(1)

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City Hall, Room 234
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San Francisco, California 94102
Attention: Treasure Island Project Director

CTC Accom #20110000-TK
Treasure Island / Yerba Buena Island
APN Blk. 1939 Lots 1 and 2

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Phil Ting, Assessor-Recorder
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DISPOSITION AND DEVELOPMENT AGREEMENT

(TREASURE ISLAND/YERBA BUENA ISLAND)

by and between

TREASURE ISLAND DEVELOPMENT AUTHORITY,
a California non-profit public benefit corporation

and

TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,
a California limited liability company

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LIST OF EXHIBITS

Exhibits highlighted in grey will be attached to DDA upon agreement of the parties in accordance with terms of Section 28.38 the DDA. The Infrastructure Plan (Exhibit FF) and the Parks and Open Space Plan (Exhibit GG) are not included in the recorded version of the DDA, but such Exhibits shall be kept on file with the Authority and available to the public in accordance with Section 28.35 of the DDA.

Exhibit	Description
Ex. A	Definitions
Ex. B-1	The Project Site/Excluded Properties (Map showing NSTI and Excluded Properties (job corps, coast guard and Caltrans))
Ex. B-2	Legal Description of Project Site
Ex. C	Project MMRP
Ex. D	The Land Use Plan
Ex. E	The Housing Plan
Ex. F	The Community Facilities Obligations
Ex. G:	The Public Property
Ex. H	Approved Vertical DDA Form
Ex. I	Approved Vertical LDDA Form
Ex. J	Intentionally Omitted
Ex. K	Intentionally Omitted
Ex. L	Site 12 Redesign Site
Ex. M	Ground Lease
Ex. N	Transportation Plan Obligations
Ex. O	Sustainability Obligations
Ex. P	Treasure Island Jobs and Equal Opportunity Policy
Ex. Q	Pre-Approved Arbiters List
Ex. R	Reversionary Quitclaim Deed
Ex. S	Summary Proforma
Ex. T	Auction Bidder Selection Guidelines for Commercial Lots
Ex. U	Qualified Appraisal Pool
Ex. V-1	Appraisal Instructions (Non-Critical Commercial Lots)
Ex. V-2	Appraisal Instructions (Residential Lots)
Ex. W	Auction Bidder Selection Guidelines for Residential Auction Lots
Ex. X	Guidelines for Residential Auction Lot Selection
Ex. Y-1	Form of Guaranty (Base Security)
Ex. Y-2	Form of Guaranty (Adequate Security other than Base Security)
Ex. Z	Architect's Certificate
Ex. AA	Authority Quitclaim Deed
Ex. BB	Certificate of Completion
Ex. CC	DRDAP
Ex. DD	Engineer's Certificate
Ex. EE	Financing Plan

Ex. FF	Infrastructure Plan
Ex. GG	Parks and Open Space Plan
Ex. HH	Permit to Enter
Ex. II	Phasing Plan
Ex. JJ	Schedule of Performance

LIST OF ATTACHMENTS

The Attachments are not included in the recorded version of the DDA, but such Attachments shall be kept on file with the Authority and available to the public in accordance with Section 28.35 of the DDA.

Att. 1	Form of Public Trust Exchange Agreement
Att. 2	Form of Navy Economic Development Conveyance Memorandum of Agreement

DISPOSITION AND DEVELOPMENT AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND)

This DISPOSITION AND DEVELOPMENT AGREEMENT (TREASURE ISLAND/YERBA BUENA ISLAND) (including all Exhibits and Attachments as amended from time to time, this "**DDA**" or this "**Agreement**") dated for reference purposes only as of June 28, 2011 (the "**Reference Date**"), is made by and between Developer and the Authority. The terms defined in Exhibit A that are used in this DDA have the meanings given to them in Exhibit A.

