

### Agreement Regarding Sculpture Foundation

This Agreement Regarding Sculpture Foundation (this “**Agreement**”), dated for reference purposes as of November 16, 2022, is by and between TREASURE ISLAND SERIES 1, LLC, a Delaware limited liability company (“**TIS1**”), and THE CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation (“**City**”), acting by and through its San Francisco Arts Commission (“**SFAC**”) and the Treasure Island Development Authority (“**TIDA**”).

#### Recitals

A. TIS1 has engaged or shall engage a Contractor (as defined in Section 1 below) to perform work for the development of the hilltop park at Yerba Buena Island (the “**Hilltop Park**”), subject to the terms and requirements of that certain Disposition and Development Agreement (Treasure Island/Yerba Buena Island) between TIDA and Treasure Island Community Development, LLC, a California limited liability company (“**Master Developer**”), dated for reference purposes as of June 28, 2011 (as amended, the “**DDA**”). TIS1 has assumed certain rights and obligations of Master Developer under the DDA as it relates to Hilltop Park.

B. Hiroshi Sugimoto (“**Artist**”) has designed an original sculptural work entitled “Point of Infinity” for the Hilltop Park (the “**Sculpture**”), a 66-foot tall sculpture comprised of glass fiber reinforced concrete and stainless steel that functions as a monumental sundial - the tip will cast a shadow on a large stone, to be placed nearby, during the vernal and autumnal equinoxes as depicted on **Exhibit A** attached hereto and incorporated herein by this reference.

C. TIS1 agrees to enter into and manage a construction contract with Contractor for the installation of a foundation for the Sculpture at the Hilltop Park, in connection with its work on the Treasure Island development project under the DDA (the “**Development**”), on the terms and conditions set forth below.

#### Agreement

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. SCOPE OF WORK.

a. TIS1 shall engage Jensen Landscape Contractor, or another licensed general contractor reasonably approved by SFAC (the “**Contractor**”), using an AIA Document A104 – 2017, Standard Abbreviated Form of Agreement Between Owner and Contractor (as modified by TIS1) (“**Construction Contract**”), to construct the Sculpture’s foundation, structural slab and related architectural gravel and drainage (“**Sculpture Work**”), which Construction Contract shall provide payment to the Contractor on the basis of a stipulated sum not to exceed Two Hundred Seventy Four Thousand and Seventy Six Dollars (\$274,076) (the “**CC Price**”), which includes a contingency of \$24,916. The Sculpture Work is more particularly described on **Exhibit B** attached hereto and incorporated herein by this reference. The Construction Contract, any material change to the Construction Contract and any increase to the CC Price, shall be approved by SFAC in advance, which approval shall not be unreasonably withheld, conditioned or delayed.

b. TIS1 will incorporate the construction requirements of the DDA into the Construction Contract, including the payment of prevailing wages and the hiring and nondiscrimination requirements, and otherwise implement and oversee the Construction Contract in the same manner as the

other construction work being performed by TIS1 under the DDA, subject to the specific terms and revisions set forth in this Agreement. The parties (i) do not intend to make the Sculpture Work a part of the Infrastructure under the DDA, and (ii) acknowledge that the Sculpture Work is additional and will be paid for by SFAC as set forth below; provided, however, the parties intend to incorporate the construction requirements and procedures and exemptions from the DDA into this Agreement for the benefit of both TIS1 and SFAC.

c. The Sculpture Work will be subject to the permitting requirements of the City's Department of Public Works ("PW"). Inspections specified by the Engineer of Record for the Sculpture Work will be coordinated by the Contractor or TIS1; provided, any separate fees payable to PW for these inspections will be paid for by SFAC.

