  
26 default.

27  
28 3.7.1.6 The form and content of the Quitclaim Deed  
29 transferring the FOST Parcel is consistent with Section 3.5 and the applicable FOST,  
30 and the Navy and the Authority have agreed on the forms of the Assignment of  
31 Easements, Contracts, Licenses and Permits described in Section 7.1, the Access  
32 Easements and Utility Easements described in Section 7.3, and the Utilities  
33 Agreement described in Article 9.

34  
35 3.7.1.7 The Navy has delivered into escrow the Navy  
36 Closing Documents described in Section 8.2 below.

37  
38 3.7.1.8 All third party consents for the assignment or the  
39 replacement of any Non-Assignable Easements, Contracts and Permits related to the  
40 provision of electricity to Treasure Island and all easements, leases, licenses and/or  
41 encroachment permits necessary to perfect and assign the Unperfected Easements,  
42 Contracts and Permits related to the provision of electricity to Treasure Island have  
43 been obtained. The Non-Assignable and Unperfected Easements, Contracts and  
44 Permits related to the provision of electricity to Treasure Island are shown in Exhibit  
45 I-7.

1                                   3.7.1.9     At the Initial Closing: (i) the physical condition of  
2 the FOST Parcel shall be substantially the same as on the Effective Date of this  
3 Agreement, excepting reasonable wear and tear, activities under the Caretaker  
4 Agreement, master leases, and Navy’s remedial activities, (ii) there shall be no  
5 litigation or administrative agency or other governmental proceeding pending, that  
6 materially and adversely affects the proposed redevelopment of the FOST Parcel, (iii)  
7 the environmental condition (including without limitation the presence, nature, extent  
8 and concentration of Hazardous Substances thereon) of any portions of the FOST  
9 Parcel covered by a FOST issued by the Navy shall not be materially worse than the  
10 known environmental condition on the Effective Date of this Agreement, (iv) if any  
11 portion of the FOST Parcel was identified by the Navy and the State of California as  
12 impacted by radiological contamination, the Navy shall have obtained written  
13 assurance from the State of California that the environmental condition of such sites  
14 complies with all applicable laws and will not be subject to regulation after transfer  
15 under the California Radiation Control Law (i.e., such site shall have a license  
16 exemption or release for unrestricted use with respect to radiological issues) or such  
17 portion shall be removed from the FOST Parcel and included in the Remainder  
18 Parcel, (v) no Regulatory Authority shall have required additional screening,  
19 investigation, remediation or restrictions related to radiological contamination (other  
20 than employee health and safety plan screening to be conducted by a contractor prior  
21 to or during construction) beyond those set forth in the FOST issued for any portions  
22 of the FOST Parcel; and (vi) to the extent that a Record of Decision or FOST exists  
23 for a particular portion of the FOST Parcel on the Effective Date of this Agreement,  
24 such Record of Decision or FOST shall not have been modified or changed (or  
25 required to be modified or changed) unless mutually agreed upon (including changing  
26 through an Explanation of Significant Differences, except for the final Explanation of  
27 Significant Differences for IR Site 31 dated May 2011), and no additional conditions  
28 or restrictions not identified in the existing Record of Decision or FOST shall have  
29 been added after the Effective Date of this Agreement and prior to the Initial Closing.  
30

31                                   3.7.1.10    The FOST Parcel is not subject to any liens,  
32 exceptions and encumbrances other than the following: (i) the lien of real property  
33 taxes not yet due and payable, (ii) the exceptions to title described in the preliminary  
34 title report attached hereto as Exhibit T, (iii) exceptions to title approved by the  
35 Authority in accordance with Section 3.5.2 of this Agreement, (iv) environmental  
36 restrictions or land use covenants consistent with Section 3.4 that the Navy may  
37 record against the Navy Real Property in accordance with Section 3.5.2, and (v) non-  
38 material liens, exceptions or encumbrances that do not impair the value of the Navy  
39 Real Property or the ability to develop the Project.  
40

41                                   3.7.1.11    All Regulatory Authority approvals have been  
42 obtained for the FOST Parcel relating to the investigation and environmental response  
43 for underground and above-ground petroleum storage tanks, and any releases of  
44 petroleum, petroleum derivatives, petroleum fractions, or any chemicals, compounds  
45 or products that result from their degradation in accordance with Article 18.  
46

1                   3.7.2 With respect to any subsequent Closing for a portion of the Remainder  
2 Parcel:

3  
4                   3.7.2.1 A FOST has been executed for such portion of the  
5 Remainder Parcel, and such FOST(s) have been concurred in by DTSC in writing,  
6 and the substance of any environmental restrictions or land use covenants whether  
7 contained in such FOST(s) or recorded separately against the applicable portion of the  
8 Remainder Parcel does not prohibit the timely implementation of the Reuse Plan land  
9 uses.

10  
11                   3.7.2.2 The Navy and the Authority are not in material  
12 default of any of their material obligations hereunder related to the transfer of such  
13 portion of the Remainder Parcel pursuant to this Agreement, unless waived by the  
14 Party not in material default.

15  
16                   3.7.2.3 The form and content of the Quitclaim Deed  
17 transferring such portion of the Remainder Parcel is consistent with Section 3.5 and  
18 the applicable FOST, and the Navy and the Authority have agreed on the form of  
19 Access Easements and Utility Easements described in Section 7.3 with respect to  
20 such portion of the Remainder Parcel.

21  
22                   3.7.2.4 The Navy has delivered into escrow the Navy  
23 Closing Documents described in Section 8.2 below.

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



1 3.7.2.6 The Navy has not permitted, agreed to sell, sold,  
2 encumbered, or granted any interest in such portion of the Remainder Parcel in  
3 violation of Section 3.5.2.2.  
4

5 3.7.2.7 All Regulatory Authority approvals have been  
6 obtained for the Remainder Parcel relating to the investigation and environmental  
7 response for underground and above-ground petroleum storage tanks, and any  
8 releases of petroleum, petroleum derivatives, petroleum fractions, or any chemicals,  
9 compounds or products that result from their degradation in accordance with Article  
10 18.  
11

12 3.7.2.8 For a conveyance that contains all or portions of the  
13 Site 12 Development Parcel, Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31,  
14 the Building 3 Parcel, the Building 233 Parcel, the UC1 and UC2 utility corridors, or  
15 Parcel 24A, each as described on Exhibit B-7 attached hereto, the applicable  
16 performance benchmarks set forth in Sections 4.2.2 and 4.2.3 below have been  
17 satisfied or waived by the Authority as to each Parcel before conveyance of that  
18 Parcel.  
19

20 3.8 Failure to Satisfy Closing Conditions.  
21

22 3.8.1 If any Closing Conditions described in Section 3.7.1 relating to the Initial  
23 Closing are not satisfied prior to or on the date that the Navy is required to convey the FOST  
24 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the  
25 Parties, then the Authority shall have the right in its sole and absolute discretion to (i) waive in  
26 writing the Closing Condition in question as to all or any portion of the FOST Parcel and  
27 proceed with Closing, or (ii) extend the Closing for the FOST Parcel for a reasonable period of  
28 time up to four (4) years as specified by the Authority to allow all of the Closing Conditions  
29 applicable to the FOST Parcel to be satisfied and, if applicable, to complete early transfer or  
30 Lease in Furtherance of Conveyance (“LIFOC”) negotiations with the Navy in accordance with  
31 Section 3.11 or Section 3.12 below.  
32

33 3.8.2 If any Closing Conditions described in Section 3.7.2 relating to a  
34 subsequent Closing for any portion of the Remainder Parcel are not satisfied prior to or on the  
35 date that the Navy is required to convey such portion of the Remainder Parcel to the Authority in  
36 accordance with the Conveyance Schedule, as may be amended by the Parties, then the Authority  
37 shall have the right in its sole and absolute discretion to (i) waive in writing the Closing  
38 Condition in question and proceed with Closing, or (ii) extend the Closing for such portion of the  
39 Remainder Parcel for a reasonable period of time up to four (4) years (except as otherwise  
40 provided for in Section 4.2.4 and/or Section 4.2.5) as specified by the Authority to allow all of  
41 the Closing Conditions applicable to such portion of the Remainder Parcel to be satisfied and, if  
42 applicable, to complete early transfer or LIFOC negotiations with the Navy in accordance with  
43 Section 3.11 or Section 3.12 below.  
44

45 3.8.3 If a dispute arises between the Parties regarding whether a Closing  
46 Condition has been satisfied, either Party may invoke the dispute resolution procedure described

1 in Article 27. The failure by the Navy to satisfy a Closing Condition, by itself, shall not be  
2 deemed a Navy default or breach under this Agreement, and the sole remedy for failure to satisfy  
3 a Closing Condition is set out in Section 3.8.1, Section 3.8.2, and Section 3.8.4.  
4

5 3.8.4 If any Closing Conditions described in Section 3.7.1 and/or 3.7.2 are not  
6 satisfied within four (4) years after the date the Navy was required to convey the applicable  
7 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the  
8 Parties (except as otherwise provided for in Section 4.2.4 and/or Section 4.2.5), and such failure  
9 to satisfy a Closing Condition is not caused by a Navy breach of an obligation under this  
10 Agreement, then the Authority shall have sixty (60) days from receipt of a written notice from  
11 the Navy to elect to waive in writing the Closing Condition in question and proceed with  
12 Closing. If after sixty (60) days the Authority has not chosen to waive in writing the Closing  
13 Condition then, this Agreement shall terminate as to the affected Parcel(s). If this Agreement  
14 terminates as to the affected Parcel(s), the Navy shall have the right to transfer or convey such  
15 Parcel(s) according to applicable law and in accordance with Section 3.8.6 and 3.8.7, provided,  
16 however if this Agreement terminates as to all of the Navy Real Property prior to the Initial  
17 Closing, then the Navy shall have the right to transfer or convey such Parcel(s) according to  
18 applicable law and without complying with Section 3.8.6 or Section 3.8.7.  
19

20 3.8.5 If the Authority does not accept a Parcel for which the Closing Conditions  
21 have been satisfied or waived within sixty (60) days after the Navy's tender of the Parcel, subject  
22 to Excusable Delay, then the Authority shall be in default and the Navy shall have the right, in its  
23 sole discretion, and as its sole and exclusive remedy, to transfer or convey the Parcel in  
24 accordance with applicable law.  
25

26 3.8.6 The Navy agrees that concurrent with the transfer or conveyance of the  
27 FOST Parcel, or any portion thereof, to a third party in accordance with Section 3.8.4 the Navy  
28 shall notify the third party of the restrictions under the DDA Land Use Plan as such DDA Land  
29 Use Plan may be modified by the Authority to address the failure to satisfy the Closing  
30 Condition that gave rise to the Navy transfer or conveyance of such FOST Parcel, or portion  
31 thereof, if any, and concurrent with any transfer or conveyance of the Remainder Parcel, or a  
32 portion thereof, to a third party in accordance with Section 3.8.4 the Navy shall notify the third  
33 party of the restrictions under the DDA Land Use Plan as such version of the DDA Land Use  
34 Plan may be modified by the Authority to address the failure to satisfy the Closing Condition that  
35 gave rise to the Navy transfer or conveyance of such Remainder Parcel, or portion thereof, if  
36 any.  
37

38 3.8.7 The Navy shall not transfer or convey all or any portion of the Navy Real  
39 Property in accordance with Section 3.8.4 to a state or federal agency, or any other entity that  
40 would be exempt from complying with land use restrictions, including restrictions arising under  
41 the DDA Land Use Plan, the City's Planning Code, the City's General Plan or the City's Zoning  
42 Map (an "**Exempt Transferee**"), without first granting the Authority the option (the "**Authority  
43 Option**") to lease the portion of the Navy Real Property that the Navy proposes to transfer or  
44 convey to the Exempt Transferee (the "**Option Property**"). At least sixty (60) days prior to  
45 initiating the process for transfer or conveyance of all or any portion of the Option Property to an  
46 Exempt Transferee, the Navy shall notify the Authority in writing (the "**Option Notice**") of (i)

1 the description of the Option Property subject to the Option Notice, and (ii) the proposed method  
2 of transfer or conveyance, and (iii) if known, the identity of the proposed Exempt Transferee and  
3 the Exempt Transferee's proposed use of the Option Property. The Authority shall have forty-  
4 five (45) days after receipt of the Option Notice to exercise the Authority Option by delivering a  
5 written exercise notice to the Navy. If the Authority exercises the Authority Option, the Parties  
6 shall promptly execute a lease. The form of lease will be a LIFO or master lease similar to the  
7 existing master leases and will include the following provisions: the Authority will not pay rent  
8 and the term will expire on the earlier of fifty (50) years after lease commencement or such time  
9 as the Navy satisfies the applicable Closing Condition allowing for conveyance of the Option  
10 Property to the Authority.

11  
12 3.9 Quitclaim Deeds. The Navy shall convey all of its right, title, and interest in and  
13 to the Navy Real Property to the Authority, and the Authority agrees to accept conveyance of the  
14 Navy Real Property "as is" and "where is" by good and sufficient Quitclaim Deeds in  
15 accordance with this Agreement, by separate conveyance and Closing. Acceptance of the Navy  
16 Real Property by the Authority shall be by execution of the Authority's acceptance statement on  
17 the Quitclaim Deeds. The Navy shall prepare plats and legal descriptions of areas that are  
18 subject to environmental restrictions and covenants at its own expense and provide such plats  
19 and legal descriptions to the Authority for review. The Authority shall prepare draft plats and  
20 legal descriptions of the metes and bounds of the outer boundary of the Naval Station Treasure  
21 Island and the Parcels of Navy Real Property at its own expense and provide such plats and legal  
22 descriptions to the Navy for review. The Parties shall work cooperatively to ensure that plats  
23 and legal descriptions are correct and agreed to by each Party. The Authority shall be  
24 responsible for recording Quitclaim Deeds at its own expense. The Parties shall cooperate in  
25 executing and delivering corrective deeds necessary to convey omitted land intended to be  
26 included in the Navy Real Property and to correct any erroneous description of the Navy Real  
27 Property.

28  
29 3.10 Sub-parcels. Sub-parcelization of any Parcel may be considered and a sub-parcel  
30 may be conveyed as mutually agreed to by the Parties.

31  
32 3.11 Early Transfer Negotiations. At any time, the Parties may enter into early transfer  
33 negotiations for the conveyance of any Parcel or agreed upon sub-parcel with a covenant deferral  
34 pursuant to Section 120(h)(3)(c) of CERCLA and the terms of a mutually acceptable Early  
35 Transfer Cooperative Agreement that has been approved by the Navy, the Authority's Board of  
36 Directors and, if required, the City's Board of Supervisors and Mayor, each in their sole and  
37 absolute discretion.

38  
39 3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into  
40 negotiations for a LIFO or for any portion of the Navy Real Property on terms mutually  
41 acceptable to the Parties, subject to approval by (1) the Authority's Board of Directors and, if  
42 required, the City's Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her  
43 designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority  
44 will enter into a LIFO, easement or other instrument acceptable to the Authority that allows for  
45 the construction of roads, utilities and other infrastructure on the properties.

1            3.13 Marina Property. The Marina Property depicted in Exhibit F will be conveyed to  
2 the Authority pursuant to this Agreement, but will not be conveyed by the Authority to the  
3 Developer or be subject to the terms and conditions of the DDA. Accordingly, the revenues  
4 received by the Authority from the Marina Property shall not be subject to Article 4  
5 (“**Consideration**”) and Article 5 (“**Controls**”), other than Section 5.13. Revenues received by  
6 the Authority from the Marina Property shall be used by the Authority to fund the Authority’s  
7 costs of administering the closure and reuse of Treasure Island and implementing the DDA Land  
8 Use Plan, and shall directly reduce the Authority Costs Payment. An annual accounting of  
9 Marina Property revenues shall be provided to the Navy in accordance with Section 4.3.6.2  
10 hereof.

## 11 12            **ARTICLE 4** 13            **CONSIDERATION**

14  
15            4.1 Consideration. In consideration for the conveyance of the Navy Real Property,  
16 the Authority shall pay to the Navy (i) an initial purchase price of Fifty Five Million Dollars  
17 (\$55,000,000) (the “**Initial Consideration**”), payable over a term of ten (10) years (as such term  
18 may be extended pursuant to Section 4.2.4 and/or Section 4.2.5 below) (the “**Initial**  
19 **Consideration Term**”) and (ii) Additional Consideration based on Net Cash Flow generated  
20 from the Project. Payments of the Initial Consideration and the Additional Consideration may be  
21 made directly by the Developer on behalf of the Authority to the Navy. All payments due  
22 hereunder shall be payable to the U.S. Treasury and sent to BRAC Program Management Office  
23 West, 1455 Frazee Road, Suite 900, San Diego, CA 92108 or to any new or substitute address  
24 specified, in writing in accordance with the notice procedure set forth herein.

### 25 26            4.2 Initial Consideration.

27  
28            4.2.1 Initial Closing. Commencing on the Initial Closing, the Authority shall pay  
29 the Initial Consideration in U.S. Dollars in ten equal annual installments of Five Million Five  
30 Hundred Thousand Dollars (\$5,500,000) (each, an “**Installment Payment**”) plus interest if and  
31 when due. The first payment of Five Million Five Hundred Thousand Dollars (\$5,500,000) shall  
32 be paid at the Initial Closing. Each subsequent Installment Payment shall be made on the  
33 Anniversary Date of the Initial Closing and shall consist of (i) the amount of the Installment  
34 Payment then due, plus (ii) the Interest Rate multiplied by the amount of the Initial Consideration  
35 that had not yet been paid as of the beginning of the prior year (i.e., the Initial Consideration  
36 minus the total of Installment Payments that were actually paid through the prior year). The  
37 Parties also intend that so long as all of the Navy Real Property has been conveyed, all of the  
38 Initial Consideration and applicable interest will have become due and payable by the expiration  
39 of the Initial Consideration Term, subject to the credit against Initial Consideration pursuant to  
40 Section 4.2.10 hereof. Notwithstanding the foregoing, if at any time Navy conveys any Parcel to  
41 a third party to the extent permitted under Section 3.8.4 hereof, the total amount of the Initial  
42 Consideration shall be reduced by the amount of consideration received by the Navy from the sale  
43 or transfer of such Parcel up to the amount of the Initial Consideration, and any interest payable  
44 thereon shall be on the reduced amount of Initial Consideration. Authority shall also be entitled  
45 to a credit against any future Installment Payment (and if insufficient Installment Payments  
46 remain to fully use the credit, against future payments of Additional Consideration) equal to the

1 interest paid by Authority to Navy from the Initial Closing through the date of the third-party sale  
2 calculated on the amount of consideration received by the Navy from the sale or transfer of the  
3 applicable Parcel. If at the time of the third party sale, one or more Installment Payments remain  
4 due, the Installment Payments shall continue until the Navy has been paid an amount equal to the  
5 Initial Consideration less the amount of the third party sale. If the conveyance to a third party  
6 occurs after Authority has already paid the Navy Installment Payments in an amount that equals  
7 more than the Initial Consideration less amounts received by the Navy from the third party sale,  
8 then no further Installment Payments shall be due, and Authority shall be entitled to credit the  
9 amount of the Authority's overpayment against future payments of Additional Consideration that  
10 may become due under Section 4.3 hereof. Without limiting the foregoing, if this Agreement  
11 terminates as to any Parcel in accordance with Section 3.8.4 hereof, then such termination shall  
12 also be treated as a Redesign Trigger Event under Section 4.2.8 hereof.