RECITALS

Developer and the Authority enter into this DDA with reference to the following facts and circumstances:

Overview

A. Naval Station Treasure Island ("**NSTI**") is a former United States Navy base located in the City and County of San Francisco ("**City**"), that consists of the following two islands connected by a causeway: (1) Treasure Island, comprised of approximately 409 acres of level filled land, and (2) an approximately 90 acre portion of Yerba Buena Island, a natural rock outcropping, steeply sloped and highly vegetated, with elevations rising to over 300 feet above the water. NSTI also includes approximately 316 acres of unfilled tidal and submerged lands lying adjacent to Treasure Island in San Francisco Bay and approximately 234 acres of unfilled tidal and submerged lands lying adjacent to Yerba Buena Island in San Francisco Bay (the "**Submerged Lands**").

B. The land within NSTI that is the subject of this Agreement is shown on Exhibit B-1, attached hereto, and more particularly described in Exhibit B-2, attached hereto (the "**Project Site**"). For purposes of this Agreement, the term "NSTI" excludes the portions of NSTI that are occupied by the United States Department of Labor Jobs Corps, the United States Coast Guard and the California Department of Transportation (collectively, the "**Excluded Properties**"). The Excluded Properties are also shown on Exhibit B-1, attached hereto.

C. During World War II, NSTI was used as a center for receiving, training, and dispatching service personnel. After the war, NSTI was used primarily as a naval training and administrative center. In 1993, Congress and the President selected NSTI for closure and disposition by the Base Realignment and Closure Commission acting under Public Law 101-510, 10 U.S.C. §2687 and its subsequent amendments. The Department of Defense subsequently designated the City, and later the Authority, as the Local Reuse Authority ("**LRA**") responsible for the conversion of NSTI under the federal disposition process.

D. In 1994, a Citizen's Reuse Committee ("**CRC**"), representing a broad spectrum of community interests, was formed to (1) review reuse planning efforts for NSTI by

the San Francisco Planning Department and the San Francisco Redevelopment Agency, and (2) make recommendations to the City's Planning Commission and Board of Supervisors.

E. In July 1996, after an extensive community planning effort, the City's Mayor, Board of Supervisors, Planning Commission and the CRC unanimously endorsed the Draft Reuse Plan (the "**Reuse Plan**") for NSTI. The Reuse Plan served as the basis for the preliminary redevelopment plan for NSTI. Since adoption of the Reuse Plan, the Authority has undertaken an extensive public process to further refine the land use plan for NSTI.

F. In 1996, the City negotiated the Base Closure Homeless Assistance Agreement (the "**Original TIHDI Agreement**") with the Treasure Island Homeless Development Initiative, a California non-profit corporation ("**TIHDI**"), which represents a number of non-profit member organizations. TIHDI was formed in 1994 to develop the homeless component of the Reuse Plan. The Original TIHDI Agreement would, among other things, (1) give TIHDI certain rights to participate in economic development opportunities at NSTI, (2) facilitate implementation of a permanent employment program related to activities occurring at NSTI, (3) give TIHDI certain rights to both temporary and permanent housing in support of TIHDI's programs, and (4) provide TIHDI with certain financial support. The United States Department of Housing and Urban Development approved the Original TIHDI Agreement on November 26, 1996. The Original TIHDI Agreement was updated and superseded in its entirety by the Amended and Restated Base Closure Homeless Assistance Agreement (the "**TIHDI Agreement**") that was approved by Authority on April 21, 2011, and by the Board of Supervisors concurrently with its approval of this Agreement.

G. The Authority was created in 1997 to serve as the entity responsible for the reuse and development of NSTI. Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (as amended from time to time, the "**Conversion Act**"), the California Legislature (1) authorized the Board of Supervisors to designate the Authority as a redevelopment agency under the California Community Redevelopment Law (California Health and Safety Code §33000 et seq.) ("**CCRL**") with authority over NSTI, and (2) with respect to those portions of NSTI that are subject to the Public Trust, vested in the Authority the authority to administer the Public Trust as to such property in accordance with the terms of the Act.

H. The Board of Supervisors designated the Authority as a redevelopment agency with powers over NSTI under the Conversion Act in Resolution No. 43-98, dated February 6, 1998.