d. TIS1 will not be responsible for any defective or negligent work performed by the Contractor in connection with the Sculpture Work, but TIS1 will inspect the Sculpture Work during construction in the same manner as other work performed for the development of the Hilltop Park, and will promptly notify SFAC and the Contractor if it becomes aware of any defective work or other problem relating to the Construction Contract or the Sculpture Work. Upon request, TIS1 will also provide updates to SFAC on the status of the Sculpture Work and the Construction Contract. The Construction Contract will include language granting or assigning to SFAC the right to make claims directly against the Contractor for defective work and related matters, and the parties agree to reasonably cooperate in good faith on any such claims at no cost to TIS1. The Construction Contract will also expand the indemnification clause so that it names the City and TIDA as indemnified parties in all instances, in addition to any indemnification of TIS1. SFAC waives and releases, and agrees to indemnify, protect, defend and hold harmless, TIS1 and the Indemnified Parties (as defined below), from any and all claims caused by, resulting from or related to the Sculpture Work performed by Contractor; provided, however, the foregoing release, waiver and indemnity shall not apply to any claims resulting from the negligence, willful misconduct or breach of this Agreement by TIS1. As used herein, the term "**Indemnified Parties**" shall mean and refer to the following: (i) Treasure Island Community Development, LLC, a California limited liability company; Treasure Island Development Group, LLC, a Delaware limited liability company; Treasure Island Series 2, LLC, a Delaware limited liability company; Treasure Island Holdings, LLC, a Delaware limited liability company; Lennar Homes of California, Inc.; Lennar Corporation; KSWM Treasure Island, LLC, a California limited liability company; Stockbridge TI Co-Investors, LLC, a Delaware limited liability company; U.S. Home Corporation; Kenwood Investments, LLC; WMS Treasure Island Development I, LLC; Stockbridge Treasure Island Investment Company, LLC; Stockbridge Real Estate Partners II, LLC; Stockbridge Real Estate Fund II-A, LP; Stockbridge Real Estate Fund II-B, LP; Stockbridge Real Estate Fund II-C, LP; Stockbridge Real Estate Fund II-D, LP; Stockbridge Real Estate Fund II-E, LP; Stockbridge Real Estate Fund II-B-E1, LP; Stockbridge Fund E Holdings, LLC; Stockbridge Real Estate Fund II-T, LP; and all of such persons' parent companies, subsidiaries, affiliates, successors and assigns (including in the event of a partial assignment of this Agreement, both assignor and assignee), representatives, partners, stockholders, designees, officers, directors, managers, members, agents, attorneys, and employees and their respective heirs, executors, administrators; and (ii) the following Lender Parties: Treasure Island Development Fund I, LLC; Treasure Island Development Fund 2, LLC; and any other lender to the Indemnified Parties for work relating to the Hilltop Park.

## 2. PAYMENT TERMS.

a. SFAC shall be responsible for all costs and expenses payable by TIS1 under the Construction Contract, without markup, but excluding any costs resulting from TIS1's breach of the Construction Contract or this Agreement ("**TIS1 Costs**"). Before making payments under the Construction Contract, TIS1 shall provide to SFAC a copy of the application for payment, applicable lien releases, a notice of the proposed payment amount and any relevant backup, together with a statement confirming that

the work covered by the proposed payment was completed by the Contractor (each, a “**Payment Notice**”). SFAC will approve the Payment Notice or state any reasonable objection to the Payment Notice (with an explanation of the reasonable objection) within ten (10) business days following SFAC’s receipt of Payment Notice. SFAC’s failure to respond to the Payment Notice within ten (10) business days following receipt will be deemed an approval of the Payment Notice. Each party will be responsible for any delay costs due under the Construction Contract that are caused by that party (i.e., for TIS1, failure to submit Payment Notices on time or failure to pay to Contractor approved Payment Notices on time, and for SFAC, failure to approve or object to a Payment Notice within ten (10) business days following receipt as set forth above). Upon completion of the Sculpture Work and approval or deemed approval by SFAC of the final Payment Notice, SFAC will be deemed to have accepted the Sculpture Work and TIDA, as owner of the land, will own the foundation. Upon request, TIS1 will sign a quitclaim or other instrument to evidence TIDA’s ownership of the foundation.

b. Within ten (10) business days following the execution of this Agreement, SFAC shall deposit to TIS1(Supplier #0000049260) the full CC Price (the “**SW Deposit**”). In connection with any change order that increases the CC Price, SFAC shall deposit with TIS1, within ten (10) business days following SFAC’s approval of the change order, the additional funds required to cover the increased CC Price, which shall be held by TIS1 as part of the SW Deposit. TIS1 shall hold the SW Deposit for distribution as provided herein. TIS1 shall make all payments due to Contractor under the terms of the Construction Contract on a timely basis following the approval (or deemed approval) of a Payment Notice from the SW Deposit. Within ten (10) business days following the completion of the Sculpture Work and the payment to Contractor of all amounts due to Contractor under the Construction Contract, TIS1 shall return to SFAC any unused portion of the SW Deposit.