13  
14 4.2.2 Performance Benchmarks For Site 12. The provisions of this Section 4.2.2  
15 apply only to the developable area of Site 12 (the "**Site 12 Development Parcel**") as that site is  
16 shown on Exhibit B-5 attached hereto. The Navy shall comply with the following performance  
17 benchmarks for the Site 12 Development Parcel (each, a "**Site 12 Performance Benchmark**") on  
18 or before the dates for those benchmarks set forth in the Conveyance Schedule:

19  
20 4.2.2.1 The issuance of a Record of Decision for the Site 12  
21 Development Parcel (the "**Site 12 ROD**") that would not preclude the timely development of the  
22 Site 12 Development Parcel in accordance with the DDA Land Use Plan for multi-family  
23 residential use at the densities contemplated by the Project.

24  
25 4.2.2.2 The Navy's satisfaction of all Closing Conditions for transfer  
26 of the Site 12 Development Parcel to the Authority in accordance with the Conveyance Schedule  
27 and delivery of all Navy Closing Documents in accordance with Section 8.2.

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

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

16  
17           4.2.5 Tolling for Failure to Meet Other Performance Benchmarks. If the Navy  
18 fails to meet a Parcel 21 Performance Benchmark, a Parcel 30 Performance Benchmark, a Parcel  
19 30N Performance Benchmark, a Parcel 30S Performance Benchmark, a Parcel 31 Performance  
20 Benchmark, a Parcel 24A Performance Benchmark, a UC1 Utility Corridor Performance  
21 Benchmark, a UC1 Utility Corridor Performance Benchmark, a Building 3 Performance  
22 Benchmark, and/or a Building 233 Performance Benchmark established in Section 4.2.3 within  
23 the time provided, including by reason of an Excusable Delay, which Performance Benchmarks  
24 shall apply individually and separately to each such parcel, then the Authority’s obligation to pay  
25 any future Installment Payment on the Anniversary Date of the Initial Closing will be tolled for  
26 the same number of days occurring between the applicable Performance Benchmark date and the  
27 date on which the applicable Performance Benchmark is satisfied. For example, if a Performance  
28 Benchmark must be satisfied by November 30, 2015, the next subsequent Installment Payment  
29 was due on January 1, 2016, and such Performance Benchmark was satisfied on April 1, 2016 (a  
30 delay of 123 days), then the next Installment Payment would be due on May 3, 2016 (i.e. 123  
31 days from the original Anniversary Date of January 1, 2016), and all future Installment Payments  
32 would be due on May 3 of subsequent years in the Initial Consideration Term unless further  
33 tolled.

34  
35           4.2.6 Tolling for More than Two Years. If tolling under Section 4.2.4 or Section  
36 4.2.5 continues for a period of more than two (2) years, the Parties shall meet and confer in good  
37 faith to determine whether or not it is reasonably foreseeable that the Navy will be able to meet  
38 the applicable Performance Benchmark within a reasonable period of time.  
39

40           4.2.7 Extension of Tolling Period. If the Parties determine that the reasons for  
41 the delay can be overcome through the good faith and diligent efforts of the Navy, and will likely  
42 result in the satisfaction of the applicable Performance Benchmark, then the Parties may by  
43 mutual agreement extend the applicable two (2) year tolling period to account for the delay. If the  
44 Parties do not reach agreement within sixty (60) days after the first meet and confer (subject to  
45 extension by mutual agreement of the Parties), then the procedures of Section 4.2.8 and 4.2.9  
46 shall apply.

1  
2           4.2.8 Redesign Trigger Events. If (i) the Navy fails to meet the applicable  
3 Performance Benchmark within the applicable two year period and the Parties do not mutually  
4 agree to extend such period pursuant to Section 4.2.7, or (ii) this Agreement terminates as to any  
5 Parcel in accordance with Section 3.8.4 hereof (for any reason other than failure to satisfy the  
6 Closing Conditions in Section 3.7.1.8 or Section 3.7.1.10 (other than by reason of Navy’s breach  
7 of its covenants in Section 3.5.2.2), which Parcel or portion thereof is located within the  
8 development footprint (as that area is shown on the DDA Land Use Plan) (each of the foregoing  
9 events, a “**Redesign Trigger Event**”), the Authority shall have the right to re-entitle, redesign  
10 and rebuild portions of the Project (the “**Redesign Plan**”). The scope of the Redesign Plan shall  
11 be to the extent reasonably necessary, as determined by the Authority, to recapture the lost value  
12 to the Project resulting from the Redesign Trigger Event. The primary goal of any Redesign Plan  
13 shall be to recover an equivalent amount of development value attributable to the applicable  
14 parcel based on the level of development permitted by the Project and Developer’s financial  
15 projections, or if the parcel is an open space parcel, based upon the lost value to the Project  
16 resulting from the redesign of the affected open space. The Redesign Plan shall address the  
17 rebuilding of already constructed Horizontal Improvements to the extent necessary to  
18 accommodate the redesign, and shall identify the incremental level of additional Horizontal  
19 Improvements, if any, required as a result of the redesign.  
20

21           4.2.9 Work Program and Budget. No later than one hundred eighty (180) days  
22 after a Redesign Trigger Event (as such date may be extended in the reasonable discretion of the  
23 Navy), the Authority shall submit to the Navy a work program and budget (the “**Work Program**”  
24 and the “**Redesign Budget**”) for the Redesign Plan. The Work Program shall set forth the  
25 anticipated work program and schedule necessary to prepare, entitle and implement the Redesign  
26 Plan. The Redesign Budget shall estimate the anticipated costs necessary to prepare, entitle and  
27 implement the Redesign Plan (the “**Redesign Costs**”). Redesign Costs shall include, without  
28 limitation, all Soft Costs related to the Redesign Plan, including without limitation, costs  
29 associated with any subsequent environmental review that is required pursuant to CEQA, and  
30 Hard Costs related to the rebuilding, replacing, relocating or incremental cost of additional  
31 Horizontal Infrastructure as necessary to accommodate the Redesign Plan. The Navy shall have  
32 ninety (90) days to review the Work Program and Redesign Budget and shall be deemed to have  
33 approved the Work Program and Redesign Budget unless it delivers a written objection notice  
34 within such ninety (90) day period including reasonably detailed grounds for any material  
35 objections thereto. The sole grounds for the Navy’s objection rights shall be that the proposed  
36 Redesign Costs exceed the scope for such costs permitted under Section 4.2.8 hereof. Failure of  
37 the Navy to deliver a written objection notice within such ninety (90) day period shall be deemed  
38 approval of the Redesign Costs.  
39

40           4.2.10 Credit for Redesign Costs. Starting on the date that is thirty (30) days after  
41 submittal of the Work Program and Redesign Budget (or in the event of a Navy objection related  
42 to the Work Program and Redesign Budget under Section 4.2.9 that results in approved Redesign  
43 Costs, upon the resolution of such dispute) (the “**Credit Commencement Date**”), the period of  
44 tolling under Section 4.2.4 or Section 4.2.5, as applicable, shall be discontinued, but Authority  
45 shall have the right to a credit against all subsequent payments of Initial Consideration or  
46 Additional Consideration up to the total amount of either (i) the Redesign Costs set forth in the

1 Redesign Budget, or (ii) the Redesign Costs actually incurred by Developer and Authority if such  
2 amount exceeds the Redesign Costs set forth in the Redesign Budget. The Navy is not  
3 responsible for Redesign Costs that exceed the Initial and Additional Consideration. Any such  
4 credit shall also be subject to the accounting and reconciliation procedures of Section 4.3.6 and  
5 4.3.7.2.

6  
7 4.2.11 Security for Initial Consideration.

8  
9 4.2.11.1 RESERVED

10  
11 4.2.11.2 Initial Consideration. The Authority shall sign and deliver  
12 to the Navy through escrow at the Initial Closing a Promissory Note in the principal amount of  
13 the Initial Consideration. The Promissory Note for the Initial Consideration shall bear interest  
14 and be payable in installments as more particularly described in Section 4.2.1 above. The  
15 Promissory Note for the Initial Consideration shall be secured by (i) an Assignment of Rents  
16 encumbering the rents, issues and profits payable under all interim subleases for the Navy Real  
17 Property including, but not limited to, that certain Sublease, Development, Marketing and  
18 Property Management Agreement between the Authority and the John Stewart Company dated  
19 March 17, 1999, as amended from time to time, and any successor interim subleases or leases  
20 relating to the Navy Real Property whether executed prior to or after a conveyance hereunder,  
21 and (ii) to the extent the rents, issues and profits assigned under the Assignment of Rents are not  
22 sufficient to cover the unpaid principal and interest due under the Promissory Note for the Initial  
23 Consideration, a Subordinate Pledge of Net Available Tax Increment Revenues generated from  
24 the Navy Real Property prior to or after a conveyance hereunder. The Subordinate Pledge shall  
25 be subordinate to the pledge of Net Available Tax Increment Revenues to the holders of any  
26 bonded indebtedness and to the Developer under the DDA; provided, however, that the DDA  
27 shall provide that all such Net Available Tax Increment Revenues to be paid directly to  
28 Developer in reimbursement for the expenditure of Qualified Project Costs (as defined in the  
29 Financing Plan attached as Exhibit EE to the DDA) shall be withheld from Developer by the City  
30 and held for the account of the Navy upon the occurrence of and for the duration of any default  
31 of a payment of Initial Consideration hereunder. Provided, further, that the Parties recognize that  
32 the Authority's Assignment of Rents hereunder is subordinate to the senior security interest the  
33 Authority provided to the San Francisco County Transportation Authority under the  
34 Memorandum of Agreement for Project Management and Oversight, Engineering and  
35 Environmental Services for the Yerba Buena Ramps dated July 1, 2008, as amended. The  
36 Authority agrees that the senior security interest provided to the San Francisco County  
37 Transportation Authority and secured by Assignment of Rents, as described above, shall not  
38 exceed Eighteen Million Eight Hundred Thirty Thousand Dollars (\$18,830,000), plus accrued  
39 interest. Any additional obligation of funds by the Authority to the San Francisco County  
40 Transportation Authority in excess of Eighteen Million Eight Hundred Thirty Thousand Dollars  
41 (\$18,830,000), plus accrued interest, shall be covered by other forms of security that do not  
42 result in a subordinate position for the Navy. "**Net Available Tax Increment Revenues**" means  
43 tax increment revenues allocated by the City to any Infrastructure Financing District established  
44 for all or any portion of the Navy Real Property and received by the City. The forms of the  
45 Promissory Note for the Initial Consideration, Assignment of Rents, and the Subordinate Pledge  
46 are attached to this Agreement as Exhibit HH, Exhibit II, and Exhibit JJ. All rents, issues and



1 profits payable to Developer under any agreement subject to the Assignment of Rents shall be  
2 immediately paid and payable directly to the Authority on account of the Navy, or directly to the  
3 Navy, as provided by the terms of the Assignment of Rents, commencing on, and for the  
4 duration of, any default in the payment of Initial Consideration hereunder.

5  
6 4.3 Additional Consideration.

7  
8 4.3.1 Amount of Additional Consideration. The Authority shall pay the Navy  
9 additional consideration consisting of (1) 100% of Net Cash Flow generated by the Project in  
10 excess of a Developer 18% IRR until the Navy has received Fifty Million Dollars (\$50,000,000)  
11 (the “**First Tier Participation**”), as more fully described below; and (2) 35% of Net Cash Flow  
12 generated by the Project in excess of a Developer 22.5% IRR (the “**Second Tier Participation**”),  
13 as more fully described below. The First Tier Participation and Second Tier Participation are  
14 collectively referred to herein as the “**Additional Consideration.**” Payments of Additional  
15 Consideration may be made directly by the Developer on behalf of the Authority to the Navy.

16  
17 4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the  
18 expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45)  
19 days after the expiration of each subsequent Quarter during the Term hereof, the Authority shall  
20 require the Developer to submit a reasonably detailed statement to the Authority and the Navy  
21 (the “**IRR Statement**”) accompanied by an Accounting consistent with Section 4.3.6 hereof  
22 showing (i) the cumulative IRR achieved for each of the eight (8) immediately prior Quarters for  
23 any IRR Statement provided during the Initial Consideration Term, and (ii) the cumulative IRR  
24 achieved for each of the six (6) prior Quarters for any IRR Statement provided after expiration of  
25 the Initial Consideration Term (the eight or six Quarter Period, as applicable, the “**Reporting**  
26 **Period**”). The IRR Statement shall also calculate the average IRR over the Reporting Period,  
27 calculated by adding the IRR of each Quarter in the Reporting Period and dividing the total by the  
28 number of Quarters in the Reporting Period. If the IRR Statement shows that Developer has  
29 achieved an average IRR of more than 18.00% over the Reporting Period, then the Authority shall  
30 within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after  
31 the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during  
32 the Term hereof, pay the Navy an amount that would reduce the cumulative IRR to 18.00% as of  
33 the end of the Reporting Period (each, a “**First Tier Payment**”) provided that the total First Tier  
34 Payments made to the Navy shall not exceed Fifty Million Dollars (\$50,000,000). First Tier  
35 Payments shall be made until the total of all First Tier Payments equals Fifty Million Dollars  
36 (\$50,000,000). All payments of First Tier Participation shall be due and payable in accordance  
37 with Section 4.3.6 hereof.

38  
39 4.3.3 Payment of Second Tier Participation. The Authority shall continue to  
40 submit the IRR Statement and Accounting through the Termination Date. If an IRR Statement  
41 shows that Developer has achieved, after reducing Net Cash Flow by the amount of any First Tier  
42 Payments, an average IRR of more than 22.5% within any Reporting Period, then the Authority  
43 shall within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring  
44 after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter  
45 during the Term hereof, pay the Navy 35% of the total amount of Net Cash Flow that would  
46 reduce the cumulative IRR to 22.5% as of the end of the Reporting Period (per the calculation

1 methodology in the Exhibit DD) (a “**Second Tier Payment**”). Second Tier Payments shall be  
2 made until the Termination Date. All payments of a Second Tier Payment shall be due and  
3 payable in accordance with Section 4.3.6 hereof.  
4

5 4.3.4 Late Payments and Default. Any failure to pay Initial Consideration and  
6 associated interest or Additional Consideration within ten (10) days after the payment due date  
7 shall be considered late (“**Late Payment**”). Any Late Payment will incur a late payment penalty  
8 equal to two and one-half percent (2.5%) of the payment due. Failure to make any required  
9 payment under this Agreement in full within thirty (30) calendar days shall constitute a default  
10 under this Agreement. Any Late Payment constituting a default hereunder shall accrue interest at  
11 the Default Interest Rate from the due date and the Default Interest Rate shall remain in effect on  
12 the Late Payment amount until paid. Any late payment penalty and default interest shall not be  
13 allowed as a Development Cost. Without limiting any other remedies that the Navy may have at  
14 law or equity, if the Authority is in default of this Agreement, the Navy may delay conveyances  
15 of additional Parcels without the tolling provisions of Section 4.2.4 and 4.2.5 until the Authority  
16 has cured the default.  
17

18 4.3.5 RESERVED  
19

20 4.3.6 Accounting.  
21

22 4.3.6.1 Accounting. The Authority shall cause the  
23 Developer to maintain accurate books and records specific to the Project setting forth  
24 all components used for determining the Additional Consideration, including, without  
25 limitation, each component of Net Cash Flow, and to determine the amount of  
26 Redesign Costs and credits against Initial and Additional Consideration. The  
27 Authority shall ensure that each IRR Statement submitted by Developer as required  
28 by Sections 4.3.2 and 4.3.3 is accompanied by a complete accounting and  
29 computations setting forth the basis of each Additional Consideration to be paid,  
30 including the Gross Revenues and Development Costs for the relevant determination  
31 period, together with a narrative description of the methodology employed to  
32 calculate each Additional Consideration Payment to be due for the relevant period  
33 (the “**Accounting**”). The Accounting shall be in conformance with generally  
34 accepted accounting principles consistently applied (“**GAAP**”) where applicable, or  
35 with respect to the IRR Statement, in conformance with appropriate industry  
36 standards. An annual Accounting shall be provided to the Navy in accordance with  
37 Section 5.9.1 hereof. After receipt of the initial Accounting, the Navy shall either  
38 approve the Accounting in writing or provide written notice providing reasonable  
39 detail of its objections to or queries of the Accounting within ninety (90) days of  
40 receipt thereof, provided that the Navy's failure to respond within such ninety (90)  
41 day period shall be deemed consent. The Navy shall either approve each subsequent  
42 Accounting in writing or provide written notice providing reasonable detail of its  
43 objections to or queries of the Accounting within forty-five (45) days of receipt  
44 thereof, provided that the Navy's failure to respond within such forty-five (45) day  
45 period shall be deemed consent. If the Navy objects to the Accounting, it may  
46 determine to exercise its audit rights pursuant to Section 4.3.8.

1  
2 4.3.6.2 Marina Property Accounting. The Authority shall  
3 determine on a quarterly basis all gross revenues and related expenses associated with  
4 the Marina Property, and shall prepare a reasonably detailed statement showing all  
5 net revenues received by Authority from the Marina Property. The Authority shall  
6 provide a copy of such Marina Property statement to the Navy along with each  
7 Accounting in a timely manner.  
8

9 4.3.7 Reconciliation.