I. After completion of a competitive master developer selection process, the Authority and Developer entered into the Exclusive Negotiating Agreement dated as of June 1, 2003. The Exclusive Negotiating Agreement was amended and restated in its entirety pursuant to the Amended and Restated Exclusive Negotiating Agreement dated as of September 14, 2005, as further amended by the Amendment to Schedule of Performance Set Forth in the Amended and Restated Exclusive Negotiating Agreement dated as of July 1, 2006, the Second Amendment to the Amended and Restated Exclusive Negotiating Agreement dated as of March 12, 2008, the Third Amendment to the Amended and Restated Exclusive Negotiating Agreement dated as of February 10, 2010, and the Fourth Amendment to Exclusive Negotiating Agreement dated as of

June 22, 2011 (collectively, the "**ENA**"). The ENA sets forth the terms and conditions under which the Authority and Developer are willing to negotiate the transaction documents for the conveyance, management and redevelopment of NSTI, including a schedule of performance for major milestones.

J. One of the key milestones under the ENA was the completion of a term sheet summarizing the key policy goals, basic development guidelines, financial framework and other key terms and conditions that formed the basis for the negotiation and completion of the final transaction documents.

K. On October 24, 2006, the Treasure Island/Yerba Buena Island Citizens Advisory Board ("**TICAB**") voted 16-0-1 to endorse the Development Plan and Term Sheet for the Redevelopment of Naval Station Treasure Island (the "**2006 Development Plan**"). On October 30, 2006, the Authority Board voted 6-0 to adopt Resolution No. 06-59-10/30 endorsing the 2006 Development Plan. On December 12, 2006, the Board of Supervisors voted 10-1 to adopt Resolution No. 699-06 endorsing the 2006 Development Plan, subject to the terms and conditions of Resolution No. 699-06.

L. The 2006 Development Plan was updated pursuant to the Update to Development Plan and Term Sheet (the "**Development Plan Update**) that (i) the TICAB voted 15 to 1, with one abstention, to endorse on April 6, 2010, (ii) the Authority Board voted 7 to 0 to endorse on April 7, 2010, and (iii) the Board of Supervisors voted 11 to 0 to endorse on May 18, 2010. The 2006 Development Plan and the Development Plan Update are collectively referred to in this Agreement as the "**Development Plan**."

M. On October 13, 2007, the Governor approved SB 815 (Migden) and on October 11, 2009, the Governor approved SB 833 (Leno). SB 815 and SB 833 both amended the Treasure Island Public Trust Exchange Act (as amended, the "**Exchange Act**"), which is the State legislation authorizing an exchange of Public Trust lands between Treasure Island and Yerba Buena Island, to be consistent with the proposed reuse and development program for the Project Site.

N. On September 26, 2008, the Governor approved AB 981 (Leno), which authorized (i) the creation of the Treasure Island Transportation Management Agency ("**TITMA**"), (ii) implementation of a congestion management pricing program as part of the redevelopment of NSTI, and (iii) collection and distribution of parking, transit pass and congestion management pricing revenues as part of an overall transit demand management program for the proposed redevelopment of NSTI.

O. The United States of America, acting by and through the Department of the Navy ("**Navy**"), and the Authority have negotiated an Economic Conveyance Memorandum of Agreement (as amended and supplemented from time to time, the "**Conveyance Agreement**") that governs the terms and conditions for the transfer of NSTI from the Navy to the Authority. Under the Conveyance Agreement, the Navy will convey NSTI to the Authority in phases after the Navy has completed environmental remediation and issued a Finding of Suitability to Transfer ("**FOST**") for specified parcels of NSTI or portions thereof.

P. The Development Plan contemplated that a Redevelopment Plan would be adopted under CCRL for NSTI, and the Project Site would be included in a Redevelopment Project Area. The Development Plan also contemplated that tax increment financing as provided in CCRL would be available to finance certain costs related to the Project Site. As a result of potential changes to CCRL, the Parties have determined to proceed with development of the Project Site using the Infrastructure Financing District ("**IFD**") mechanism provided under the Infrastructure Financing District Act (California Government Code Section 53395 et seq.) ("**IFD Act**"), as amended from time to time.