3. **SFAC APPROVAL RIGHTS.** In connection with the Sculpture Work and the Construction Contract, SFAC shall have approval rights with respect to the following matters: (a) drawings, plans and specification for the Sculpture Work; (b) applications for payment (as noted in Section 2 above); (c) the use of contingency funds before payment of these funds under the Construction Contract; (d) the scope and amount of all change orders before execution of each change order; (e) the schedule for the Sculpture Work (stages, milestones and timing) and any liquidated damages assessed against the Contractor; and (f) any punch list items and the final determination that the Sculpture Work has been finally completed. SFAC shall not unreasonably withhold, condition or delay its approval to any of the foregoing matters. If SFAC fails to timely approve or reasonably object to any such matters within 10 business days, TIS1 shall have the right to do so (and SFAC shall be responsible for any delay caused thereby). In addition, SFAC shall have the right, on a good faith and commercially reasonable basis, to suspend the Sculpture Work and terminate the Construction Contract for cause and convenience; provided, however, SFAC shall be responsible for any delay caused thereby and for any costs incurred by TIS1 under the Construction Contract in connection with such suspension or termination.

4. **INSURANCE.** Contractor will be responsible for obtaining and maintaining customary insurance required by TIS1 of its contractors; provided, however, if SFAC reasonably requests additional insurance, SFAC shall either obtain such policy or shall be responsible for any additional cost charged by Contractor for such insurance; provided, further, any such increase will be included as a requirement under the Construction Contract. Upon SFAC’s request prior to the execution of the Construction Contract (and provided that TIS1 is not otherwise obtaining such insurance as part of its insurance for the Development), the Construction Contract will require Contractor to obtain, at SFAC’s cost, (1) insurance for any damage to the Sculpture which may occur following installation of the Sculpture during completion of the Sculpture Work, and (2) builder’s risk insurance for the Sculpture Work (or for the reasonable and equitable share attributable to the Sculpture Work of the cost of such builder’s risk insurance obtained by TIS1 for the Development).

5. **NOTICES.** Any notices for payment or request approvals under this Agreement shall be effective only if in writing and given by email, with a return receipt required, addressed as follows; any notice of default must be delivered both by email and by personal delivery or by certified mail with a return receipt requested, postage prepaid, or overnight courier; provided, further, any email delivered on a non-business day or after 5:30 p.m. Pacific time on a business day, shall be deemed to have been delivered on the next occurring business day:

TIS1: Treasure Island Series 1, LLC  
2603 Camino Ramon, Ste. 525  
San Ramon, CA 94583  
Attn: Jing Ng and Levi Conover  
[Jing.Ng@tidgsf.com](mailto:Jing.Ng@tidgsf.com); [levi.conover@tidgsf.com](mailto:levi.conover@tidgsf.com)

SFAC: Mary Chou  
Senior Program Manager, Public Art  
San Francisco Arts Commission  
401 Van Ness Avenue, Ste. 325  
San Francisco, CA 94102  
[Mary.chou@sfgov.org](mailto:Mary.chou@sfgov.org)

with a copy to: Robert Beck, TI Director  
Treasure Island Development Authority  
Administration Building  
One Avenue of Palms, Treasure Island  
San Francisco, CA 94130  
[bob.beck@sfgov.org](mailto:bob.beck@sfgov.org)

Notices herein shall be deemed given upon the date of the return receipt either from email or certified mail, or the date of personal delivery. Any party may change its address for notices by delivering a notice in the manner set forth above.