10  
11 4.3.7.1 Reconciliation of Final IRR. The Authority shall,  
12 within one hundred and eighty (180) days after the Termination Date, submit a Final  
13 IRR Statement and Accounting to the Navy, showing the Developer's IRR for the  
14 entire term of the Project (the "**Final IRR**") and all payments of Additional  
15 Consideration made to the Navy hereunder. The Final IRR Statement and  
16 Accounting shall be performed and certified by an independent Certified Public  
17 Accountant in accordance with appropriate industry standards. If the Final IRR  
18 Statement and Accounting discloses that the Final IRR exceeded 18% but payments  
19 to the Navy of First Tier Participation were less than \$50 million, the Authority shall  
20 pay to the Navy the amount necessary to reduce the Final IRR to 18%, so long as the  
21 total of all First Tier Participation payments do not exceed \$50 million. If the Final  
22 IRR Statement and Accounting discloses that the Final IRR exceeded 22.5%, but  
23 payments to Navy of Second Tier Participation hereunder totaled less than 35% of  
24 Net Cash Flow for the Project above a 22.5% Final IRR, then Authority shall cause to  
25 be paid to Navy the amount of Net Cash Flow necessary to raise the total of Second  
26 Tier Participation payments to equal 35% of all Net Cash Flow above a 22.5% Final  
27 IRR.  
28

29 4.3.7.2 Reconciliation of Redesign Costs. Within one  
30 hundred eighty (180) days after completion of all planning, entitlement, design and  
31 rebuilding work required under the Redesign Plan, as evidenced by City acceptance  
32 of all public improvements and final building inspection sign-off for all  
33 improvements as identified in the Work Program, Authority shall provide Navy with  
34 a statement that includes an accounting of all Redesign Costs actually incurred by  
35 Developer and Authority, and a statement of the amount of credit against Initial  
36 Consideration actually taken by Authority. The accounting shall be performed and  
37 certified by an independent Certified Public Accountant in accordance with GAAP.  
38 To the extent that the amount of the credits taken against Initial Consideration  
39 exceeds the actual Redesign Costs shown on the statement, Authority shall promptly  
40 cause the Navy to be paid the difference. If the amount of the credit against Initial  
41 Consideration is less than the actual Redesign Costs as shown on the Statement, then  
42 Authority shall be permitted to continue to credit Initial Consideration and Additional  
43 Consideration until the entire actual Plan Redesign Costs are recovered. The Navy is  
44 not responsible for Redesign Costs that exceed the Initial and Additional  
45 Consideration.  
46

1                     4.3.8 Audit Rights. The Navy shall be entitled from time to time to audit the  
2 Developer’s books, records, and accounts pertaining to the Net Cash Flow and all components  
3 thereof, the payment of Additional Consideration and the calculations, payments and credits  
4 relating to the Redesign Costs. Such audit shall be conducted during normal business hours  
5 upon ten (10) business days notice at the principal place of business of the Developer and other  
6 places where records are kept. The Navy shall provide the Developer with copies of any audit  
7 performed. If it shall be determined as a result of such audit that there has been a deficiency in  
8 the payment of any Additional Consideration or an over-credit against Initial Consideration,  
9 the Authority shall immediately pay any such deficiency with interest at the Default Interest  
10 Rate. In addition, if it shall be determined as a result of such audit that an Accounting has  
11 understated the Net Cash Flow for the applicable period by more than five percent (5%), the  
12 Authority or the Developer on behalf of the Authority, shall be required to pay, in addition to  
13 interest as aforesaid, all of the Navy’s costs and expenses connected with the audit or review of  
14 Developer’s accounts and records for the Project. All such payments shall be paid within thirty  
15 (30) days of receipt of written notice to the Authority of such underpayment and such audit  
16 costs shall not be allowed as a Development Cost.  
17

18                                     **ARTICLE 5**  
19                                     **CONTROLS**  
20

21                     5.1 Horizontal Development Process. The Parties acknowledge that the transaction  
22 contemplated by the DDA anticipates that the Developer will (among other things) construct  
23 certain infrastructure improvements on the Navy Real Property after conveyance or in  
24 accordance with Section 3.12, subdivide the Navy Real Property after conveyance, and offer for  
25 sale or ground lease certain of the developable Lots for the development of the vertical  
26 improvements. As described below, the sale price or ground lease value of Lots shall be  
27 determined in accordance with this Article.  
28

29                     5.2 Sale or Ground Lease of Commercial Lots.  
30

31                     5.2.1 Development by Developer of Critical Commercial Lots. Those Lots  
32 designated for commercial use or development in the DDA Land Use Plan (collectively, the  
33 “**Commercial Lots**”) will be divided into two groups. The first group (the “**Critical**  
34 **Commercial Lots**”), consists of Block M-1A and M-1B and Buildings 1, 2 and 3, as shown on  
35 the DDA Land Use Plan, which will be developed by Developer pursuant to the terms of the  
36 DDA. Developer may ground lease or purchase (as the case may be) up to one hundred percent  
37 (100%) of the Critical Commercial Lots in accordance with this Section 5.2.1. The second group  
38 (“**Non-Critical Commercial Lots**”) consists of Blocks C-2H, 2Y, and the Senior Officers  
39 Quarters Historic District identified on the DDA Land Use Plan, and any of the Critical  
40 Commercial Lots that Developer elects not to develop, to the extent permitted under the DDA. If  
41 Developer by itself or in joint ventures with other development partners develops the Critical  
42 Commercial Lots, the sales price or capitalized ground lease rent (as the case may be) for the  
43 Critical Commercial Lots purchased by or ground leased to Developer or the Developer joint  
44 venture entity (the “**Critical Commercial Lots Payment**”) shall be derived from a pro-forma  
45 (including the financial model of any vertical development that requires a subsidy) prepared by  
46 Developer and approved by the Authority in connection with the approval of the Sub-Phase

1 application as described in the DDA that contains the applicable Critical Commercial Lot,  
2 showing reasonable detail of projected revenues, expenses, subsidies and/or target returns  
3 associated with the Critical Commercial Lots, acknowledging that to the extent that the Critical  
4 Commercial Lots require subsidy for development, the Critical Commercial Lots Payment may be  
5 \$0.00. Developer will provide this information to an independent appraiser and shall request a  
6 letter report confirming the appropriateness of Developer's assumptions and conclusions related  
7 to the Critical Commercial Lots. No potential or actual investor or lender shall be prohibited by an  
8 exclusivity agreement between the Developer and other investors or lenders from participating in  
9 any financing of any Commercial Lot or any other commercial product type developed by parties  
10 other than Developer.

11  
12 5.2.2 Transfer by Developer of Developed Critical Commercial Lots. Developer  
13 or the Developer joint venture entity developing the Critical Commercial Lots may, in its sole  
14 discretion, subsequently transfer (as that term is defined in the DDA) any of the developed  
15 Critical Commercial Lots (the "**Developed Critical Commercial Lots**") to a third party,  
16 provided, however, that any and all revenues received by Developer or the Developer joint  
17 venture entity arising from or associated with the transfer of the Developed Critical Commercial  
18 Lots shall be treated as Gross Revenues hereunder. Transfer of the Developed Critical  
19 Commercial Lots shall be by sale, or by sub-ground lease or assignment of ground lease,  
20 provided, however, with respect to the first transfer of a ground lease by Developer, the transferee  
21 shall be required to pay a transfer payment based upon the fair market value for the right to  
22 occupy the applicable Developed Critical Commercial Lot on the terms and conditions of the  
23 ground lease. A joint venture entity in which Developer holds an ownership interest may  
24 purchase the Developed Critical Commercial Lot and in such case, the transfer price shall be  
25 determined in accordance with the Appraisal Process described in Section 5.4 hereof. If  
26 Developer or a Developer joint venture entity elects to transfer the Developed Critical  
27 Commercial Lot to a third-party entity (such parcel, a "**Non-Developer Critical Commercial**  
28 **Lot**"), the transfer price shall be determined by Auction pursuant to the Auction process  
29 applicable to Commercial Lots, as set forth in Section 5.2.4 below.

30  
31 5.2.3 Sale or Ground Lease of Non-Critical Commercial Lots. At such time as  
32 deemed appropriate by the Authority and Developer pursuant to the terms of the DDA, the  
33 Authority shall convey to Developer the Non-Critical Commercial Lots. Upon such conveyance,  
34 Developer shall be required to offer by Auction the Non-Critical Commercial Lots for sale or sub-  
35 ground lease or assignment of ground lease (as applicable).

36  
37 5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical  
38 Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the Developer  
39 at the approval of each applicable Sub-Phase application(as confirmed by an appraiser letter  
40 described in Section 5.2.1). The minimum bid price shall be set for the Auction for a Non-  
41 Developer Critical Commercial Lot no sooner than three months prior to the applicable Auction.  
42 The pool of qualified bidders in the Auction of any Non-Critical Commercial Lots or any Non-  
43 Developer Critical Commercial Lots shall be determined by the Authority and Developer prior to  
44 the applicable Auction based on the Auction Bidder Selection Guidelines applicable to  
45 Commercial Lots (attached hereto as Exhibit S-2). The pool of qualified bidders in the Auction of  
46 any Non-Critical Commercial Lot or any Non-Developer Critical Commercial Lot and the

1 minimum bid price for the Auction of Non-Developer Critical Commercial Lots shall be provided  
2 to the Navy at least 10 days prior to the applicable Auction. If no qualified bids are received for  
3 the Non-Critical Commercial Lots, Developer and/or its affiliates will have the option to purchase  
4 such Commercial Lot(s) based upon an appraisal in accordance with Section 5.4 hereof. If  
5 Developer does not exercise the option to purchase unsold Non-Critical Commercial Lot(s), the  
6 Authority and Developer shall mutually agree upon a new minimum bid price to be used in a new  
7 Auction, which may take the form of adjustment to the pro forma minimum bid price or an  
8 appraisal. In such case, the Authority shall cause Developer to re-bid the Non-Critical  
9 Commercial Lot at such time deemed appropriate by the Authority and Developer pursuant to the  
10 terms of the DDA. If no minimum bids from qualified bidders are received for the Non-  
11 Developer Critical Commercial Lots that are acceptable to Developer, Developer shall reserve the  
12 right to withdraw the Non-Developer Critical Commercial Lot from sale and re-bid the Non-  
13 Developer Critical Commercial Lot at such future time deemed appropriate in accordance with  
14 the terms of the DDA.

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

33  
34 5.3.1 Developer Lots. Unless otherwise agreed upon by the Parties in their  
35 reasonable discretion, no more than one-third of the Developer Lots (which also equals 20% of  
36 the Market Rate Lots) can be sold directly to Developer, and the balance of the Developer Lots  
37 may be sold to an entity or entities comprised of some or all of the same partners as Developer,  
38 but having a materially different capital structure than Developer, in accordance with the  
39 Appraisal Process. Concurrent with the sale of any Developer Lot to an entity or entities  
40 comprised of some or all of the same partners as Developer, but having a materially different  
41 capital structure than Developer, a duly authorized officer of Developer shall provide the  
42 Authority and Navy with a certified statement that the prospective purchaser has a materially  
43 different capital structure than Developer. For purposes hereof, an entity having a “materially  
44 different capital structure” means an entity comprised of some or all of the same partners as  
45 Developer but one in which there has been a cumulative change of at least 25% in the capital  
46 positions of all the partners, and at least one of the partners has changed its capital position by at

1 least 15%. Before the close of each Sub-Phase within each Major Phase, the Developer will  
2 provide to the Authority and Navy a list of equity investors for that Sub-Phase. During the  
3 implementation of any Sub-Phase, Developer will provide to the Authority and Navy  
4 immediately prior to the sale of any parcels to an affiliate of Developer or the equity investors of  
5 that Major Phase, a notice of such affiliate sale which notice shall describe why the sale is  
6 permitted under the terms of this Agreement. Prior to the close of any sale directly to Developer,  
7 the Authority shall cause Developer to provide to the Navy a letter from a real estate broker or  
8 licensed real estate professional familiar with the Bay Area market who is not an affiliate of the  
9 Developer and has no equity investment in the Developer in such Sub-Phase, finding that  
10 acquisition and development of the Market Rate Lot by the Developer is appropriate in the  
11 context of then-existing market conditions. The basis of such findings could include, but is not  
12 limited to, establishing a new product type, initiating or establishing the development of a new  
13 phase in the Project, responding to changes in market conditions, or other similar market-based  
14 factors. Any disputes arising out of this Section 5.3.1 shall be referred to the arbitration process  
15 for other disputes set forth in Section 27.3.3 hereof.

16  
17 5.4 Appraisal Process. The process described in this Section 5.4 (the “**Appraisal**  
18 **Process**”) shall apply to the Developer Lots, the JV Lots and those Developed Critical  
19 Commercial Lots and Non-Critical Commercial Lots for which an appraisal is required under  
20 Sections 4.3.5.1, 5.2.2 or 5.2.4. The Authority and Developer shall confer and select an  
21 appraiser from the Qualified Appraiser Pool for each such Developed Critical Commercial Lot,  
22 Developer Lot, Non-Critical Commercial Lot or JV Lot to be appraised. An appraisal used for  
23 the purpose of determining the parcel sale price (or ground lease rent, if applicable) shall be  
24 updated if a sales contract (or ground lease) for such parcel has not been executed within one (1)  
25 year from the date of the appraisal.

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

44  
45 5.4.2 Appraisal Instructions. The selected appraiser shall appraise the  
46 applicable Developer Lot, JV Lot, Non-Critical Commercial Lot (to the extent subject to

1 appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the extent subject to  
2 appraisal by Section 5.2.2) utilizing either the Residential Lots Appraisal Instructions attached  
3 hereto as Exhibit X-1 or the Commercial Lots Appraisal Instructions attached hereto as Exhibit  
4 X-3, as applicable, as the Parties hereto may agree to amend from time to time which agreement  
5 shall not be unreasonably withheld, conditioned or delayed. If an Excess Land Appreciation  
6 Structure is established in a Major Phase by Product Type, such structure will be deemed to  
7 apply to all Market Rate Lots in the applicable Major Phase, and the appraisal instructions shall  
8 incorporate such terms. If an Excess Land Appreciation Structure established for a Major Phase  
9 is later revised in connection with a Sub-Phase, in accordance with Section 5.6 hereof, then such  
10 structure will be deemed to apply to all Market Rate Lots in the applicable Sub-Phase, and the  
11 appraisal instructions shall incorporate such terms. If material changes are proposed to appraisal  
12 instructions, including assumptions, special assumptions, limiting conditions, hypothetical  
13 conditions, and other special instructions, the requesting Party shall propose such amendment in  
14 writing, and, if the Parties disagree, they shall follow the dispute resolution procedure set forth in  
15 Section 27.3.2.

16  
17 5.4.3 Notification of Appraisal. The Authority shall provide to the Navy  
18 documentation of appraiser selection and appraisal instructions prior to the commencement of the  
19 appraisal and shall provide a copy of the complete appraisals promptly following completion of  
20 all appraisals.

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

36  
37 5.5.1 Timing of Residential Auction Lots Selection. The Residential Auction  
38 Lots will be selected by mutual agreement by the Authority and the Developer prior to  
39 approval of each Major Phase application.

40  
41 5.5.2 Residential Auction Lots as Benchmarks. The Auction Lot sales prices, as  
42 deemed appropriate by the appraisers, and other relevant market data shall be used as  
43 comparables in the appraisal process for the Developer Lots and the JV Lots. The mix of  
44 Product Types of the Market Rate Lots subject to Auction shall roughly mirror that of the  
45 Market Rate Lots to be allocated and sold in that Major Phase, with a goal of selecting at least  
46 one representative parcel for each Market Rate Lot Product Type offered in that Major Phase.



1 For the purposes of this Agreement and the DDA, “**Product Types**” are defined as a  
2 residential building with a typical unit count and building typology that allows general  
3 assumptions of construction costs. Examples of such Product Types are townhomes; low rise  
4 (up to 70’ in height); mid rise (above 70’ and up to 125’ in height) and towers (above 125’ in  
5 height).  
6

7           5.5.3 Guidelines for Residential Auction Lots Selection. The distribution and  
8 selection of the Residential Auction Lots shall be based on a principle of nondiscrimination.  
9 The selected Residential Auction Lots shall be generally representative of the average  
10 advantages and disadvantages of the Market Rate Lots to be developed in that Major Phase.  
11 Factors to be considered in such selection include, but are not limited to, parcel size, views,  
12 proximity to parks, proximity to the transit center, proximity to the Job Corps site, proximity to  
13 the Bay Bridge, proximity to the retail core and exposure to wind (collectively, the  
14 “**Guidelines for Residential Auction Lot Selection**”), attached hereto as Exhibit FF.  
15

16           5.6 Major Phase Decisions. Prior to approval of each Major Phase or Sub-Phase  
17 application, as applicable, the decisions in this Section 5.6 (collectively, the “**Major Phase**  
18 **Decisions**”) shall be agreed upon by the Authority and the Developer and notice thereof shall be  
19 provided to the Navy as more fully described in Section 5.7 below. The foregoing  
20 notwithstanding, pursuant to the DDA, the Developer or the Authority may, at its election,  
21 request amendments of, or modification of, Major Phase Decisions in connection with each Sub-  
22 Phase within the Major Phase and during the course of each Sub-Phase. If the Authority and  
23 Developer agree upon such amendments or modifications to the Major Phase Decision(s), notice  
24 of such amendment or modification shall be provided to the Navy in accordance with Section 5.7  
25 below and the Navy shall have the right to object to such amendment or modification in  
26 accordance with Section 5.7 hereof.  
27

28           5.6.1 Prior to approval of each Major Phase, the proposed location of  
29 Residential Auction Lots within that Major Phase as shown on a revised land plan for that  
30 Major Phase showing the distribution of various Product Types.  
31

32           5.6.2 Prior to approval of each Major Phase, the qualifications of Residential  
33 Auction Lot bidders by Product Type for that Major Phase based on the applicable Auction  
34 Bidder Selection Guidelines.  
35

36           5.6.3 Prior to approval of each applicable Sub-Phase, minimum bid prices for  
37 the Residential Auction Lots and the Non-Critical Commercial Lots located within that Sub-  
38 Phase, which shall be based on the pro forma, as updated prior to approval of the application  
39 for such Sub-Phase, as well as any Re-Setting of the Minimum Bid Price, as described above.  
40

41           5.6.4 Prior to approval of each Major Phase (and each Sub-Phase if updated by  
42 Developer at such time), the Excess Land Appreciation Structure for that Phase for each  
43 Product Type in such Phase. For purposes of this Agreement and the DDA the “Excess Land  
44 Appreciation Structure” is defined as the structure, procedures and metrics of the then-  
45 prevailing, industry standard market based participation in price appreciation greater than  
46 forecast at the time of such pad sale (if any) for horizontal development land sellers.

1  
2           5.7     Navy Objection Rights to Major Phase Decisions.  
3

4           5.7.1   Notice. The Authority shall send a notice to the Navy in writing providing  
5 the details of the Major Phase Decisions (the “**Major Phase Decision Notice**”). The Navy shall  
6 have the right to reasonably object to any of the Major Phase Decisions (or any component part  
7 thereof) if the Navy believes any of the following is true with respect to the Major Phase Decision  
8 at issue: (i) the mix of Product Types for the Residential Auction Lots were not sufficient to  
9 achieve adequate benchmarking for that Major Phase; or (ii) the Guidelines for Residential  
10 Auction Lot Selection were not followed; or (iii) the Excess Land Appreciation Structure is not  
11 commensurate with industry practice, market based participations for that Product Type in such  
12 Major Phase, or Sub-Phase as applicable; or (iv) the Auction Bidder Selection Guidelines were  
13 not followed.  
14

15           5.7.2   Right to Object. The Navy shall have ten (10) business days from certified  
16 receipt of the Major Phase Decision Notice to object in writing, which grounds may include  
17 failure to provide adequate information necessary for the Navy’s review, and any such objection  
18 shall state with specificity the item or items to which the Navy objects or the items of additional  
19 information reasonably requested by Navy. Failure to so object in writing within such ten (10)  
20 business day period shall be deemed consent. The Authority shall have five (5) business days to  
21 respond to the objection or to seek to confer, as more fully set forth in Section 27.2. If the  
22 Authority responds and the Parties do not reach agreement with one another after such response,  
23 either Party can request to confer (as set forth in Section 27.2.1). If a conference is requested, the  
24 Parties shall confer and attempt to resolve the outstanding objections within five (5) business days  
25 of the conference request. Failure to reach agreement at such meeting shall be referred to the  
26 expedited dispute resolution process set forth more fully in Section 27.3.2.  
27

28           5.8     Audit Rights and Reporting. The Authority agrees to submit to the Navy annual  
29 audited financial statements specific to this Project within thirty (30) calendar days of  
30 completion of the annual audited financial statements, which completion shall in no case be later  
31 than ninety (90) calendar days after the end of the year being audited. The Navy shall have  
32 commercially reasonable access to the Developer’s auditors if the Navy needs clarifications  
33 relating to the financial statements. Authority shall provide Navy with annual statements of its  
34 records maintained pursuant to Section 5.13.2 hereof, certified by Authority’s chief financial  
35 officer or equivalent.  
36

37           5.9     DDA Audit Rights and Reporting. The Authority agrees to provide the Navy with  
38 copies of the DDA Reports and any audits promptly upon their receipt by the Authority and  
39 further agrees to cause the DDA to provide the following audit rights and reporting requirements  
40 for the benefit of the Authority and the Navy, provided, however, that the Navy shall treat such  
41 information as confidential to the fullest extent permitted under all laws, rules and regulations  
42 applicable to the Navy related to public disclosure of information as long as such confidentiality  
43 does not in any way limit the Navy’s remedies hereunder:  
44

45           5.9.1   Following the Initial Major Phase Approval, the Authority shall cause the  
46 Developer to provide to the Navy, no later than four (4) months following the end of each

1 Developer Fiscal Year, an annual Accounting for the preceding Developer Fiscal Year consistent  
2 with the requirements of Section 4.3.6.1, including reports of Gross Revenues and Development  
3 Costs, including Net Cash Flow, specified by Major Phases and including a cumulative project  
4 level summary of IRR, executed by the Developer's Chief Financial Officer, certified by the  
5 Developer and reviewed by an independent accounting firm. As set forth in Section 1.6(a)(i) of  
6 the Financing Plan attached to the DDA, if the Developer obtains a Major Phase Approval less  
7 than six (6) months before the end of the Developer Fiscal Year, the reporting may commence for  
8 that Major Phase following the close of the following Developer Fiscal Year.