Q. The purpose of this Agreement is to provide for the disposition and development of the Project Site after the Navy's transfer of NSTI to the Authority in accordance with the Conveyance Agreement. This Agreement provides for a mixed-use development that is in furtherance of the Reuse Plan, the Development Plan and the TIHDI Agreement, and is consistent with the City's General Plan and the Eight Priority Planning Policies.

R. The Project, which is more particularly described in Section 1 has been presented and reviewed by the Treasure Island community and other stakeholders at numerous public meetings, including those held before the Authority Board, the TICAB, the Board of Supervisors, the Planning Commission and in other local forums.

S. This Agreement describes those elements of the Project that Developer is permitted, and in some cases obligated, to construct. As described in Section 1.4 below, this Agreement contemplates that certain proposed improvements will be developed by parties other than Developer.

T. The Project Site has a unique and special importance to the Authority and to the City because of its location, the nature of the improvements and the uses contemplated for the Project Site. The Authority desires to advance the socioeconomic interests of the City and its residents by promoting the productive use of underdeveloped, former military base property and encouraging quality development and economic growth, thereby enhancing housing and employment opportunities for residents and expanding the City's property tax base. The Authority also desires to obtain the community benefits of the Project, which are in addition to those dedications, conditions and exactions required by laws or regulations, and which advance the reuse and development objectives of the Authority and provide benefits to the City and its residents.

U. The Authority has determined that by entering into this Agreement: (i) the Authority will ensure the productive use of underdeveloped, former military base property and foster orderly growth and quality development of the Project Site; (ii) development will proceed in accordance with the goals and policies set forth in the Reuse Plan, the Development Plan, the General Plan and the City's Eight Priority Planning Principles; (iii) over time, the City will receive substantially increased tax revenues; (iv) the City will benefit from increased economic development and employment opportunities that the Project will create for City residents; and (v) the City will receive the community benefits that the Project will provide for City residents. The Project proposed under this Agreement and the fulfillment generally of this Agreement (A) are in the best interests of the Authority, the City, and the health, safety, morals and welfare of its

residents; and (B) are in accordance with the public purposes and provisions of applicable federal, state and local laws and requirements.

V. The residential component of the Project will consist of a maximum of 8,000 Residential Units including a minimum of 2,000 below market rate units. The below market rate units, constituting a minimum of 25% of the total number of Residential Units, are an integral part of the development meeting the varied housing needs of the community. Development of both the market rate and the below market rate units is essential to the feasibility and completion of the reuse and development of NSTI.

W. The City and the Authority have analyzed potential environmental impacts of the Project and identified mitigation measures in the Environmental Impact Report for Treasure Island and Yerba Buena Island (the "**Project EIR**") and a Mitigation Monitoring and Reporting Program attached hereto as Exhibit C (the "**Project MMRP**"), in accordance with the requirements of CEQA. On April 21, 2011, the Planning Commission and the Authority Board certified the Project EIR.

X. The Parties wish to enter into this DDA to set forth the terms and conditions under which the Project will be developed.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Developer and the Authority agree as follows:

1. The Project.

1.1 Overview. This DDA contemplates a project (the "**Project**") under which the Authority acquires the Project Site from the Navy and conveys portions of the Project Site to Developer for the purposes of (i) alleviating blight in the Project Site through development of Improvements consistent with the Development Requirements, (ii) geotechnically stabilizing the Project Site, (iii) constructing Infrastructure and Stormwater Management Controls to support the Project and other proposed uses on NSTI, such as roads and utilities, and including Infrastructure and Stormwater Management Controls to support the construction of Affordable Housing Units, (iv) constructing and improving certain public parks and open spaces, (v) remediating certain existing Hazardous Substances, and (vi) selling and ground leasing Lots to Vertical Developers who will construct Units and commercial and public facilities thereon, all as more particularly described in this DDA.