6. **DISPUTES.**

a. Any dispute between TIS1 and the City and/or SFAC relating to this Agreement shall be resolved in the same manner as any dispute relating to construction under the DDA (with TIS1 as Master Developer and SFAC as the Authority), provided (i) either party shall be entitled to actual damages (not special or punitive) following a default by the other party under this Agreement, and (ii) a default under this Agreement shall not be deemed a default under the DDA.

b. If TIS1 is involved in or becomes involved in litigation, arbitration, or another alternative dispute resolution procedure (“ADR”) with a third party relating to this Agreement or the work performed under this Agreement and TIS1 or any other party joins the City and/or SFAC as a party to such litigation, arbitration, or other ADR, then the disputes between TIS1 and the City and/or SFAC relative to the claims involved in such litigation, arbitration, or other ADR shall be resolved in such litigation, arbitration, or other ADR. In the event that TIS1 is required, by law or by contract, to resolve a dispute with a third party in litigation, arbitration or other ADR, the City and/or SFAC agrees to participate in and be bound by such procedure.

c. Pending final resolution of a dispute, except as otherwise agreed in writing, the parties shall proceed diligently with performance of the terms of this Agreement.

7. MISCELLANEOUS.

a. TIS1 and SFAC shall cooperate with each other and such party’s respective consultants, architects, engineers, contractors, subcontractors, suppliers, and others involved with or impacted by the Sculpture Work, and shall use their commercially reasonable efforts to maintain a positive working relationship with each other.

b. Nothing herein shall be construed as creating a joint venture or partnership between TIS1 and the City or SFAC (and all such parties remaining as independent contractors in connection with the Sculpture Work) and each party shall remain solely responsible for its own personnel in connection herewith. Except as expressly set forth herein, in no event shall SFAC be authorized on behalf of TIS1 to: (a) enter into any agreements; (b) waive any provisions or receive or accept notice under any contract on behalf of TIS1; (c) authorize any payments or accept or approve any documents, work, services, goods, or materials that result in a change to any contract, or (d) act as or be an agent or employee of TIS1.

c. This Agreement supersedes all prior discussions between and documents exchanged by the parties. This Agreement may be amended or modified only by a writing signed by City and TIS1.

d. This Agreement shall be governed by the laws of the State of California without regard to choice of law principles.

e. This Agreement may be executed in counterparts with the same effect as if all parties hereto had executed the same document. All counterparts shall be construed together and shall constitute a single document. Any party may deliver its signature to this Agreement by facsimile or electronic mail and any party that receives an executed signature page from another party by facsimile or electronic mail may rely upon said signature as if it was a signed original.

f. No waiver by any party of any of the provisions of this Agreement shall be effective unless in writing and signed by an officer of other authorized representative, and only to the extent expressly provided in such written waiver.

g. Time is of the essence.

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

**TIS1:**

TREASURE ISLAND SERIES 1, LLC, a Delaware limited liability company

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

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

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

**SFAC:**

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation,  
acting by and through the San Francisco Arts Commission

By: \_\_\_\_\_  
Ralph Remington, Director of Cultural Affairs

**TIDA:**

TREASURE ISLAND DEVELOPMENT AUTHORITY, a  
California nonprofit public benefit corporation