9  
10 5.9.2 A summary pro forma (including the financial model of any vertical  
11 development that requires a subsidy) will be attached to the DDA as an exhibit and the budget  
12 will be updated by the Developer prior to the approval of each Major Phase or Sub-Phase  
13 application and submitted to the Authority and the Navy for its review.

14  
15 5.9.3 In conjunction with the annual Accounting, the Developer shall submit to  
16 the Authority and the Navy an updated pro forma budget in both a printed and electronic form.  
17 The electronic form of the pro forma must be in Microsoft Excel 2007 or its successor format.

18  
19 5.9.4 The DDA shall provide the Authority and the Navy the right, but not the  
20 obligation, to audit the books and accounts of the Developer no more frequently than once per  
21 twelve (12) month period, unless such audit reveals a discrepancy in the calculation of Gross  
22 Revenues and/or Development Costs or the Developer is otherwise in material default of its  
23 financial obligations under the DDA. The Authority, or the Navy, as the case may be, shall bear  
24 all costs of such audit unless the results of the audit demonstrate more than a five percent (5%)  
25 discrepancy between the results of the audit and the annual financial statements provided by the  
26 Developer. Payment by the Authority of audit costs shall not be allowed as a Development Cost  
27 if there is a discrepancy of more than five percent (5%). All such reports and audits are subject to  
28 the Authority's obligation to treat such information as confidential to the full extent permitted by  
29 law. The Navy shall treat such information as confidential to the fullest extent permitted under all  
30 laws, rules and regulations applicable to the Navy related to public disclosure of information as  
31 long as such confidentiality does not in any way limit the Navy's remedies hereunder.

32  
33 5.10 DDA Timelines. The Authority shall provide a Schedule of Performance  
34 establishing commercially reasonable timelines for completion of each Major Phase, subject to  
35 industry standard force majeure provisions, including regulatory, economic and litigation force  
36 majeure.

37  
38 5.11 Limit on Soft Costs for Purposes of Calculating Consideration. Except for a  
39 reasonable limit on Developer management and overhead fees as further provided herein,  
40 Developer Soft Costs will not be capped, but will be subject to a "reasonableness" standard,  
41 certain approval rights by the Authority, and subject to audit by the Authority. The Authority  
42 agrees that "reasonable" Developer's Soft Costs shall be defined as "incurred in a manner that is  
43 consistent with an efficient, well-managed project of comparable scope, duration and complexity  
44 and is commensurate with market-based charges by third party providers for similar projects."  
45 Whether or not the Developer utilizes unrelated third-party contractors for development,  
46 construction and property management services, such management fees and costs will not exceed

1 market-based charges by third-party providers for similar projects, taking into account the level  
2 of project management, auditing and reporting requirements. The Developer may provide such  
3 management services internally, or through a combination of internal management services and  
4 third-party management contractors not owned or controlled by Developer. For purposes of  
5 determining Soft Costs for any particular scope of work, a construction management fee may be  
6 included not to exceed the lesser of four percent (4%) of Hard Costs or actual construction  
7 management fees actually incurred for such scope; a property management fee may be included  
8 not to exceed the lesser of two and one-half percent (2.5%) of lease revenues or actual property  
9 management fees actually incurred for such scope; and a development/project management fee  
10 not to exceed the lesser of three percent (3%) of Hard Costs or actual development/project  
11 management fees actually incurred for such scope. If the actual and reasonable costs incurred by  
12 Developer exceed the above limits, Developer, on behalf of the Authority may submit a request  
13 to the Navy to approve the increase of any applicable fee to an amount equal to the actual cost.  
14 Such requests shall be made in writing with appropriate supporting documentation. Failure of  
15 the Navy to respond in writing to any such request within thirty (30) days shall be deemed  
16 consent. Navy's consent shall not be unreasonably withheld or delayed, and Navy shall make its  
17 determination within thirty (30) days of Developer's request. If Navy requests additional  
18 information as may be reasonably required to make its determination within ten (10) days of  
19 Developer's request, then Navy shall make its determination denying or granting the request  
20 within thirty (30) days after receipt of such additional information. The Navy shall only deny its  
21 consent if it reasonably determines, as evidenced by its written determination provided to  
22 Developer and the Authority, that the cost limit exceedance is inconsistent with current market  
23 standards as applied to the scope and nature of the Project and the fee limit request is  
24 unreasonable under the circumstances. Any such exceedance objected to by the Navy in  
25 accordance with this Section shall not be included as Development Cost.

26  
27 5.12 Limit on City Fees and Exactions. The Authority shall limit City fees and  
28 exactions to those fees and exactions as set forth in the DDA, at the rate or amounts in effect as  
29 of the date of the DDA for a period of time specified in the DDA. The agreed upon development  
30 fees and exactions for the Project will be fixed for a specified period of time (through a  
31 Development Agreement or other legally enforceable mechanism) and the application of new  
32 fees and exactions and changes in City regulations will be limited over the life of the  
33 Development Agreement. To the extent legally permissible, the DDA and Development  
34 Agreement shall include certain limits on the authority of the City and the Authority to impose  
35 new or amend City laws and regulations that would have a material adverse effect on the  
36 horizontal or vertical development by the Developer or Vertical Builders or the rights and  
37 obligations of the Developer or any Vertical Builder under the DDA, Vertical DDA,  
38 Development Agreement or other applicable transactional documents. Any City fees and  
39 exactions in violation of these limitations will not qualify as Development Costs.

40  
41 5.13 Reinvestment of Real Estate Proceeds. Any proceeds from a sale, lease, or  
42 equivalent use of the Navy Real Property (i.e., any mechanism that serves to accomplish the  
43 same purposes of a sale or lease such as licenses, permits, concession agreements, etc.) received  
44 by the Authority for the Navy Real Property during the first seven (7) years after the date of the  
45 last transfer of property to the Authority, must be used to pay the Navy the Initial Consideration  
46 and the Additional Consideration as set forth herein, or to support long-term job creation and the

1 economic redevelopment of, or related to, the Navy Real Property. Tax revenues shall not be  
2 construed to be proceeds from a sale, lease, or equivalent use of the Navy Real Property.

3  
4 5.13.1 Examples of Allowable Uses of Proceeds. Allowable uses of proceeds  
5 pursuant to Section 5.13 include payment for, or offsetting the costs of public investment, for the  
6 following purposes:

- 7
- 8 5.13.1.1 Land acquisition;
- 9
- 10 5.13.1.2 Road construction;
- 11
- 12 5.13.1.3 Transportation management facilities;
- 13
- 14 5.13.1.4 Storm and sanitary sewer construction;
- 15
- 16 5.13.1.5 Police and fire protection facilities and other public  
17 facilities;
- 18
- 19 5.13.1.6 Utility construction;
- 20
- 21 5.13.1.7 Building rehabilitation;
- 22
- 23 5.13.1.8 Historic property preservation;
- 24
- 25 5.13.1.9 Pollution prevention equipment or facilities;
- 26
- 27 5.13.1.10 Demolition;
- 28
- 29 5.13.1.11 Disposal of hazardous materials generated by demolition;
- 30
- 31 5.13.1.12 Landscaping, grading, and other site or public  
32 improvements; and
- 33
- 34 5.13.1.13 Planning for or the marketing of the redevelopment and  
35 reuse of the Navy Real Property.
- 36

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

1 5.13.2 Records. Consistent with standard accounting practices for tax purposes,  
2 the Authority shall maintain adequate records and books of account for income and expenses  
3 related to the redevelopment of the Navy Real Property detailing transactions described in Section  
4 5.13 and Section 5.13.1. The Authority shall provide the Navy with access to such records and  
5 books of account and proper facilities for inspection thereof at all reasonable times.

6  
7 5.13.3 Recoupment of Proceeds. The Navy may recoup all proceeds described in  
8 Section 5.13, which have not been reinvested in allowable uses described in Section 5.13 or  
9 Section 5.13.1. If recoupment is desired after review of annual financial statements, the Navy  
10 shall notify the Authority in writing that it intends to recoup proceeds in a specific amount,  
11 describing why it believes that those proceeds have not been reinvested as required by Section  
12 5.13 or Section 5.13.1. Within sixty (60) days of receipt of such notification, the Authority shall  
13 submit its response to the Navy. Within sixty (60) days of receipt of the Authority’s response or  
14 within sixty (60) days of the date the Authority’s response was due under this Section, the Navy  
15 shall issue its decision on the matter, which shall be final and binding on the Authority, subject to  
16 the dispute resolution procedures contained in Article 27. The Authority shall pay the amount of  
17 recoupment due within sixty (60) days of final resolution of the dispute.

18  
19 5.14 Covenant of Good Faith and Fair Dealing. The Authority will provide that the  
20 DDA will be subject to, and the Parties agree that this Agreement is subject to a covenant of  
21 good faith and fair dealing.

22  
23 **ARTICLE 6**  
24 **DEVELOPMENT AND DISPOSITION AGREEMENT**  
25

26 6.1 Upon full execution and delivery, the Authority will deliver a copy of this  
27 Agreement to the Developer, and this Agreement shall become the Conveyance Agreement as  
28 defined in the DDA (and attached as Attachment 2 to the DDA), thereby incorporating the  
29 applicable terms of this Agreement into the DDA.  
30

31 **ARTICLE 7**  
32 **EASEMENTS, CONTRACTS, PERMITS AND OTHER SIMILAR INSTRUMENTS**  
33

34 7.1 Assignable Easements, Contracts and Permits. As part of the Initial Closing, the  
35 Navy shall assign to the Authority (i) the assignable easements, leases, licenses and  
36 encroachment permits held by the Navy over, under, or through non-Navy owned property  
37 necessary for the operation, maintenance, or improvement of the Property, and (ii) the assignable  
38 contracts, permits or other agreements relating to the Navy Property that the Authority has  
39 agreed to assume, each as listed on Exhibit I-1, attached hereto (collectively, the “**Assignable**  
40 **Easements, Contracts and Permits**”).  
41

42 7.2 The Navy agrees to assist the Authority, as deemed appropriate by mutual  
43 agreement of the Parties, to enable the assignment and amendments required for any assignable  
44 contracts, licenses, permits, or other agreements that were in existence on the Effective Date of  
45 this Agreement and that are identified by either of the Parties after Closing as necessary for the  
46 Authority to develop the Navy Real Property.

1  
2           7.3    Access and Utility Easements or Other Similar Instruments. At each Closing, the  
3 Navy shall grant to the Authority or reserve to itself easements, licenses, rights of way, or other  
4 similar instruments, as applicable, and at locations mutually and reasonably agreeable to the  
5 Parties and adjusted from time to time.

6  
7                   7.3.1   Access Easements.  
8

9                           7.3.1.1    The Navy shall grant to the Authority non-exclusive  
10 easements, licenses, rights of way, or other similar instruments for ingress and egress  
11 on, over and across existing roads on Navy owned Parcels for pedestrian, vehicular  
12 and other access as required to connect the Authority owned Parcels to each other and  
13 to connect the Authority owned Parcels to publicly accessible roads adjacent to the  
14 Navy owned Parcels (the “**Authority Access Easements**”). At the Initial Closing,  
15 the Authority Access Easements related to the FOST Parcel shall be granted for the  
16 area reasonably necessary to provide the Authority reasonable access to its property.  
17 The Authority Access Easements will be provided in an easement agreement or, to  
18 the extent mutually agreed by the Parties, in the applicable Quitclaim Deeds or as a  
19 license, right of way, or other similar instrument. The Parties shall negotiate in good  
20 faith subsequent Authority Access Easements related to other Parcels prior to the  
21 subsequent Closing of each such Parcel.  
22

23                           7.3.1.2    The Navy may reserve to itself, its successors and  
24 assigns non-exclusive easements or other similar instruments for ingress and egress  
25 on, over and across existing roads on Parcels to be conveyed to the Authority for  
26 pedestrian, vehicular and other access as required to connect the Navy owned Parcels  
27 to each other, to connect the Navy owned Parcels to publicly accessible roads  
28 adjacent to the Parcel to be conveyed to the Authority (“**Navy Reserved Access**  
29 **Easement**”). The Navy may reserve non-exclusive easements or other similar  
30 instruments for access to third parties that own portions of the former Naval Station  
31 Treasure Island, which were previously disposed of and conveyed by the Navy, for  
32 ingress and egress on, over and across existing roads on Parcels to be conveyed to the  
33 Authority for pedestrian, vehicular and other access as required to connect third party  
34 owned parcels of real property to public roads adjacent to the Parcel to be conveyed  
35 to the Authority (“**Third Party Access Easement**”). The Navy Reserved Access  
36 Easement and Third Party Access Easement are collectively referred to as the “**Navy**  
37 **Access Easements.**”  
38

39                           7.3.1.3    The Authority Access Easements and Navy Access  
40 Easements shall include the following:  
41

42                                   7.3.1.3.1    Each Party shall have the right, but not the  
43 obligation, to access, repair and maintain such roads, at its own expense, and to the  
44 extent that such access, repair or maintenance does not interfere with the development  
45 or the environmental remediation of any of its own property.  
46

1 7.3.1.3.2 Use of existing roadways by the Parties to  
2 the Authority Access Easements or Navy Access Easements, or their successors or  
3 assigns, shall be at the sole cost and expense of said Parties, their successors and  
4 assigns, without any representation or warranty on the part of the Parties regarding  
5 the condition or state of repair of said roadways or any obligation to make, or liability  
6 for, any alterations, improvements, repairs or additions thereto.  
7

8 7.3.1.3.3 The location of the Authority Access  
9 Easements and Navy Access Easements will be adjusted from time to time as  
10 necessary to accommodate the redevelopment activity. The Party on whose property  
11 the Authority Access Easements or Navy Access Easements exists (the “**Owner  
12 Property**”) shall not redevelop, close, abandon, reconfigure or replace existing  
13 roadways within such easement in such a manner that would unreasonably interfere  
14 with the ability of the other Party to exercise its access rights to the easement except  
15 where the Party on whose property the Authority Access Easements or Navy Access  
16 Easements exists provides the other Party with suitable comparable alternative access  
17 over other areas of the Property. Where such redevelopment, closure, abandonment,  
18 reconfiguration or replacement is necessary to conduct actions required by the  
19 redevelopment that results in such roadway subject to this easement no longer  
20 providing the intended access or otherwise ceasing to exist, the Authority Access  
21 Easement or Navy Access Easements, as applicable, shall be moved from time to  
22 time to include, in the following order of priority either (i) access over other  
23 improved roads that may exist on the Owner Property, (ii) access over other  
24 unimproved roads that may exist on the Owner Property, or (iii) access over other  
25 unimproved portions of the Owner Property. The adjustment of the Access  
26 Easements shall be completed by revising the exhibits in the original Quitclaim Deeds  
27 or other applicable instruments with written approval by the Navy or the Authority.  
28 The approval will not be unreasonably withheld.  
29

30 7.3.1.3.4 The Navy Access Easements shall continue  
31 until such time as final subdivision maps are recorded and attendant street dedications  
32 provide public access. The Authority Access Easements shall continue until such  
33 time as either the Parcel is owned by the Authority or final subdivision maps are  
34 recorded and attendant street dedications provide equivalent access.  
35

36 7.3.2 Utility Easements. Prior to the Initial Closing and any subsequent Closing,  
37 as appropriate, the Navy shall grant to the Authority on Navy owned Parcels, or reserve to itself  
38 on Parcels being conveyed to the Authority, easements, licenses, rights of way, or other similar  
39 instruments for the operation and maintenance of existing utilities, and installation, operation and  
40 maintenance of all or portions of new utility systems on said Parcels (“**Utility Easements**”).  
41 Such Utility Easements on Navy owned Parcels may be provided pursuant to the Utilities  
42 Agreement referenced in Article 9 hereof. Such Utility Easements on Parcels being conveyed to  
43 the Authority shall be reserved by the Navy, as reasonably necessary to provide the remaining  
44 Navy-owned parcels with utility service. The location of the Utility Easements will be adjusted  
45 from time to time as necessary to accommodate the redevelopment activity. The Party on whose  
46 property the Utility Easements exist (the “**Owner Property**”) shall not redevelop, close,



1 abandon, reconfigure or replace existing utilities within such easement in such a manner that  
2 would unreasonably interfere with the ability of the other Party to exercise its use of the utilities  
3 except where the Party on whose property the Utility Easements exists provides the other Party  
4 with suitable comparable alternative utility service and easements over other areas of the  
5 Property. Where such redevelopment, closure, abandonment, reconfiguration or replacement is  
6 necessary to conduct actions required by the redevelopment that results in such utility no longer  
7 providing the intended service or otherwise ceasing to exist, the Utility Easement, as applicable,  
8 shall be moved from time to time to include, in the following order of priority either (i) utilities  
9 in other improved roads that may exist on the Owner Property, (ii) utilities in other unimproved  
10 roads that may exist on the Owner Property, or (iii) utilities in other unimproved portions of the  
11 Owner Property. The adjustment of the Utility Easements shall be completed by revising the  
12 exhibits in the original Quitclaim Deeds or other applicable instruments with written approval by  
13 the Navy or the Authority. The approval will not be unreasonably withheld.  
14

15 7.4 Cost of Work on the Easements. The cost of any work and improvements on the  
16 easements shall be borne entirely by the Party undertaking such work, except to the extent agreed  
17 to in writing by the Parties. The cost of the preparation of surveys and legal descriptions of the  
18 easements shall be borne by the requesting Party, except to the extent agreed to in writing by the  
19 Parties.  
20

## 21 **ARTICLE 8**

### 22 **CLOSING AND SETTLEMENT**

23

24 8.1 Opening of Escrow. On or before the Effective Date of this Agreement, the  
25 Parties shall open escrow by depositing an executed copy of this Agreement with Title  
26 Company. The Parties agree to jointly develop escrow instructions for the Initial Closing and  
27 each subsequent Closing, if applicable. The Authority shall deposit the agreed upon escrow  
28 instructions with the Title Company that shall serve as the instructions to the Title Company, as  
29 the escrow holder, for each of the Closings contemplated hereby. The Navy and the Authority  
30 agree to execute such additional escrow instructions as may be appropriate to enable the Title  
31 Company to comply with the terms of this Agreement; provided, however, that in the event of  
32 any conflict between the provisions of this Agreement and any supplementary escrow  
33 instructions, the terms of this Agreement shall control.  
34

35 8.2 Navy Deliveries. The Navy shall deliver to escrow at least five (5) days prior to  
36 any Closing the following documents, as applicable (“**Navy Closing Documents**”), in a form  
37 previously reviewed and approved by the Authority, and duly executed and authorized (and  
38 acknowledged if necessary for recordation):  
39

40 8.2.1 Quitclaim Deed(s) substantially in the form as set forth in Exhibit D  
41 attached hereto.  
42

43 8.2.2 Final FOST(s), as appropriate for such Parcel(s) to be conveyed at such  
44 Closing that meet the conditions of Section 3.4, and copies of all Regulatory Authority approvals  
45 obtained for the applicable Parcel relating to the investigation and environmental response for  
46 underground and above-ground petroleum storage tanks, and any releases of petroleum,

1 petroleum derivatives, petroleum fractions, or any chemicals, compounds or products that result  
2 from their degradation that meet the conditions of Article 18.

3  
4 8.2.3 Bill of Sale for the Navy Personal Property conveyed to the Authority for  
5 such Parcel(s), in substantially the form set forth in Exhibit H-1.

6  
7 8.2.4 Bill of Sale for the Navy owned Utility Infrastructure located on such  
8 Parcel(s) and for the Initial Closing, including off-site Utility Infrastructure, in substantially the  
9 form set forth in Exhibit H-2.