1.2 Vertical Disposition and Development Agreements and Lease Disposition and Development Agreements. This Agreement grants to Developer (i) the right to acquire portions of the Project Site and (ii) the right, and upon the satisfaction of certain conditions, the obligation, to develop the Infrastructure and Stormwater Management Controls and the Required Improvements. While this Agreement applies primarily to Infrastructure and Stormwater Management Controls, it also includes certain terms and conditions that will apply to Vertical Improvements. In connection with the sale of Lots to Vertical Developers in accordance with Article 17, Developer, the Authority and each Vertical Developer will enter into a Vertical

Disposition and Development Agreement (**"Vertical DDA**") for Lots that are not subject to the Public Trust. Because Public Trust property may not be sold in fee, development of certain of the Public Trust Parcels will be subject to a Lease Disposition and Development Agreement ("**Vertical LDDA**") that sets forth the terms under which the applicable Public Trust Parcels will be developed for commercial purposes in accordance with Article 17 below. For clarity, the Vertical DDA and the Vertical LDDA, as applicable, will include all of the terms and conditions that will apply to Vertical Improvements, and they will incorporate by reference certain Attachments and Exhibits to this Agreement that will apply to both Infrastructure and Stormwater Management Controls and Vertical Improvements.

1.3 Improvements. The primary Improvements constituting the Project are listed below and are more particularly described in the Land Use Plan, the Infrastructure Plan, the Parks and Open Space Plan, the Transportation Plan, the Community Facilities Plan, the Housing Plan, the Schedule of Performance, the Phasing Plan, the SUD and the Design for Development. Developer and Vertical Developers shall design, construct and complete the Infrastructure and Stormwater Management Controls and the Vertical Improvements, and Qualified Housing Developers shall design, construct and complete the Authority Housing Units, all at the times and subject to the conditions set forth in this DDA and the Vertical DDA/LDDAs, as applicable. In accordance with the terms of this DDA and the Vertical DDA/LDDAs, Developer and Vertical Developers shall have the right and, with regard to certain Improvements identified in this DDA and upon the satisfaction of certain conditions set forth in this DDA, the obligation, to develop the Project shown on the Land Use Plan attached hereto as Exhibit D, in accordance with the Development Requirements, including, without limitation, the Project components listed below, excepting certain improvements to be constructed on NSTI, including the Project Site, for which Developer is not responsible as described in Section 1.4 hereof.

(a) Geotechnical stabilization of certain portions of Treasure Island and the causeway connecting it to Yerba Buena Island, and addition of fill to raise the surface elevation on those portions of Treasure Island that are to be developed to address flood protection and potential future sea level rise as more particularly described in the Infrastructure Plan;

(b) Up to 6,316 Developer Residential Units, of which approximately 5% percent will be Inclusionary Units constructed in accordance with the Housing Plan attached hereto as Exhibit E and more specifically defined in Exhibit A (the "**Housing Plan**") (with up to an additional 1,684 below market rate Residential Units to be designed, constructed and completed by Qualified Housing Developers on behalf of the Authority and TIHDI in accordance with the Housing Plan), provided however, that the total percentage of below-market rate Residential Units, including Inclusionary Units, may be adjusted upwards from 25% to 30% in accordance with Article 9 of the Housing Plan;

(c) Up to approximately 140,000 square feet of new commercial and retail space with accessory parking;

(d) Up to approximately 100,000 square feet of new office space with accessory parking;

(e) Adaptive reuse of Buildings 1, 2, and 3 on Treasure Island with up to 311,000 square feet of commercial/flex space (the adaptive reuse would include approximately 67,000 square feet of additional retail, which, when combined with the 140,000 square feet of new retail, yields a total of 207,000 square feet of retail space proposed on the Islands) with accessory parking;

(f) Adaptive reuse of certain of the historic buildings on Yerba Buena Island;

(g) Up to approximately 500 hotel rooms or Fractional Interest Units;

(h) New and/or upgraded public and community facilities, including a new joint police/fire station and funding for upgraded school facilities on Treasure Island, and Developable Lots for the development by Authority or third parties of the Treasure Island Sailing Center, an Environmental Education Center and other community facilities, as more particularly described in the Community Facilities Obligations attached hereto as Exhibit F;

(i) New and/or upgraded public utilities, including the water distribution system, wastewater collection system, recycled water storage and distribution system, storm water collection and Stormwater Management Controls, Developable Lots to accommodate the Wastewater Treatment Facility and other SFPUC improvements, as more particularly described in the Infrastructure Plan;