By: \_\_\_\_\_  
Robert Beck, Treasure Island Director

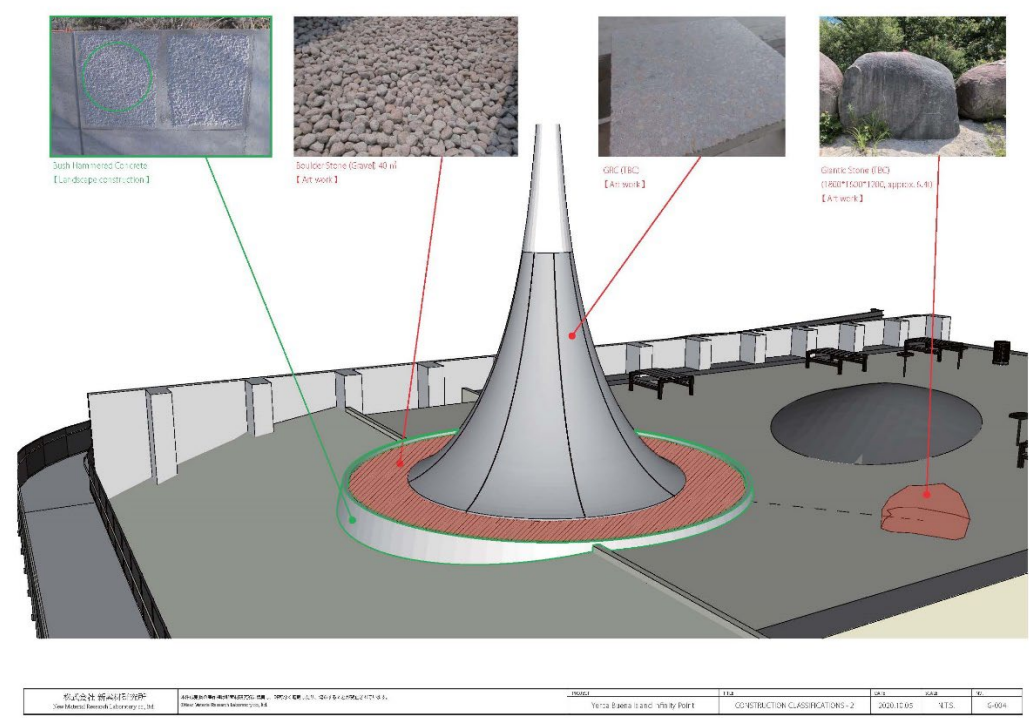
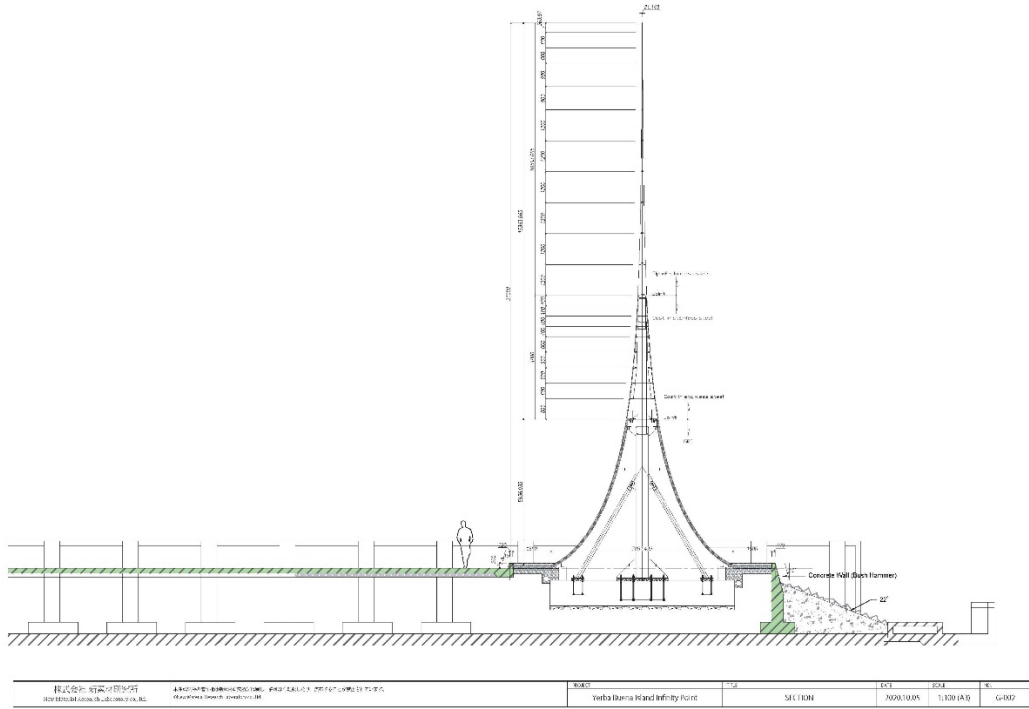
APPROVED AS TO FORM:

DAVID CHIU, City Attorney

By: \_\_\_\_\_  
Charles Sullivan, Deputy City Attorney

**EXHIBIT A**

Depiction of Sculpture



**EXHIBIT B**

Scope of Sculpture Work

[Attached]