10  
11 8.2.5 Any Access Easement(s) required by the Authority relating to such  
12 Parcel(s), in accordance with Section 7.3.1 of this Agreement.

13  
14 8.2.6 Any Utility Easement(s) required by the Authority relating to such  
15 Parcel(s), in accordance with Section 7.3.2 of this Agreement.

16  
17 8.2.7 Any appropriate instruments assigning the Assignable Easements,  
18 Contracts and Permits required by the Authority in accordance with Section 7.1 of this  
19 Agreement.

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 Any LIFO, easements, or other instruments that may be required under  
32 Section 3.12.

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

36  
37 8.2.12 The Land Use Covenant, as applicable.

38  
39 8.2.13 Such additional documents as may be required to close escrow, under this  
40 Agreement or by California law.

41  
42 8.2.14 Representation to the Authority, in substantially the form set forth in  
43 Exhibit N-1, stating that as of the date of Closing, the Navy has the full capacity, right, power,  
44 and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing  
45 unless subsequently prohibited by law.

1           8.3    The Authority Deliveries. The Authority shall deliver to escrow at least five (5)  
2 days prior to the Initial Closing and, to the extent applicable, any other Closings, the first  
3 Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the  
4 following documents in a form previously reviewed and approved by the Navy, and duly  
5 executed and authorized (and acknowledged if necessary for recordation) (the “**Authority**  
6 **Closing Documents**”):

7  
8           8.3.1 Acceptance of Quitclaim Deed(s) substantially as set forth in Exhibit D  
9 attached hereto.

10  
11           8.3.2 Any LIFO, easements, or other instruments that may be required under  
12 Section 3.12.

13  
14           8.3.3 For the Initial Closing, a Utilities Agreement, or subsequent amendments,  
15 as the case may be, as set forth in Article 9, as applicable.

16  
17           8.3.4 Any appropriate instruments assigning or replacing the Non-Assignable  
18 Easements, Contracts and Permits and perfecting the Unperfected Easements, Contracts and  
19 Permits necessary for electricity to be provided to Treasure Island as required by Section 3.7.1.8  
20 hereof that the Authority has obtained.

21  
22           8.3.5 If applicable, any appropriate instruments assigning or replacing the Non-  
23 Assignable Easements, Contracts and Permits and perfecting the Unperfected Easements,  
24 Contracts and Permits that are not necessary for electricity to be provided to Treasure Island as  
25 required by Section 3.6 hereof.

26  
27           8.3.6 Acceptance of any Access Easement(s) required by the Authority relating  
28 to such Parcel(s) in accordance with Section 7.3.1 of this Agreement.

29  
30           8.3.7 Acceptance of any Utility Easement(s) required by the Authority relating to  
31 such Parcel(s) in accordance with Section 7.3.2 of this Agreement.

32  
33           8.3.8 Acceptance of any Assignable Easements, Contracts and Permits, Non-  
34 Assignable Easements, Contracts and Permits and the Unperfected Easements, Contracts and  
35 Permits required by the Authority relating to such Parcel(s), in accordance with Section 7.1 of this  
36 Agreement.

37  
38           8.3.9 Such additional documents as may be required to close escrow, under this  
39 Agreement or by California law.

40  
41           8.3.10 Representation to the Navy, in substantially the form set forth in Exhibit N-  
42 2, stating that as of the date of Closing, the Authority has the full capacity, right, power, and  
43 authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing unless  
44 subsequently prohibited by law.

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**ARTICLE 9**  
**UTILITY INFRASTRUCTURE AND UTILITIES AGREEMENT**

9.1 Utilities Agreement. Concurrently with this Agreement, the Parties are entering into a Utilities Agreement in the form attached hereto as Exhibit E relating to the phased transfer of the existing utility infrastructure on Treasure Island (the “**Utility Infrastructure**”). At the time of any transfer of real property from the Navy to the Authority under this Agreement, (i) the Caretaker Agreement shall not terminate with respect to the real property on Treasure Island retained by the United States (or to any existing utility lines or retained easements required to maintain service to such real property under the Caretaker Agreement) as a result of the transfer, and (ii) the Caretaker Agreement shall automatically terminate with respect to the real property that is transferred to the Authority.

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

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

9.3.1 During the term of the Caretaker Agreement, the Authority staff shall seek appropriations and any required approvals to continue to operate and maintain the Utility Infrastructure consistent with the Authority’s past practice and past annual expenditures before the Effective Date. The Parties understand that the Authority’s past practice and past annual utility expenditures have been generally limited to the revenues received by the Authority from utility operations at Treasure Island and some portion of the revenues received from the property on Treasure Island (which are also used to fund all operations and maintenance at Treasure Island and not just utility operations and maintenance). If and to the extent that the Authority has obtained in the past, or obtains in the future, appropriations of funds for utilities operations and maintenance from additional sources such as the City’s General Fund (above the revenues received from subleasing activities), any such appropriation will not create an obligation by the Authority to continue to seek such an appropriation in the future, and nothing in this Article 9 shall amend or limit the provisions set forth in Section 22.2.

9.3.2 The Authority shall expend all revenues received by the Authority from the delivery of utility services at Treasure Island on utility-related costs at Treasure Island. Upon receipt of appropriations for utilities maintenance, repairs and operations at Treasure Island, the

1 Authority shall expend all such appropriated funds for utility repairs, maintenance and operations  
2 at Treasure Island. Subject to the availability of appropriations as set forth above, the Authority  
3 shall use good faith efforts to continue to operate and maintain the utility systems at Treasure  
4 Island during the normal course of development until such time as the responsibility for  
5 providing a specific utility service is assumed by a public utility.  
6

7 9.3.3 The United States Coast Guard (the “**Coast Guard**”), an agency of the  
8 United States, operates federally owned land, buildings, and structures on Yerba Buena Island  
9 (the “**Coast Guard Installation**”) for the benefit of the public, including maritime search and  
10 rescue and oil spill response. Other users of the Coast Guard Installation include other federal  
11 agencies, agencies of the State of California, and San Francisco municipal agencies, including  
12 the San Francisco Fire Department and San Francisco Police Department. Although the Coast  
13 Guard Installation is separate from and not part of Naval Station Treasure Island, all users of the  
14 Coast Guard Installation are entirely reliant on the existing utility infrastructure installed by the  
15 Navy decades ago. The Coast Guard Installation is not subject to the authority provided by §  
16 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as  
17 amended, and is not subject to closure or transfer to the Authority. Subject to the limitations set  
18 forth above, the Authority shall consider public health and safety and the Coast Guard  
19 Installation’s role in the protection of the environment in the San Francisco Bay and the  
20 operation of the Ports of San Francisco and Oakland in all decisions regarding the utility  
21 infrastructure serving Treasure Island and Yerba Buena Island.  
22

#### 23 9.4 Utilities During Development. 24

25 9.4.1 The Parties agree that the proposed development of Treasure Island and  
26 Yerba Buena Island with new utility infrastructure will benefit all residents and occupants of  
27 Treasure Island and Yerba Buena Island, including the Coast Guard, and that the sooner that  
28 such new utility infrastructure can be built, the better for all residents and occupants as such new  
29 utility infrastructure will help to improve system reliability and performance.  
30

31 9.4.2 It is the objective of the Parties that utility services to all occupants of  
32 Treasure Island and Yerba Buena Island, including the Coast Guard, shall be available during the  
33 normal course of development until such time as the responsibility for providing a specific utility  
34 service is assumed by a public utility. Nevertheless, given the current state of the Utility  
35 Infrastructure and the duration of the Treasure Island development period (and the limitation of  
36 revenue sources), the Authority cannot guarantee the continued and uninterrupted availability of  
37 utility services to Treasure Island. The failure of any Utility Infrastructure, by itself, shall not be  
38 a default under this Agreement or give rise to any right or claim against the Authority.  
39

40 9.4.3 The Authority and its successors may remove, alter, relocate, or abandon  
41 any of the Utility Infrastructure, provided that replacement of that component of the Utility  
42 Infrastructure is installed as part of the proposed work (if needed to continue to provide service  
43 to the Coast Guard Installation), and there is no material interruption or decrease in service (other  
44 than temporary interruptions consistent with infrastructure repair and replacement projects) to  
45 the Coast Guard Installation as a result of such work. The Authority shall be responsible for  
46 promptly repairing any utility line damaged by the Authority or its agents in connection with

1 work undertaken by it. The Authority shall keep the Navy and the Coast Guard reasonably  
2 informed of development plans and schedules that may impact the Coast Guard’s access to utility  
3 service, and shall respond to requests for additional information.  
4

5 9.5 Key Infrastructure. In connection with any transfer of land from the Navy to the  
6 Authority, the Navy will (a) reserve non-exclusive easements (each individually an “**Easement**”  
7 and collectively the “**Easements**”) for the use, inspection, operation, maintenance, repair and  
8 replacement of the Utility Infrastructure on, over, under, and across those portions of the  
9 Property described in the following exhibits (each individually an “**Easement Area**” and  
10 collectively the “**Easement Areas**”): (i) Exhibit MM-1 easement for water lines; (ii)  
11 Exhibit MM-2 easement for electric lines; (iii) Exhibit MM-3 easement for natural gas lines; and  
12 (iv) Exhibit MM-4 easement for wastewater lines, and (b) retain fee title to the appropriate  
13 Utility Infrastructure located within the Easement Areas (the “**Key Infrastructure**”). The  
14 Authority shall have the right to relocate the Key Infrastructure without the prior consent of the  
15 Navy or the Coast Guard, so long as (a) the requirements set forth in Section 9.4.3 are satisfied,  
16 and (b) the Coast Guard has been informed of the proposed relocation project at least sixty (60)  
17 days before the relocation. Upon the completion of any such relocation, following the cut over  
18 and functional operation of the new utility line, the Authority shall provide a legal description of  
19 the new Easement Area and deliver to the Navy an easement, in recordable form, that grants  
20 access to the relocated Key Infrastructure in the same manner as that reserved by the original  
21 Easement, and the Navy shall deliver to the Authority or its successor a quitclaim deed or other  
22 instrument, in recordable form, that terminates the original Easement.  
23

24 9.5.1 In exercising any rights in the Easement Areas, the Navy and/or the Coast  
25 Guard shall (i) provide at least sixty (60) days prior notice before performing any excavation,  
26 repair or replacement of any utility infrastructure, except in the event of an emergency,  
27 (ii) perform such work in accordance with applicable requirements taking into consideration  
28 customary engineering standards and practices in San Francisco, and seek to minimize safety  
29 hazards, property damage and disruption, (iii) use reasonable, good faith efforts to comply with  
30 the reasonable traffic and utility coordination requirements of Grantee, (iv) comply with the  
31 requirements of the Underground Service Alert regarding notification of excavation and marking  
32 of subsurface facilities, (v) promptly repair any damage to property (including any utility  
33 infrastructure) resulting from exercise of its easement rights, and (vi) comply with the utility  
34 provider’s standard terms and conditions if and when connecting to that utility provider’s  
35 equipment. Notwithstanding anything to the contrary above, in the event of an emergency, the  
36 Coast Guard shall have the right to begin work immediately if it reasonably determines that the  
37 Authority is not able or willing to perform the required repair work.  
38

39 9.5.2 In connection with the use of the Easement Areas, the Navy and the Coast  
40 Guard shall meet and confer with Authority, and the parties shall coordinate and cooperate in  
41 good faith at all times to expeditiously resolve all matters and to avoid any potential conflicts in  
42 use, and any disruption in the operations of Treasure Island and Yerba Buena Island to the  
43 greatest extent possible. In the event of any dispute regarding the Easement Areas, the conflict  
44 dispute resolution process described in Section 27.2.1 shall apply, provided the foregoing shall  
45 not prevent the Coast Guard from making any emergency repairs as needed to restore service to  
46 the Coast Guard Installation as set forth in Section 9.5.1. To the maximum extent provided by

1 law, the Authority, the Navy and the Coast Guard shall each remain responsible for all liabilities,  
2 claims, demands, judgments, suits, litigation, or amounts payable attributable to their respective  
3 uses or activities on or about the Property.  
4

5 9.5.3 When the Authority has installed a new utility line that has been dedicated  
6 to and accepted by a public utility, and utility service to the Coast Guard Installation can connect  
7 to such new infrastructure in accordance with the public utility's standard terms and conditions  
8 of service (such that the Easement Area is no longer needed), the applicable Easement will  
9 automatically terminate, together with the Navy's rights in and to the Key Infrastructure located  
10 within that Easement Area, except to the extent that the point of connection is located outside the  
11 Coast Guard Installation, in which case the easement shall continue to run in perpetuity from the  
12 Coast Guard Installation to the point of connection. At the request of the Authority or the  
13 successor owner of the applicable property, the Navy shall confirm the termination of the  
14 Easement and the transfer of the Key Infrastructure by executing and delivering a quitclaim  
15 deed, bill of sale, or other instrument in a form reasonably acceptable to the Authority or its  
16 successor.  
17

18 **ARTICLE 10**  
19 **TIME OF THE ESSENCE AND POSTPONEMENT**  
20

21 10.1 Time is of the Essence. The Parties agree that a fundamental component of this  
22 Agreement is the timely disposal of the Navy Real Property by the Navy, which will permit the  
23 economic redevelopment of the Navy Real Property. Accordingly, the Parties agree that time is  
24 of the essence in this Agreement.  
25

26 10.2 Postponement. A party who is subject to Excusable Delay in the performance of  
27 an obligation hereunder (including, without limitation, compliance with the Conveyance  
28 Schedule), or in the satisfaction of a condition to the other Party's performance hereunder, shall  
29 be entitled to a postponement of the time for performance of such obligation or satisfaction of  
30 such condition during the period of enforced delay attributable to an event of Excusable Delay.  
31

32 10.2.1 Notice of Excusable Delay. The Excusable Delay provisions of this  
33 Section shall not apply unless (1) the Party seeking to rely upon such provisions shall have given  
34 notice to the other Party as soon as reasonably possible, but in no event later than the earlier of (i)  
35 thirty (30) days after obtaining knowledge of the beginning of an Excusable Delay or (ii) the  
36 deadline for performance of the term, covenant or condition of this Agreement that is subject to  
37 the Excusable Delay, of such delay and the cause or causes thereof, to the extent known, and (2)  
38 the Party claiming the Excusable Delay must at all times be acting diligently and in good faith to  
39 avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a  
40 reasonable alternative means of performance. Notwithstanding the foregoing, no later than thirty  
41 (30) days after the execution of this Agreement, the Parties shall provide notice to the other of any  
42 event of Excusable Delay that may exist as of the date of execution but may have arisen prior to  
43 the execution hereof.  
44

45 10.2.2 Extensions. Either Party may extend time for the other Party's  
46 performance of any term, covenant or condition of this Agreement or permit the curing of any

1 default upon such terms and conditions as it determines appropriate; provided, however, that  
2 any such extension or permissive curing of any particular default shall not operate to release  
3 any of the other Party's obligations, nor constitute a waiver of the extending Party's rights with  
4 respect to any other term, covenant or condition of this Agreement or any other breach of this  
5 Agreement. The Parties may extend the time for performance by either or both Parties of any  
6 term, covenant or condition of this Agreement by a written instrument signed by authorized  
7 representatives of both Parties without the execution of an amendment to this Agreement.  
8

9  
10 **ARTICLE 11**  
11 **ENVIRONMENTAL REPORTS**

12 11.1 From and after the Effective Date, the Navy will make available to the Authority  
13 all known Environmental Reports prepared by or for the Navy with respect to the Navy Real  
14 Property that is subject to the Closing. The Authority and its agents, its successors, and its  
15 transferees, at their own expense, shall have the right to inspect, review, and copy any or all of  
16 the Environmental Reports within a reasonable timeframe of providing notice to the Navy.  
17

18 11.2 The CERCLA administrative record component of the Environmental Reports  
19 shall be indexed and an up-to-date copy of the index and the location of the records shall be  
20 provided to the Authority prior to each Closing, at no cost to the Authority. The administrative  
21 record shall be maintained by the Navy in the San Diego area or at another location at or  
22 proximate to the Navy Real Property.  
23

24 11.3 The CERCLA administrative record will be maintained by the Navy for a period  
25 of ten (10) years following the date that the last Parcel is transferred to the Authority.  
26

27  
28 **ARTICLE 12**  
29 **DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS**

30 12.1 From and after the Effective Date, the Navy will make available to the Authority  
31 for inspection and copying those surveys, soils and geological reports, studies, assessments, test  
32 results, well close-out reports, leases, licenses, easements, permits, contracts and other  
33 documents relating to the physical or structural composition of the Navy Real Property including  
34 plans and specifications for buildings and other improvements, drawings of underground utility  
35 systems (including gas, sewer, water, electrical, and telephone), personal property (including  
36 executed and completed motor vehicle transfer of ownership forms) and any and all other  
37 documents of material significance to the ownership, use, management or operation of the Navy  
38 Real Property ("**Navy Real Property Documents**") which are physically located at the  
39 following repositories: (1) Building 1, Treasure Island, and (2) Southwest Division of the Naval  
40 Facilities Engineering Command, San Diego, California. The Navy shall permit access to the  
41 Authority to the identified repositories and such other locations that may be subsequently  
42 identified for inspection and copying of any Navy Real Property Documents available to the  
43 Navy that are identified by the Authority related to the Navy Real Property. The Authority and  
44 its transferees and agents, at their own expense, shall have the right to inspect, review, and copy  
45 any or all of the Navy Real Property Documents with reasonable prior notice to the Navy.  
46 Nothing herein shall require the Navy to release information, documents, or databases to the



1 Authority or other parties that would be contrary to the Freedom of Information Act, that are  
2 privileged, or that would be in violation of federal law.  
3

4 **ARTICLE 13**  
5 **NAVY OFFICE**  
6

7 13.1 Commencing on the date of the Initial Closing and continuing until the date that is  
8 seven (7) years after the Initial Closing (unless terminated earlier by Navy), the Navy shall have  
9 the right to occupy up to three thousand five hundred (3,500) square feet of office space and up  
10 to two thousand (2,000) square feet of space for file storage, which file storage may be located  
11 in non-contiguous or non-adjacent spaces, for the Navy caretaker site office (the “**Navy Office**”)  
12 and six reserved parking spaces. At the Initial Closing, the Navy Office will continue to be  
13 located in Building 1, as more particularly shown on Exhibit K-1 attached hereto and to the  
14 extent practicable, Navy shall be permitted to remain in its presently existing office space until  
15 such space is required for implementation of the Project. The terms of occupancy for the Navy  
16 Office are set forth in Exhibit K-2 attached hereto (“**Navy Office Provisions**”). Navy shall be  
17 responsible for its cost of utilities serving the Navy Office, but the Navy Office Provisions shall  
18 otherwise be rent free for the seven (7) year period. The Authority shall have the right, from  
19 time to time during the Navy Office Provision term, to relocate the Navy Office to another  
20 location within Building 1 or to one of the buildings known as the Great Whites as more  
21 particularly shown on Exhibit K-3 attached hereto, or to any other adequate location on Treasure  
22 Island or Yerba Buena Island, by giving Navy no less than six (6) months’ prior written notice.  
23 The relocation premises shall be substantially equivalent in size, general quality, and dimensions  
24 to the then-existing premises but while the office space shall be contiguous, the relocated storage  
25 space may be located in one or more non-contiguous spaces. The Authority shall bear all  
26 reasonable costs incurred by the Authority to physically relocate Navy to any relocation space,  
27 and shall be responsible for the cost of standard tenant improvements for the relocation  
28 consistent in quality with the Navy’s current space in Building 1. Reasonable costs and standard  
29 tenant improvements, as those terms are used herein, shall include but not be limited to the cost  
30 of a dedicated T1 transmission line at any relocation space and the cost of establishing Navy and  
31 Marine Corp Intranet (NMCI) connectivity to the relocation space. The Navy Office Provisions  
32 further outlines the requirements of the Authority and the Navy. Navy shall be entitled at any  
33 time upon thirty (30) days prior written notice to terminate the Navy Office Provisions. At the  
34 expiration of the initial seven (7) year occupancy period, the Navy may elect to terminate its  
35 occupancy, or to renew its occupancy under the same terms as the Navy Office Provisions  
36 provided that consideration for any renewal period will be at fair market rent, to be determined  
37 by the Authority based on the highest and best use permitted for the occupied space, supported  
38 by documented market examples at Treasure Island, if available. The Authority shall have the  
39 right to assign its interest in Building 1, or the building to which the Navy is relocated, to  
40 Developer or its successors or assigns, by leasehold or other instrument, so long as the Authority  
41 retains rights under such leasehold or other instrument that will enable the Authority to satisfy its  
42 obligations to provide the Navy Office and the six reserved parking spaces in accordance with  
43 the terms of this Section and the Navy Office Provisions.  
44