(j) Up to approximately 300 acres of parks and public open space, as more particularly described in the Parks and Open Space Plan;

(k) New and/or upgraded streets and public ways as more particularly described in the Infrastructure Plan;

(l) Bicycle, transit, and pedestrian facilities as more particularly described in the Infrastructure Plan;

(m) Landside services for the Marina as more particularly described in the Infrastructure Plan and Section 8.3 hereof, and

(n) A ferry quay/bus intermodal transit center ("**Transit Hub**") as more particularly described in the Infrastructure Plan; and

(o) Such additional environmental remediation work more particularly described in the Infrastructure Plan after issuance of one or more FOST(s) for the Project Site.

The Parties acknowledge and agree that the density and intensity of development as set forth in this Section 1.3 form the basis of Developer's financial expectations for the Project and the Proforma. The particular land uses and locations are shown in the Land Use Plan and defined more particularly in the SUD, the Area Plan and the Design for Development. Design controls governing the Project are set forth in the SUD and Design for Development. The Land Use Plan is provided for the purposes of indicating the general type, pattern and location of development as shown, but shall not be construed as a regulating document with regard to land

uses or development standards, both of which are regulated and controlled by the Area Plan, SUD and the Design for Development.

1.4 Project Development. The Project contemplates the development of improvements within NSTI, including the Project Site, by parties other than Developer and Vertical Developers entering into Vertical DDA/LDDAs with Developer and the Authority. Such other improvements include (i) the Authority Housing Units to be developed by Qualified Housing Developers, as more particularly described in the Housing Plan, (ii) the Marina to be developed by the Marina Developer as a separate project in accordance with a separate Disposition and Development Agreement between the Authority and the Marina Developer, (iii) elements of the parks and open space system as described in the Parks and Open Space Plan (including without limitation, the regional sports facilities), (iv) the Wastewater Treatment Facility to be developed by the San Francisco Public Utilities Commission ("**SFPUC**"), as described in the Infrastructure Plan, and (vi) those projects as more particularly described in the Community Facilities Obligations for which Developer is obligated to provide a Developable Lot but which are to be transferred by the Authority to other Vertical Developers.

1.5 Developer's Role Generally. Except as otherwise described in Section 1.4, Developer shall be the master developer for the Project, orchestrating development of the Project Site in cooperation with the Authority, the City, Vertical Developers, TIHDI, Qualified Housing Developers, the Marina Developer and others. Developer has the right and obligation to develop Major Phase 1 (the "**Initial Major Phase**"), and to develop the remaining Major Phases itself or to assign the development rights to third parties subject to the further terms and conditions of this Agreement. However, in addition to the Developer's rights and obligations under this DDA attendant to each Major Phase and its related Sub-Phases, Developer, as the "**Master Developer**", remains obligated to Authority throughout all Major Phases for payment of Authority Costs, City Costs, Subsidies and the Navy Payment (collectively, the "**Financial Obligations**"), and (ii) development of each of those items identified on the Schedule of Performance attached hereto under the heading of "Community Facility."

1.6 Development Process Generally. As more particularly described in Article 3, the Project will be developed in a series of Major Phases, and within each Major Phase in a series of Sub-Phases, under the following process, as and to the extent required under this DDA, the DRDAP and the Vertical DDA/LDDAs.

(a) a Substantially Complete Major Phase Application must be submitted to the Authority for each Major Phase before the applicable Outside Date;

(b) Each Major Phase Application shall include a Site Plan showing proposed Sub-Phases within the applicable Major Phase;

(c) following (or simultaneously with) a Major Phase Approval, Developer shall submit a Sub-Phase Application to the Authority for each Sub-Phase within that Major Phase before the applicable Outside Date, which Sub-Phase Application shall be a Complete or Substantially Complete Sub-Phase Application;

(d) following (or simultaneously with) submittal of each Sub-Phase Application, Developer shall seek approvals of Tentative Subdivision Maps for the development of that Sub-Phase in accordance with the Treasure Island/Yerba Buena Island Subdivision Code (each a "**Tentative Subdivision Map**");