45 13.2 All personal property associated with the Navy Office shall be excluded from  
46 transfer until such time as the Navy Office Provisions is terminated. Upon Navy Office

1 Provisions termination, the Navy upon its sole right shall determine excess personal property to  
2 be made available to the Authority.  
3

4 **ARTICLE 14**  
5 **NAVY REPRESENTATIONS**  
6

7 14.1 The Navy hereby represents to the Authority on and as of the Effective Date and  
8 will represent as of the date of each Closing as follows:  
9

10 14.1.1 Execution of Agreement. That the Navy has full capacity, right, power and  
11 authority to execute, deliver and perform this Agreement and all documents to be executed by the  
12 Navy pursuant hereto, and all required action and approvals therefore have been duly taken and  
13 obtained for the execution of this Agreement. The Navy further represents to the Authority that  
14 as of the date of Closing, the Navy shall have full capacity, right, power and authority to execute,  
15 deliver and perform this Agreement and all documents to be executed by the Navy pursuant  
16 hereto for the Closing unless subsequently prohibited by law. This Agreement and all documents  
17 to be executed pursuant hereto by the Navy are and shall be binding upon and enforceable against  
18 the Navy in accordance with their respective terms.  
19

20 14.1.2 Complete Information. All known relevant Environmental Reports and  
21 Navy Real Property Documents of material significance have been made available to the  
22 Authority for inspection and copying.  
23

24 **ARTICLE 15**  
25 **AUTHORITY REPRESENTATIONS**  
26

27 15.1 The Authority hereby represents to the Navy that on and as of the Effective Date,  
28 the Authority has full capacity, right, power and authority to execute, deliver and perform this  
29 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
30 action and approvals therefore have been duly taken and obtained for the execution of this  
31 Agreement. The Authority further represents to the Navy that as of each Closing, the Authority  
32 shall have full capacity, right, power and authority to execute, deliver and perform this  
33 Agreement and all documents to be executed by the Authority pursuant hereto, and all required  
34 action and approvals will have been duly taken and obtained for the Closing. The individuals  
35 signing this Agreement and all other documents executed or to be executed pursuant hereto on  
36 behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to  
37 bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by  
38 the Authority are and shall be binding upon and enforceable against the Authority in accordance  
39 with their respective terms.  
40

41 **ARTICLE 16**  
42 **TITLE AND NAVY COVENANTS**  
43

44 16.1 From the Effective Date to the Closing, the Navy shall not do, permit, or agree to  
45 sell, encumber or grant any interest in the Navy Property or any part thereof in any form or  
46 manner whatsoever or otherwise perform or permit any act which will diminish or otherwise

1 affect the Authority's interest under this Agreement or in or to the Navy Property or which will  
2 prevent the Navy's full performance of its obligations hereunder, without the prior written  
3 consent of the Authority except environmental restrictions or land use covenants consistent with  
4 Section 3.4.2 as may be designated in the CERCLA Record of Decision, an approved Corrective  
5 Action Plan or the FOST.  
6

7 16.2 The Navy shall not remove or alter any Navy Personal Property or Utility  
8 Infrastructure that is intended to be transferred by this Agreement to the Authority, without the  
9 prior written consent of the Authority, except when such removals or alterations are in  
10 association with the Navy's continuing obligations under CERCLA, 42 U.S.C. § 9601, et seq.  
11

## 12 **ARTICLE 17**

### 13 **ENVIRONMENTAL PROVISIONS**

14

15 17.1 Navy Obligations Under 42 U.S.C. § 9620(h) of CERCLA. The Navy Real  
16 Property shall be conveyed subject to the Navy's obligations with regard to Hazardous  
17 Substances as set forth in CERCLA at 42 U.S.C. § 9620(h)(3).  
18

19 17.2 CERCLA Access. The Quitclaim Deeds shall include a clause granting the  
20 United States access rights to the Navy Real Property pursuant to Section 120(h)(3)(A)(iii) of  
21 CERCLA at 42 U.S.C. § 9620(h)(3)(A)(iii) in any case in which remedial action or corrective  
22 action is found to be necessary after the date of transfer.  
23

24 17.3 Lead-Based Paint. The Quitclaim Deeds shall incorporate the Lead-Based Paint  
25 (hereinafter referred to as "**LBP**") Disclosure and restrictions required by 40 CFR § 745.113, if  
26 applicable, and other applicable authority. The Parties agree that the Authority, or its successors  
27 or assigns, will seek approval of a procedure through the State of California whereby once the  
28 LBP is removed from the Navy Real Property in compliance with Federal and State standards,  
29 the LBP Disclosure and restrictions can be removed from the Quitclaim Deeds in accordance  
30 with the approved procedure. The Navy agrees to cooperate with such procedure upon approval  
31 by the State of California, and, if applicable, sign all amended Quitclaim Deeds as necessary.  
32

33 17.4 Asbestos. The Quitclaim Deeds shall include any notifications or restrictions  
34 concerning asbestos or asbestos-containing materials ("**ACM**") that have been found on the  
35 Navy Real Property, as described in the Final 2009 Asbestos Reevaluation Report for Treasure  
36 Island and Yerba Buena Island dated February 2011, if applicable. The Parties agree that the  
37 Authority, or its successors or assigns, will seek approval of a procedure through the State of  
38 California, whereby once the ACM is removed from the Navy Real Property in compliance with  
39 Federal and State standards, the ACM notification and any other ACM reference can be removed  
40 from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to  
41 cooperate with such procedure upon approval by the State of California, and, upon removal, if  
42 applicable, sign all amended Quitclaim Deeds as necessary.  
43

44 17.5 Radiological Contamination. If additional screening, investigation or remediation  
45 related to radiological contamination (other than employee health and safety plan screening to be  
46 conducted by a contractor prior to or during construction) is required by applicable law or

1 regulation for any portion of the real property previously conveyed by the Navy to the Authority,  
2 the Navy will undertake such additional screening, investigation, and/or remediation pursuant to  
3 such applicable laws and regulations. If any portion of Navy owned property not yet conveyed  
4 to the Authority is identified as impacted by radiological contamination, and as a consequence  
5 the Navy fails to convey such portion of the Navy Real Property by the applicable date set forth  
6 in the Conveyance Schedule (“**Delayed Parcel**”), within ten (10) days of a written request from  
7 the Authority, the Navy shall deliver to the Authority information describing (i) the current status  
8 of the remediation of the Delayed Parcel, (ii) the estimated cost to complete the remediation of  
9 the Delayed Parcel, and (iii) the estimated date when the Delayed Parcel can be conveyed to the  
10 Authority in the condition required by this Agreement. Nothing in this Agreement transfers  
11 responsibility for the screening, investigation, management, or remediation of any potential  
12 radiological contamination caused by the Navy or its agents to the Authority, or any third party  
13 claims relating thereto, and the Navy retains such responsibility in accordance with applicable  
14 laws and regulations. If requested by the Authority, the Parties shall meet and explore the  
15 potential for utilizing an agreement pursuant to 10 U.S.C. 2701(d) under which the Navy shall  
16 have the option, but not the obligation, of allowing the amount of the Initial or Additional  
17 Consideration then remaining payable to the Navy to fund the performance of environmental  
18 remediation on the Delayed Parcel in accordance with the scope and cost agreed to by the Parties  
19 in the agreement in lieu of direct payment of such consideration to the Navy.  
20

21 **ARTICLE 18**  
22 **PETROLEUM CORRECTIVE ACTION**  
23

24 18.1 The Navy represents that as of the Effective Date, it has satisfied all requirements,  
25 obligations and objectives included in the FFSRA and the current Petroleum Corrective Action  
26 Plan as they relate to petroleum products, underground and above ground storage tanks and  
27 related piping, petroleum derivatives, fractions and daughter products (collectively, “**Petroleum**  
28 **Products**”), except for YF-3 and Site 6, which shall be governed by Sections 18.2 and 18.3  
29 hereof.  
30

31 18.2 The Navy shall satisfy all requirements, obligations and objectives included in the  
32 FFSRA and the current Petroleum Corrective Action Plan as they relate to Petroleum Products  
33 related to Site 6 prior to Closing for that parcel.  
34

35 18.3 YF-3 may be conveyed prior to the completion of the petroleum corrective action  
36 identified in the FFSRA and the current Petroleum Corrective Action Plan; provided, however,  
37 that the Navy will continue to be the responsible party to complete the corrective action and  
38 obtain regulatory closure for YF-3.  
39

40 **ARTICLE 19**  
41 **COVENANT AGAINST CONTINGENT FEES**  
42

43 19.1 The Authority warrants that no person or agency has been employed or retained to  
44 solicit or secure this Agreement upon an agreement or understanding for a commission,  
45 percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established  
46 commercial agencies maintained by the Authority for the purpose of securing the successful

1 purchase of the Navy Property by the Authority. “Bona fide established commercial agencies”  
2 has been construed to include licensed real estate brokers engaged in the business generally. For  
3 breach or violation of the warranty, Navy has the right to annul this Agreement without liability  
4 or in its discretion to require the Authority to pay, in addition to the consideration, the full  
5 amount of such commission, percentage, brokerage, or contingent fee.  
6

7 **ARTICLE 20**  
8 **NOTICES**  
9

10 20.1 Notices shall be deemed sufficient under this Agreement if made in writing and  
11 delivered personally (including by messenger) or sent by United States registered or certified  
12 mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to  
13 the Parties at their respective addresses set forth below (or to any new or substitute address  
14 hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure  
15 set forth herein by the intended recipient of such notice), and the same shall be effective upon  
16 receipt, if delivered personally or by messenger, or two (2) business days after deposit in the mail  
17 if mailed:  
18

19 If to the Authority: Treasure Island Development Authority  
20 One Avenue of the Palms, Suite 241  
21 Treasure Island  
22 San Francisco, CA 94130  
23 Attn: Treasure Island Project Director  
24 Telephone: (415) 274-0662  
25 Facsimile: (415) 274-0299  
26 Email: 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 234  
31 1 Dr. Carlton B. Goodlett Place  
32 San Francisco, CA 94102  
33 Attn: Real Estate Team Leader  
34 Telephone: (415) 554-4735  
35 Facsimile: (415) 554-4755  
36 Email: charles.sullivan@sfgov.org  
37

38 With a copy to: George R. Schlossberg, Esq.  
39 Kutak Rock LLP  
40 1101 Connecticut Avenue, N.W.  
41 Suite 1000  
42 Washington, DC 20036  
43 Telephone: (202) 828-2418  
44 Facsimile: (202) 828-2488  
45 Email: george.schlossberg@kutakrock.com  
46

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

10 With a copy to: NAVFAC HQ Base Realignment and Closure  
11 Office of Counsel  
12 1455 Frazee Road  
13 Suite 900  
14 San Diego, California 92108-4310  
15

16 20.2 Either Party may direct in writing that any notices be sent to additional parties.  
17 The provision of notice to additional parties shall not make such additional parties third party  
18 beneficiaries of this Agreement.  
19

20 **ARTICLE 21**  
21 **PRIOR LIABILITIES**  
22

23 21.1 To the extent provided by law, the Navy shall remain responsible for all  
24 liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, “**Pre-**  
25 **Closing Obligations**”) against the Navy attributable to the Navy’s construction, installation,  
26 placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and  
27 equipment and land during the period prior to the conveyance of the Navy Real Property to the  
28 Authority pursuant to this Agreement, and with regard to a separate lease, contract for caretaker  
29 services, or other agreement, the Navy’s responsibility and the Authority’s responsibility for Pre-  
30 Closing Obligations will be as set forth in those documents. Except as otherwise provided in the  
31 Quitclaim Deeds, the Authority shall notify the Navy of the existence or occurrence of any such  
32 Pre-Closing Obligations of which it has knowledge sufficiently in advance of the scheduled  
33 Closing date to allow disposition thereof, if necessary, and shall cooperate with the Navy in the  
34 disposition thereof prior to the scheduled Closing date.  
35

36 **ARTICLE 22**  
37 **AUTHORITY’S AVAILABILITY OF FUNDS**  
38

39 22.1 Except for the Authority’s recoupment obligations as set forth in Section 5.13.3  
40 and the Authority’s obligation to provide security for the payment of the Initial Consideration as  
41 set forth in Section 4.2.11 of this Agreement, there shall be no obligation for the payment or  
42 expenditure of money by the Authority under this Agreement unless there is a valid  
43 appropriation from which the expenditure may be made and that unencumbered funds are  
44 available from the appropriation for the expenditure.  
45

1           22.2 The Navy understands and agrees that this Agreement does not create a debt of  
2 the City and County of San Francisco, and the City’s General Fund shall not have liability for the  
3 Authority’s obligations under this Agreement.  
4

5   **ARTICLE 23**  
6   **FINALITY OF CONVEYANCE**  
7

8           23.1 Possession. Upon each Closing, the Navy shall immediately deliver to the  
9 Authority possession of the Navy Real Property conveyed at the Closing.  
10

11           23.2 No Right of Rescission. There shall be no right of rescission in the Navy as to the  
12 Navy Real Property, or any portion thereof, once conveyed to the Authority. The foregoing shall  
13 not be interpreted to limit any future exercise of the power of eminent domain by the Navy.  
14

15   **ARTICLE 24**  
16   **LIABILITY FOR ENVIRONMENTAL CONTAMINATION**  
17

18           24.1 Notwithstanding any other provision of this Agreement, and except as set forth  
19 specifically in any Quitclaim Deeds, leases, licenses, and the Caretaker Agreement, or other  
20 agreement between the Authority and the Government, the Authority does not hereby assume  
21 any liability or responsibility for environmental impacts and damage caused by the use of  
22 Hazardous Substances and petroleum products by the United States, its contractors, agents or  
23 assignees, on any Parcel or adjacent to it prior to the date of conveyance. The Authority has no  
24 obligation under this Agreement to undertake the defense of any claim or action, whether in  
25 existence now or brought in the future, or to conduct any cleanup or remediation action arising  
26 out of the use or release of any Hazardous Substances or petroleum products, on or from any part  
27 of the Property to the extent such claim or action arises out of activity by: (i) the United States  
28 on the Property or adjacent to it, or (ii) during the United States’ ownership of the Property  
29 except as provided under leases, licenses, and the Caretaker Agreement entered into between the  
30 Authority and the Navy prior to the Effective Date; nor does the Authority hereby waive or  
31 release any rights it may have under applicable law against the Government with respect to such  
32 claims, actions, cleanup or remedial action.  
33

34   **ARTICLE 25**  
35   **SHORT FORM NOTICE**  
36

37           25.1 Upon execution of this Agreement, the Authority and Navy shall execute the  
38 Short Form Notice of Conveyance attached hereto as Exhibit M. The Short Form Notice of  
39 Conveyance shall be recorded in the Official Records of the City of San Francisco promptly  
40 following the execution of this Agreement. The Short Form Notice of Conveyance shall include  
41 the following language: From the Effective Date of this Agreement through the Initial Closing  
42 and any subsequent Closings, the Navy shall not permit, agree to sell, encumber or grant any  
43 interest in the Navy Real Property or any part thereof in any form or manner whatsoever, or  
44 otherwise perform or permit any act that will diminish or otherwise affect the Authority’s interest  
45 under this Agreement or to the Navy Real Property, or which will prevent the Navy’s full  
46 performance of its obligations hereunder, without the written consent of the Authority, except

1 environmental restrictions or land use covenants consistent with the Agreement as may be  
2 designated in the CERCLA Record of Decision, an approved Corrective Action Plan or the  
3 FOST.

4  
5 **ARTICLE 26**  
6 **FURTHER ASSURANCES**  
7

8 26.1 The Parties acknowledge that it is their mutual intent to effectuate an orderly,  
9 amicable, and expeditious transfer of the Navy Real Property from Navy to the Authority and  
10 that, toward that end, (i) any or all ambiguities herein shall, to the extent practicable, be  
11 construed in the way most liberally conducive to the aforesaid conveyance, (ii) neither Party  
12 shall be considered the drafter of this Agreement or any of its provisions for the purposes of any  
13 statute, case law, or rule of interpretation or construction, that would or might cause any  
14 provision to be construed against the drafter of the Agreement, and (iii) the Parties agree to  
15 execute, deliver and perform under the terms of such other documents as their respective legal  
16 counsel may deem necessary or appropriate to effect the purposes of this Agreement.  
17

18 **ARTICLE 27**  
19 **DISPUTE RESOLUTION PROCEDURES**  
20

21 27.1 Resolution of Certain Disputes. Any other provision of this Agreement  
22 notwithstanding, (i) disputes identified in Section 27.3.2 shall be resolved by non-binding  
23 arbitration in accordance with the expedited dispute resolution procedure set forth in Section  
24 27.3.2, and (ii) such other disputes under this Agreement shall be resolved either by non-binding  
25 arbitration in accordance with the non-binding arbitration procedures set forth in Section 27.3.3  
26 if the Parties mutually agree, or barring such mutual agreement as to a particular other dispute, in  
27 accordance with this Agreement and all applicable laws.  
28

29 27.2 Good Faith Meet and Confer Requirement.  
30

31 27.2.1 With respect to any dispute regarding a matter identified in Section 27.3.2,  
32 the Parties shall make a good faith effort to resolve the dispute prior to non-binding arbitration.  
33 Within five (5) business days after a request to confer regarding an identified matter,  
34 representatives of the Parties who are vested with decision-making authority shall meet to resolve  
35 the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall  
36 immediately be submitted to the expedited dispute resolution process set forth in Section 27.3.2.  
37

38 27.2.2 With respect to any other dispute arising hereunder, the Parties shall make  
39 a good faith effort to resolve the dispute in the most expeditious manner possible. Within five (5)  
40 business days after receipt of the notice of dispute, representatives of the affected Parties shall  
41 meet to resolve the dispute. If the Parties are unable to resolve the dispute in good faith within  
42 ten (10) business days after receipt of the notice of dispute, the Parties shall either agree within  
43 ten (10) business days after receipt of the notice of dispute to proceed with the non-binding  
44 arbitration procedures set forth in Section 27.3.3, or barring such agreement, either Party may  
45 proceed unilaterally as permitted by this Agreement or by law.  
46



1           27.3    Dispute Resolution Procedures.

2  
3           27.3.1 Arbiters. The non-binding arbitrator (“**Arbiter**”) will be selected by  
4 mutual agreement of the parties to be determined no later than thirty (30) days prior to the Initial  
5 Closing from a list of at least six (6) and up to ten (10) pre-approved Arbiters from the list  
6 attached hereto as Exhibit GG (the “**Pre-Approved Arbiters List**”). The Arbiter will hear all  
7 disputes under this Agreement unless the Arbiter is not available to meet the time schedule set  
8 forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on the  
9 Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, the parties  
10 shall mutually agree on the selection of an Arbiter to serve for the purposes of this dispute. The  
11 Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiters’ Qualifications**” shall  
12 be defined as at least ten (10) years experience in a real property professional capacity, such as a  
13 real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The Parties shall  
14 review the Pre-Approved Arbiters List on an annual basis, determine the continued availability  
15 and willingness to serve of each Arbiter, and may at that time or from time to time, seek to add or  
16 subtract arbiters from the Pre-Approved Arbiter List, by notice in writing to the other Party. Any  
17 such notice will be accompanied by supporting documentation of the new proposed Arbiter’s  
18 qualifications or with the reasons for seeking to remove an Arbiter from the Pre-Approved  
19 Arbiters List, as applicable. The other Party shall have fifteen (15) business days to respond in  
20 writing to such request, and failure to respond shall be deemed consent. If the other Party objects,  
21 the Parties shall confer pursuant to Section 27.2.2 and thereafter such disputes (if still unresolved  
22 after conferring) shall be referred to arbitration pursuant to Section 27.3.2. Notwithstanding the  
23 foregoing, if based upon the annual review or at any time during the Term, the Parties become  
24 aware that an Arbiter has become unavailable to serve in any prospective Arbitration or has  
25 expressed an unwillingness to continue to serve, the Parties shall replace that Arbiter with a new  
26 Arbiter mutually agreed-upon by the Parties.

27  
28           27.3.2 Expedited Dispute Resolution Procedure. The Parties hereby agree that the  
29 following disputes shall be subject to this expedited dispute resolution procedure: (i) Major Phase  
30 Decisions (pursuant to Section 5.6 hereof); (ii) proposed amendments to appraisal instructions  
31 (pursuant to Section 5.4 hereof); (iii) proposed additions or subtractions to the Qualified  
32 Appraiser Pool (pursuant to Section 5.4.1 hereof); (iv) proposed additions or subtractions to the  
33 Pre-Approved Arbiters List (pursuant to Section 27.3.1); (v) disputes related to Redesign Work  
34 Program and Costs (pursuant to Section 4.2.9); or (vi) any matter the Authority in its reasonable  
35 discretion believes has the potential to materially delay the Project.

36  
37           27.3.2.1 The Party(ies) disputing any matter subject to this  
38 expedited dispute resolution procedure shall, within five (5) business days after  
39 submittal of the dispute to non-binding arbitration, submit a brief with all supporting  
40 evidence to the Arbiter with copies to all Parties. Evidence may include, but is not  
41 limited to, expert or consultant opinions, any form of graphic evidence, including  
42 photos, maps or graphs and any other evidence the Parties may choose to submit in  
43 their discretion to assist the Arbiter in resolving the dispute. In either case, any  
44 interested Party may submit an additional brief within three (3) business days after  
45 distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing  
46 and issue a decision in the matter promptly, but in any event within ten (10) business

1 days after the initiation of the non-binding arbitration, unless the Arbiter determines  
2 that further briefing is necessary, in which case the additional brief(s) addressing only  
3 those items or issues identified by the Arbiter shall be submitted to the Arbiter (with  
4 copies to all Parties) within five (5) business days after the Arbiter's request, and  
5 thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly  
6 but in any event within two (2) business days after submission of such additional  
7 briefs, and no later than seventeen (17) business days after the initiation of the non-  
8 binding arbitration. Each Party will give due consideration to the Arbiter's decision  
9 prior to pursuing further legal action, which decision to pursue further legal action  
10 shall be made in each Party's sole and absolute discretion.

11  
12 27.3.3 Non-Binding Arbitration Process for Other Disputes.

13  
14 27.3.3.1 Election to Participate in Non-Binding Arbitration.

15 If the dispute is arising under this Agreement and is not otherwise subject to Section  
16 27.3.2, and the Parties so agree in accordance with Section 27.2.2, the Parties shall  
17 submit the dispute to non-binding arbitration by notifying the Arbiter (selected as  
18 described in Section 27.3.1) of the dispute within ten (10) business days after  
19 expiration of the good faith meet and confer provisions of Section 27.2. Thereafter,  
20 within ten (10) business days, each Party to the dispute shall submit to the Arbiter and  
21 serve on the other Party to the non-binding arbitration a short statement of the dispute  
22 and a proposed discovery and hearing schedule.

23  
24 27.3.3.2 Preliminary Hearing. Within twenty (20) business  
25 days after notice of the election to participate in non-binding arbitration, the Arbiter  
26 shall conduct, either telephonically or in-person, a preliminary hearing. At the  
27 preliminary hearing the Arbiter shall decide discovery and briefing issues and set  
28 dates, including a hearing date. In resolving discovery issues, the Arbiter shall  
29 consider expediency, cost effectiveness, fairness, and the needs of the Parties for  
30 adequate information with respect to the dispute.

31  
32 27.3.3.3 Retention of Consultants. The Parties by mutual  
33 agreement may retain consultants to assist the Arbiter in the course of Arbitration, if  
34 requested by the Arbiter. In his or her request, the Arbiter shall provide to all Parties  
35 to the dispute an explanation for the need for the consultant, the consultant's identity,  
36 hourly rate, and the estimated costs of the service. All Parties to the dispute must  
37 approve the retention of the consultant and, if retention of the consultant is approved,  
38 Authority, or Developer on behalf of Authority, shall contract with, if necessary, and  
39 pay the costs of the consultant, subject to the provisions regarding fees and costs set  
40 forth in Section 27.3.5 below. The consultant's cost shall not exceed \$10,000 without  
41 the prior written consent of the Parties to the dispute. All consultant costs paid by  
42 Authority that are not credited against Initial or Additional Consideration in  
43 accordance with Section 27.3.5 below shall be included as Development Costs in  
44 calculating the Additional Consideration.

1                   27.3.3.4 Commencement of Non-Binding Arbitration. The  
2 non-binding arbitration hearing shall commence no later than sixty (60) days after the  
3 initial preliminary hearing, unless the Parties to the dispute mutually agree to extend  
4 the date or the Arbiter extends the date.  
5

6                   27.3.3.5 Additional Procedural Requirements. The  
7 procedural rules of the non-binding arbitration under Section 27.3.3 shall be  
8 supplemented by any non-conflicting non-binding arbitration procedures of other  
9 alternative dispute resolution providers as may be mutually agreed upon by the  
10 Parties from time to time, applicable to commercial non-binding arbitration, and may  
11 be modified by agreement of the Parties.  
12

13                   27.3.3.6 Decision of Arbiter. The Arbiter shall make a  
14 written non-binding advisory decision, specifying the reasons for the decision, within  
15 twenty (20) calendar days after the hearing. Each Party will give due consideration to  
16 the Arbiter's decision prior to pursuing further legal action, which decision to pursue  
17 further legal action shall be made in each Party's sole and absolute discretion.  
18

19                   27.3.3.7 Time Period to Complete Non-Binding Arbitration.  
20 The non-binding arbitration shall be completed within eighty (80) calendar days of  
21 the preliminary hearing, unless the parties to the dispute mutually agree to extend the  
22 date or the Arbiter extends the date.  
23

24                   27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.  
25

26                   27.3.4.1 Disputes Involving Arbitrability of Disputes. The  
27 Arbiter shall decide any dispute involving either the right to have a disputed matter  
28 submitted to non-binding arbitration or whether the matter is properly the subject of  
29 the expedited dispute resolution procedure pursuant to Section 27.3.2. The Parties to  
30 such dispute shall provide notice of the dispute and submit in writing their respective  
31 positions regarding the dispute to the Arbiter. No such submission shall exceed ten  
32 double spaced pages. The Arbiter shall make his or her decision within five (5) days  
33 of the last submission.  
34

35                   27.3.4.2 No Res Judicata or Collateral Estoppel Effect. Any  
36 determination or finding of any non-binding arbitration conducted pursuant to this  
37 Article shall not have any res judicata or collateral estoppel effect in any other non-  
38 binding arbitration conducted pursuant to this Article, or in any other action  
39 commenced by any person(s) or entity(ies) whomsoever in state or federal court,  
40 whether or not Parties to this Agreement.  
41

42                   27.3.4.3 No Ex Parte Communications. No Party or anyone  
43 acting on its behalf shall have any ex parte communication with the Arbiter with  
44 regard to any matters in issue. Communications concerning procedural matters such  
45 as scheduling shall not be included in this prohibition.  
46

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 remains due, then at the next  
16 payment of Additional Consideration), fifty percent (50%) of the full amount of the Arbitrator's fees  
17 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  
42 benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in  
43 this Agreement otherwise shall be construed as creating any rights of enforcement by any person  
44 or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any  
45 entity or person other than the Parties hereto. The Authority may assign its rights, interests, and  
46 obligations under this Agreement to the City of San Francisco if the City of San Francisco

1 replaces the Authority as the designated and federally approved Local Redevelopment Authority  
2 under the Defense Base Closure and Realignment Act of 1990, as amended.  
3

4 **ARTICLE 29**  
5 **INTERPRETATION**  
6

7 29.1 The headings and captions herein are inserted for convenient reference only and  
8 the same shall not limit or construe the paragraphs or sections to which they apply or otherwise  
9 affect the interpretation hereof.  
10

11 29.2 The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar  
12 terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term  
13 “heretofore” shall mean before, the date of this Agreement.  
14

15 29.3 Words of the masculine, feminine or neuter gender shall mean and include the  
16 correlative words of other genders, and words importing the singular number shall mean and  
17 include the plural number and vice versa.  
18

19 29.4 Words importing persons shall include firms, associations, partnerships (including  
20 limited partnerships), trusts, corporations and other legal entities, including public bodies, as well  
21 as natural persons.  
22

23 29.5 The terms “include,” “including” and similar terms shall be construed as if  
24 followed by the phrase “without being limited to.”  
25

26 29.6 This Agreement shall be governed by and construed in accordance with Federal  
27 law and the laws of the State of California, provided, that in the event of a conflict between  
28 Federal law and the laws of the State of California, the Federal law shall govern.  
29

30 29.7 Whenever under the terms of this Agreement the time for performance of a  
31 covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing  
32 party, such time for performance shall be extended to the next business day. Otherwise all  
33 references herein to “days” shall mean calendar days.  
34

35 29.8 If any term or provision of this Agreement or the application thereof to any person  
36 or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this  
37 Agreement, or the application of such term or provision to persons or circumstances other than  
38 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such  
39 term and provision of this Agreement shall be valid and be enforced to the fullest extent  
40 permitted by law.  
41

42 29.9 Each and all of the recitals set forth at the beginning of this instrument, and any  
43 exhibits referenced herein and attached hereto, are incorporated herein by this reference.  
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**ARTICLE 30**  
**NON-DISCRIMINATION**

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

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**ARTICLE 31**  
**AVAILABILITY OF FUNDS**

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

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**ARTICLE 32**  
**MODIFICATION; WAIVERS**

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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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**ARTICLE 33**  
**REMEDIES FOR NONPERFORMANCE**

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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, 3.8.2, and 3.8.4. Notwithstanding the foregoing, the sole

1 remedy for failure by the Navy to meet a Performance Benchmark shall be set out in Sections  
2 4.2.4 through 4.2.10, above.

3  
4 **ARTICLE 34**  
5 **FAILURE TO INSIST ON COMPLIANCE**  
6

7 34.1 The failure of either Party to insist, in any one or more instances, upon strict  
8 performance of any of the terms of this Agreement shall not be construed as a waiver or  
9 relinquishment of such Party's right to future performance of this Agreement, but the obligations  
10 of the other Party with respect to such future performance shall continue in full force and effect.  
11 Whenever the terms of this Agreement call for one Party to approve an action or make a  
12 determination before the other Party may undertake or perform such action, said approval or  
13 determination shall not be unreasonably denied or delayed.

14  
15 **ARTICLE 35**  
16 **RISK OF LOSS**  
17

18 35.1 From the Effective Date of this Agreement, the Party then owning a Parcel shall  
19 bear all risks of loss and damage due to casualty that may be suffered by the Parcel(s), provided,  
20 however, that the Navy shall not be liable for any loss, damage or repair to utilities, roads or  
21 structures due to acts of God, enemy action, civil commotion, fire, flood, earthquake or other  
22 casualty. Notwithstanding any such loss or damage, each and all of the provisions of this  
23 Agreement shall remain unimpaired and in full force and effect.

24  
25 **ARTICLE 36**  
26 **COUNTERPARTS**  
27

28 36.1 This Agreement may be executed in multiple counterparts and/or with the  
29 signatures of the Parties set forth on different signature sheets and all such counterparts, when  
30 taken together, shall be deemed one original.

31 **[SIGNATURE PAGE FOLLOWS]**  
32  
33

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: \_\_\_\_\_

12       Name:  
13       Title:

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

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

14  
15  
16  
17  
18  
19           **TREASURE ISLAND DEVELOPMENT**  
20 **AUTHORITY**, a California non-profit  
21 public benefit corporation  
22

23  
24  
25  
26 By: \_\_\_\_\_

27  
28  
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31  
32           Approved as to form:  
33           DENNIS J. HERRERA,  
34           City Attorney

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

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

37           Deputy City Attorney  
38

39           Authorized by Authority  
40           Resolution No. 11-19-04/21  
41           Adopted April 21, 2011

42  
43           Authorized by Board of Supervisors  
44           Resolution No. 242-11  
45           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 7.3.3.

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

31  
32 “**Auction**” means any arm’s length transaction designed to maximize revenues from the  
33 sale of parcels to qualified bidders. Auction formats may include any industry standard  
34 marketing approach or typical auction formats as outcry, sealed bid, sealed bid convertible or  
35 online and may be left to the discretion of the auction broker to determine the most appropriate  
36 format given current market conditions. In no case shall an absolute auction, in which a parcel is  
37 sold to the highest bidder regardless of price, or a reserve auction, in which the seller reserves the  
38 right to accept or reject the highest bid, be utilized unless agreed upon in advance by all Parties.  
39 The Auction shall be managed by a qualified third party real estate broker unrelated to the  
40 Developer or Authority, in a manner consistent with industry practice for a non-distressed  
41 offering of quality real estate that provides at a minimum: (i) commercially standard due  
42 diligence information and access, including, without limitation, information regarding the site  
43 and entitlements; (ii) iterative rounds of bidding by qualified bidders; and (iii) commercially  
44 standard closing conditions and processes.

1           **“Authority”** means the Treasure Island Development Authority and its successors and  
2 assigns.

3  
4           **“Authority Access Easements”** has the meaning set forth in Section 7.3.1.1.

5  
6           **“Authority Closing Documents”** has the meaning set forth in Section 8.3.

7  
8           **“Authority Costs Payment”** means the Authority’s costs paid by Developer in  
9 accordance with the terms of the DDA. Because the Authority will use Marina Revenues to fund  
10 the Authority’s costs, Developer’s obligation under the DDA to pay for the Authority’s costs will  
11 be reduced by Marina Revenues as more particularly described in the DDA.

12  
13           **“Authority Option”** has the meaning set forth in Section 3.8.7.

14  
15           **“Building 233 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

16  
17           **“Building 3 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

18  
19           **“Caretaker Agreement”** has the meaning set forth in the eighth Recital and is set forth  
20 in Exhibit LL.

21  
22           **“CDPH”** means the California Department of Public Health.

23  
24           **“CEQA”** has the meaning set forth in the sixth Recital.

25  
26           **“CERCLA”** means the Comprehensive Environmental Response, Compensation and  
27 Liability Act, 42 U.S.C. § 9601, et seq.

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

30  
31           **“City”** has the meaning set forth in the first Recital.

32  
33           **“Closing”** means the transactions by which the Navy Real Property, or a portion thereof,  
34 is conveyed by Quitclaim Deed by the Navy to the Authority.

35  
36           **“Closing Conditions”** has the meaning set forth in Section 3.7.

37  
38           **“Coast Guard”** has the meaning set forth in Section 9.3.3.

39  
40           **“Coast Guard Installation”** has the meaning set forth in Section 9.3.3.

41  
42           **“Commercial Lot”** has the meaning set forth in Section 5.2.1.

43  
44           **“Conveyance Schedule”** means the schedule for conveyance of the Navy Real Property  
45 to the Authority that is set forth in Exhibit R.

1           **“Credit Commencement Date”** has the meaning set forth in Section 4.2.6

2  
3           **“Critical Commercial Lot”** has the meaning set forth in Section 5.2.1.

4  
5           **“Critical Commercial Lots Payment”** has the meaning set forth in Section 5.2.1.

6  
7           **“DDA”** means the Disposition and Development Agreement entered into by and between  
8 the Authority and the Developer, dated as of June 28, 2011.

9  
10           **“DDA Land Use Plan”** means the Land Use Plan attached to the DDA and hereto as  
11 Exhibit Z-2, as described in the second Recital.

12  
13           **“DDA Reports”** means, collectively, the items set forth in Section 5.9, Section 5.13.2,  
14 and Section 5.13.3.

15  
16           **“Default Interest Rate”** means an interest rate of three hundred (300) basis points above  
17 the Interest Rate.

18  
19           **“Delayed Parcel”** has the meaning set forth in Section 17.5.

20  
21           **“Developed Critical Commercial Lot”** has the meaning set forth in Section 5.2.2.

22  
23           **“Developer”** means Treasure Island Community Development, LLC and its successors  
24 and assigns, or other such entity that is the master developer, and expressly excludes the Marina  
25 Developer.

26  
27           **“Development Agreement”** means the Development Agreement entered into by and  
28 between the Authority and the City, dated as of June 28, 2011.

29  
30           **“Development Costs”** means all Hard Costs, Soft Costs, and Pre-Development Costs,  
31 except to the extent specifically excluded under this Agreement and specifically excluding any  
32 costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

33  
34           **“Developer Lots”** has the meaning set forth in Section 5.3.

35  
36           **“DTSC”** means the California Department of Toxic Substances Control.

37  
38           **“Easement Area”** has the meaning set forth in Section 9.5.

39  
40           **“Easements”** means the interests in real property as set forth in Article 7 and in Section  
41 9.5.

42  
43           **“EBSs”** has the meaning set forth in the third Recital.

44  
45           **“EDC”** has the meaning set forth in the second Recital.

46

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

2  
3           **“EDC Application Property”** has the meaning set forth in the second Recital.

4  
5           **“Effective Date”** has the meaning set forth in the Preamble.

6  
7           **“EIR”** has the meaning set forth in the sixth Recital.

8  
9           **“EIS”** has the meaning set forth in the fifth Recital.

10  
11           **“Entitlements”** means all land use approvals and entitlements, including all conditions  
12 of approval and CEQA mitigation measures legally required by the Authority, City or any other  
13 Regulatory Authority as a condition to the subdivision of the Navy Real Property and  
14 development of the Navy Real Property in accordance with the DDA.

15  
16           **“Environmental Reports”** means the documents included in the CERCLA  
17 administrative record for Treasure Island and Environmental Baseline Surveys (EBSs), FOSTs,  
18 FOSETs, and any agreements pursuant to 10 U.S.C. 2701(d), which documents include Toxic  
19 Substances Control Act 15 U.S.C. § 2601 et seq. documents, radiological materials documents,  
20 petroleum corrective action program documents, any lead-based paint and asbestos surveys  
21 relating to the improvements on the Property and any regulatory order or consent agreement, and  
22 any supporting documents specifically referenced therein.

23  
24           **“Excess Land Appreciation Structure”** has the meaning set forth in Section 5.6.4.

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

38  
39           **“Exempt Transferee”** has the meaning set forth in Section 3.8.7.

40  
41           **“FFSRA”** means Federal Facilities Site Remediation Agreement dated September 29,  
42 1992, as may be amended, between the Navy and the State of California Department of Toxic  
43 Substances Control (“**DTSC**”) and San Francisco Regional Water Quality Control Board  
44 (“**RWQCB**”) setting forth the Navy’s obligations to investigate and remediate sites at the Navy  
45 Real Property subject to the availability of funds and other provisions of the FFSRA. In

1 addition, the FFSRA establishes the terms and conditions for DTSC and RWQCB approved  
2 changes to schedules and penalties for failure to meet environmental remediation schedules.

3  
4 **“Final IRR”** has the meaning set forth in Section 4.3.7.1.

5  
6 **“First Tier Participation”** has the meaning set forth in Section 4.3.1.

7  
8 **“First Tier Payment”** has the meaning set forth in Section 4.3.2.

9  
10 **“FOST”** means a written determination by the Navy that a Parcel may be transferred by  
11 a Quitclaim Deed to the Authority in full compliance with 42 U.S.C. § 9620(h)(3)(A) or §  
12 9620(h)(4) of CERCLA.

13  
14 **“FOST Parcel”** has the meaning set forth in the fourth Recital.

15  
16 **“GAAP”** has the meaning set forth in Section 4.3.6.

17  
18 **“Government”** means the United States of America.

19  
20 **“Government Real Property”** means the real property owned by the United States of  
21 America which includes real property under the jurisdiction, custody or control of the United  
22 States Coast Guard, the United States Department of Labor, and the Federal Highway  
23 Administration, and specifically excludes the real property, easements, rights of access or other  
24 interests under the jurisdiction, custody, or control of the Navy as specified in Section 3.1.1; and  
25 (ii) real property owned by the State of California Department of Transportation.

26  
27 **“Gross Revenues”** means, for any period, all cash revenues received by the Developer  
28 from any source whatsoever, and whether collected through or outside of escrow in connection  
29 with all or any part of the Project, in each case for such period, which shall include, the gross  
30 proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to  
31 Developer as the master landlord under any ground lease or as a property manager under an  
32 interim management agreement with the Authority for existing facilities and open space;  
33 proceeds from the first sale of ground leases or refinancing intended to capitalize ground value;  
34 any damage recoveries, insurance payments or condemnation proceeds payable to the Developer  
35 with respect to the Project to the extent not otherwise used for repair or reconstruction of the  
36 Property, all revenues derived from agreements to which the Developer is a party pursuant to  
37 which the Developer participates in the proceeds of the operation or sale of any portion of the  
38 Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special  
39 tax districts formed for purposes of providing funds for costs associated with the Project, and  
40 amounts paid to Developer from tax increment financing or other public financing, and grants  
41 and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross  
42 Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by  
43 its partners or members or the proceeds of any loan made to the Developer.

44  
45 **“Guidelines for Residential Auction Lot Selection”** has the meaning set forth in  
46 Section 5.5.3.

1  
2       **“Hard Costs”** means Developer’s reasonable out-of-pocket costs actually incurred in  
3 connection with the construction of the Horizontal Improvements (which include, without  
4 limitation, construction of improvements by Developer on the Critical Commercial Lots to the  
5 extent required under the DDA). Hard Costs include, without limitation, necessary permit fees,  
6 bond premiums and similar fees and charges required for the construction of the Horizontal  
7 Improvements.  
8

9       **“Hazardous Substance”** means (A) any substance designated pursuant to section  
10 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated  
11 pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified  
12 under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but  
13 not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.  
14 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under  
15 section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean  
16 Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with  
17 respect to which the Administrator of the Environmental Protection Agency has taken action  
18 pursuant to section 2606 of title 15. The term does not include natural gas, natural gas liquids,  
19 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such  
20 synthetic gas).  
21

22       **“Horizontal Improvements”** means demolition, grading, geotechnical improvements,  
23 environmental investigation, environmental characterization, regulatory agency coordination and  
24 negotiation and environmental remediation for which Developer’s costs are not reimbursed  
25 through an agreement pursuant to 10 U.S.C. 2701(d) or other Navy funds, infrastructure and  
26 utilities, and all other improvements and related costs required to be performed or installed by  
27 Developer pursuant to the terms of the DDA, including but not limited to, the preparation of land  
28 for vertical development, public service and community improvements, transportation program  
29 improvements and subsidies, stormwater management controls, facilities and equipment, open  
30 space and parks improvements and maintenance, rehabilitation of historic buildings, affordable  
31 housing program and transition housing improvements.  
32

33       **“Infrastructure Financing District”** means an Infrastructure Financing District formed  
34 in accordance with the Infrastructure Financing District Act (California Government Code  
35 Section 53395 et seq.), as amended from time to time.  
36

37       **“Initial Closing”** means the date on which the first conveyance of all or any of the FOST  
38 Parcel by Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3  
39 hereof.  
40

41       **“Initial Consideration”** has the meaning set forth in Section 4.1.  
42

43       **“Initial Consideration Term”** has the meaning set forth in Section 4.1.  
44

45       **“Installment Payment”** has the meaning set forth in Section 4.2.1.  
46

1           **“Interest Rate”** means an annual interest rate of [REDACTED] %, which equals the interest rate  
2 payable on ten year (10) Treasury Notes in effect as of the date that this Agreement is entered  
3 into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for the  
4 duration of this Agreement.  
5

6           **“IRR”** means the internal rate of return, annualized, calculated on the Project’s Net Cash  
7 Flow by the Excel 2007 “IRR” function using quarterly Net Cash Flows. The Project’s Net Cash  
8 Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the  
9 quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An  
10 example of the IRR calculation is attached hereto as Exhibit DD.  
11

12           **“IRR Statement”** has the meaning set forth in Section 4.3.2.  
13

14           **“JV Lots”** has the meaning set forth in Section 5.3.  
15

16           **“Key Infrastructure”** has the meaning set forth in Section 9.5.  
17

18           **“Land Use Covenant”** means that certain land use covenant(s) entitled “Covenant to  
19 Restrict Use of Property; Environmental Restrictions” regarding environmental restrictions,  
20 entered into by the Authority and the State of California Department of Toxic Substances  
21 Control, that may be executed for a given Parcel.  
22

23           **“Late Payment”** has the meaning set forth in Section 4.3.4.  
24

25           **“LBP”** has the meaning set forth in Section 17.3.  
26

27           **“LIFO”** has the meaning set forth in Section 3.8.1.  
28

29           **“Litigation Excusable Delay”** means any action or proceeding before any court,  
30 tribunal, or other judicial, adjudicative or legislative decision-making body, including any  
31 administrative appeal, brought by plaintiffs unaffiliated with the Party claiming the benefit of  
32 Excusable Delay which both (1) (x) seeks to challenge the validity of any action taken by the  
33 Party claiming the benefit of Excusable Delay, including the Party’s approval, execution, and  
34 delivery of this Agreement and its performance hereunder, or the performance of any action  
35 required or permitted to be performed by the Party hereunder, or (y) seeks to challenge the  
36 failure of any Regulatory Authority to issue, the conditions of, or the validity of any other permit  
37 required to conduct the Party’s obligations under this Agreement, and (2) is reasonably likely to  
38 prevent the Parties from timely performing its obligations under this Agreement. Performance  
39 by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation  
40 Excusable Delay during the pendency thereof, and until a judgment, order, or other decision  
41 resolving such matter in favor of the Party whose performance is delayed has become final and  
42 unappealable. The Parties shall each proceed with due diligence and shall cooperate with one  
43 another to defend the action or proceeding or take other measures to resolve the dispute that is  
44 the subject of such action or proceeding.  
45



1           **“Lots”** means a building site to be prepared by Developer and conveyed for  
2 consideration to a third party or Developer affiliate pursuant to the terms of the DDA, including,  
3 without limitation, the Commercial Lots.  
4

5           **“Major Phase”** means each Major Phase of development identified in the phasing plan  
6 attached to the DDA.  
7

8           **“Major Phase Decision Notice”** has the meaning set forth in Section 5.7.1.  
9

10          **“Major Phase Decisions”** has the meaning set forth in Section 5.6.  
11

12          **“Marina Developer”** means Treasure Island Enterprises, LLC, its successors and  
13 assigns, or such other entity that is the master tenant and developer of the Treasure Island  
14 Marina.  
15

16          **“Marina Project”** means the redevelopment and operation of the Treasure Island Marina  
17 in accordance with a Lease Disposition and Development Agreement and a Ground Lease  
18 between the Authority and the Marina Developer.  
19

20          **“Marina Property”** means the property described in Exhibit F attached hereto which  
21 will be used for the Marina Project.  
22

23          **“Marina Revenues”** means minimum rent, percentage rent and any proceeds from  
24 refinancings, sales or subleases for the Marina Project that are actually received by the Authority  
25 under the terms of the Marina Ground Lease and/or the Marina Lease Disposition and  
26 Development Agreement. Marina Revenues shall not include the amount of any rent credits that  
27 the Marina Developer is entitled to receive under the terms of the Marina Ground Lease.  
28

29          **“Market Rate Lots”** has the meaning set forth in Section 5.3.  
30

31          **“Market Rate Units”** has the meaning set forth in Section 5.3.  
32

33          **“Multiple Conveyances”** means a series of Partial Conveyances.  
34

35          **“Navy”** has the meaning set forth in the Preamble.  
36

37          **“Navy Access Easements”** has the meaning set forth in Section 7.3.1.2.  
38

39          **“Navy Closing Documents”** has the meaning set forth in Section 8.2.  
40

41          **“Navy Office”** has the meaning set forth in Section 13.1.  
42

43          **“Navy Office Provisions”** has the meaning set forth in Section 13.1 and is attached as  
44 Exhibit K-2.  
45

46          **“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”** has the meaning set forth in Section 3.1.1, and specifically  
6 excludes the real property, easements, rights of access or other interests under the jurisdiction,  
7 custody, and control of the United States Coast Guard, the United States Department of Labor,  
8 the Federal Highway Administration, and the California Department of Transportation.

9  
10       **“Navy Real Property Documents”** has the meaning set forth in Section 12.1.

11  
12       **“Navy Reserved Access Easement”** has the meaning set forth in Section 7.3.1.2.

13  
14       **“NEPA”** has the meaning set forth in the fifth Recital.

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

17  
18       **“Net Available Tax Increment Revenues”** has the meaning set forth in Section 4.2.7.2.

19  
20       **“Net Cash Flow”** means Gross Revenues received by the Developer from the Project  
21 less Development Costs paid by the Developer.

22  
23       **“Non-Assignable Easements, Contracts and Permits”** has the meaning set forth in  
24 Section 3.6.

25  
26       **“Non-Critical Commercial Lot”** has the meaning set forth in Section 5.2.1.

27  
28       **“Non-Developer Critical Commercial Lot”** has the meaning set forth in Section 5.2.2.

29  
30       **“Open Space Acres”** means those portions of the Navy Real Property identified in the  
31 DDA Land Use Plan as ‘Open Space’ or ‘Public Services, Civic, Institutional’, consisting of  
32 approximately 300 acres.

33  
34       **“Option Notice”** has the meaning set forth in Section 3.8.7.

35  
36       **“Option Property”** has the meaning set forth in Section 3.8.7.

37  
38       **“Owner Property”** has the meaning set forth in Section 7.3.1.3.3.

39  
40       **“Parcel”** or **“Parcels”** has the meaning set forth in the fourth Recital.

41  
42       **“Parcel 9.b”** means that property identified on Exhibit B-4 attached hereto.

43  
44       **“Parcel 21 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

45  
46       **“Parcel 24A Performance Benchmark”** has the meaning set forth in Section 4.2.3.

1  
2       **“Parcel 30 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

3  
4       **“Parcel 30N Performance Benchmark”** has the meaning set forth in Section 4.2.3.

5  
6       **“Parcel 30S Performance Benchmark”** has the meaning set forth in Section 4.2.3.

7  
8       **“Parcel 31 Performance Benchmark”** has the meaning set forth in Section 4.2.3.

9  
10       **“Partial Conveyance”** means a conveyance by deed from the Navy to the Authority of  
11 any number of Parcels comprising less than the entire Navy Real Property.

12  
13       **“Party”** or **“Parties”** has the meaning set forth in the Preamble.

14  
15       **“Permissible Financing Costs”** means debt service and required reserves for Mello-  
16 Roos Bonds that are not withheld in such Mello-Roos Bonds issuances; and debt service and all  
17 other related financing costs, including, without limitation, bond issuance costs and fees, legal  
18 fees, and bond marketing costs, actually incurred and paid by Developer to pay for certain public  
19 facilities to be constructed on the Property, including a fire/police station and public parking  
20 garages, to the extent financed using public finance vehicles such as certificates of participation  
21 or revenue bonds.

22  
23       **“Pre-Approved Arbiters List”** has the meaning set forth in Section 27.3.1.

24  
25       **“Pre-Closing Obligations”** has the meaning set forth in Section 21.1.

26  
27       **“Pre-Development Costs”** means reasonable costs actually incurred and paid and  
28 directly related to the development, Entitlement, acquisition and implementation of the Project  
29 incurred by Developer between the execution of the Exclusive Negotiating Agreement between  
30 Authority and Developer and the Initial Closing, including architectural, engineering,  
31 environmental, consultant, community outreach, legal and other professional fees; real property  
32 taxes and assessments; insurance expenses; title and survey, sales and marketing expenses;  
33 project management costs, security and site maintenance; fees and charges for bonds and  
34 permits; and City cost reimbursements. The following shall not constitute “Pre-Development  
35 Costs”: (1) Repayment of the principal, fees and interest of any loan or other expense that is not  
36 also a Permissible Financing Cost; or (2) distributions, preferred return or other capital return to  
37 the members of the Developer. Pre-Development Costs also include a compound return on all  
38 such costs equal to 20% per annum. An example of the calculation of Pre-Development Costs  
39 incurred prior to the Initial Closing is attached hereto as Exhibit KK.

40  
41       **“Product Types”** has the meaning set forth in Section 5.5.2.

42  
43       **“Project”** means the mixed use development more particularly described in the DDA,  
44 and expressly excludes the Marina Project.

45  
46       **“Property”** means, collectively, the Government Real Property and the Navy Property.

1  
2       **“Qualified Appraiser Pool”** has the meaning set forth in Section 5.4.1.

3  
4       **“Quarter”** means a three-month period commencing on the first day of the Initial  
5 Closing and continuing until the Termination Date hereof.

6  
7       **“Quitclaim Deed(s)”** means those certain recordable quitclaim deeds conveying the  
8 Navy’s right, title, and interest to the Navy Real Property to the Authority, substantially in the  
9 form attached hereto and made a part hereof as Exhibit D.

10  
11       **“RACR”** has the meaning set forth in Section 3.7.1.4.

12  
13       **“Redesign Budget”** has the meaning set forth in Section 4.2.5.

14  
15       **“Redesign Costs”** has the meaning set forth in Section 4.2.5.

16  
17       **“Redesign Plan”** has the meaning set forth in Section 4.2.4.

18  
19       **“Redesign Trigger Event”** has the meaning set forth in Section 4.2.4.

20  
21       **“Regulatory Authority”** means any governmental agency having regulatory jurisdiction  
22 over the Property to issue any required authorization, approval or permit.

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

34  
35       **“Remainder Parcel”** has the meaning set forth in the fourth Recital.

36  
37       **“Reporting Period”** has the meaning set forth in Section 4.3.2.

38  
39       **“Re-Setting of the Minimum Bid Price”** has the meaning set forth in Section 5.5.

40  
41       **“Residential Auction Lots”** has the meaning set forth in Section 5.3.

42  
43       **“Reuse Plan”** has the meaning set forth in the second Recital.

44  
45       **“SEBS”** has the meaning set forth in the third Recital.

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

2  
3           **“Second Tier Payment”** has the meaning set forth in Section 4.3.3.

4  
5           **“Site 12 Development Parcel”** has the meaning set forth in Section 4.2.2.

6  
7           **“Site 12 Performance Benchmark”** has the meaning set forth in Section 4.2.2.

8  
9           **“Site 12 ROD”** has the meaning set forth in Section 4.2.2.1.

10  
11           **“SHPO”** has the meaning set forth in the seventh Recital.

12  
13           **“Soft Costs”** means Developer’s reasonable out-of-pocket costs actually incurred and  
14 paid on or after the Initial Closing (except as otherwise provided below or in Section 5.13) and  
15 attributable to the following: designing the Horizontal Improvements and improvements on the  
16 Critical Commercial Lots; marketing and selling the Lots, including Auction costs; Entitlements;  
17 architectural, engineering, consultants, community outreach, attorney and other professional  
18 fees; real property taxes and assessments; Permissible Financing Costs; 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; Authority Costs Payments;  
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 Critical Commercial Lots, development of the parks and open  
25 space, and public art; any Initial Consideration, including interest payments on the Initial  
26 Consideration, any First Tier Payment, any Second Tier Payment, and expenses incurred by  
27 Developer related to management of existing facilities and open space under a management  
28 agreement with the Authority. Without limiting the foregoing, the following shall not constitute  
29 “Soft Costs”: (1) repayment of the principal and interest, fees or costs of any loan, investment or  
30 financing other than Permissible Financing Costs; and (2) distributions, preferred return or other  
31 capital return to the members of Developer; and (3) costs and fees related to compliance and  
32 reporting to lenders other than those required for any financing allowed under Permissible  
33 Financing Costs.

34  
35           **“Subordinate Pledge”** has the meaning set forth in Section 4.2.6.

36  
37           **“Sub-Phase”** means each Sub-Phase of development as identified in the phasing plan  
38 attached as an exhibit to the DDA.

39  
40           **“Term”** means the term of this Agreement, commencing on the Effective Date and  
41 expiring on the Termination Date unless terminated earlier as otherwise provided for herein.

42  
43           **“Termination Date”** means the date twenty five (25) years from the Initial Closing or as  
44 adjusted by mutual agreement of all Parties based on the annually updated pro forma.

45  
46           **“Third Party Access Easement”** has the meaning set forth in Section 7.3.1.2.

1  
2           **“Title Company”** means such title insurance company as the Authority shall from time  
3 to time designate.

4  
5           **“Tolling Event”** has the meaning set forth in Section 4.2.3.

6  
7           **“Treasure Island”** has the meaning set forth in the first Recital.

8  
9           **“UC1 Utility Corridor Performance Benchmark”** has the meaning set forth in Section  
10 4.2.3.

11  
12           **“UC2 Utility Corridor Performance Benchmark”** has the meaning set forth in Section  
13 4.2.3.

14  
15           **“Unperfected Easements, Contracts and Permits”** has the meaning set forth in Section  
16 3.6.

17  
18           **“Utilities Agreement”** has the meaning set forth in Section 9.1.

19  
20           **“Utility Easements”** has the meaning set forth in Section 7.3.2.

21  
22           **“Utility Infrastructure”** means all utilities and related support infrastructure located on  
23 and off the Navy Real Property that are assignable or transferable by the Navy such as electrical,  
24 water, sewer, gas, and storm drainage lines to be transferred to the Authority under this  
25 Agreement pursuant to the terms and conditions set forth in a Bill of Sale in the form attached  
26 hereto and made a part hereof as Exhibit H-2 or the Quitclaim Deeds substantially in the form  
27 attached hereto and made a part hereof as Exhibit D.

28  
29           **“Vertical Builder”** means the successor owner of a Lot pursuant to a transfer permitted  
30 under the DDA who is building Vertical Improvements.

31  
32           **“Vertical DDA”** means a disposition and development agreement entered into among the  
33 Authority, Developer and a Vertical Builder in accordance with the DDA relating to the  
34 construction of Vertical Improvements.

35  
36           **“Vertical Improvements”** means buildings and structures that are not part of the  
37 Horizontal Improvements constructed on Lots transferred to a Vertical Builder.

38  
39           **“Work Program”** has the meaning set forth in Section 4.2.5.