(e) following each Sub-Phase Approval, approval of the applicable Tentative Subdivision Map and satisfaction (or waiver) of the conditions for conveyance as more particularly set forth in Article 10 hereof, the Authority shall convey certain real property it owns or acquires within the Sub-Phase to Developer and Developer shall Commence and Complete the Infrastructure and Stormwater Management Controls and Required Improvements for that Sub-Phase before the applicable Outside Dates;

(f) following recordation of a Final Subdivision Map obtained in accordance with the Treasure Island/Yerba Buena Island Subdivision Code, Developer shall seek to Transfer each Lot to a Vertical Developer, which may include Developer and its Affiliates to the extent permitted under Article 17 and Section 21.3 below, for the construction of Vertical Improvements, and in connection with such Transfer enter into a Vertical DDA and/or Vertical LDDA with such Vertical Developer;

(g) if not previously obtained, each Vertical Developer shall obtain a Vertical Approval for the proposed Vertical Improvements on the Lot it acquires; and

(h) each Vertical Developer shall have the right to proceed with the construction of Vertical Improvements consistent with its Vertical Approval, its Vertical DDA and/or Vertical LDDA and the Development Requirements.

1.7 Proportionality. Because the Project will be built over a long time period, the Parties have carefully structured the amount and timing of public and community benefits to coincide with the amount and timing of the development of Market Rate Units and other commercial opportunities. The public and community benefits have been described and apportioned as set forth in (i) the Phasing Plan and the Schedule of Performance, with respect to the Associated Public Benefits for each Major Phase and Sub-Phase, (ii) the Housing Plan, with respect to the delivery of the Authority Housing Lots, the production of Inclusionary Units and the delivery of the Developer Housing Subsidy described therein and in Section 13.3.4 hereof, (iii) the Infrastructure Plan with respect to the Completion of Infrastructure and Stormwater Management Controls; (iv) the Parks and Open Space Plan, with respect to the Completion of parks and open space and subsidy payments described in Section 13.3.1 hereof; (v) the Transportation Plan Obligations, with respect to certain transportation improvements, benefits and subsidy payments described in Section 13.3.2 hereof; (vi) the Community Facilities Obligations, with respect to certain community facilities and subsidy payments described in Section 13.3.3 hereof; and (vii) the Transition Housing Rules and Regulations, with respect to the provision of certain transition housing benefits described therein. If Developer or a Vertical Developer requests changes to the amount or timing of public and community benefits as set forth above in any Application, then such changes shall be subject to the Approval of the Authority Director or Authority Board in accordance with the DRDAP and Section 3.6 below.

1.8 Phase Boundaries; Associated Public Benefits; Order of Development.

(a) The preliminary boundaries of Major Phases and Sub-Phases are set forth in the Phasing Plan. Developer may request changes to the boundaries of any Major Phase or Sub-Phase, which changes will be subject to the Approval of the Authority as set forth in the DRDAP and Section 3.6 below.

(b) "**Associated Public Benefits**" are public parks, open space, Required Improvements, affordable housing obligations and other public and community benefits as described in the Phasing Plan, Housing Plan and the Schedule of Performance that Developer must Complete on or before the applicable Outside Date. Developer may request changes to the Associated Public Benefits for any Major Phase or Sub-Phase consistent with the principle of proportionality set forth in Section 1.7, which changes will be subject to the Approval of the Authority as set forth in the DRDAP.

(c) Major Phase Applications and Sub-Phase Applications must be submitted in the order described in Section 3.5. Developer may request changes to such order, which changes will be subject to the Approval of the Authority as set forth in Section 3.6 and the DRDAP.

1.9 Schedule of Performance/Expiration of Schedule of Performance. This DDA contemplates that the submission of Substantially Complete Major Phase Applications and Sub-Phase Applications, the Commencement and Completion of Infrastructure and Stormwater Management Controls within Sub-Phases, the Commencement and Completion of the Required Improvements and certain other identified obligations will be Commenced or Completed by the applicable Outside Dates. Developer may request changes or additions to the Schedule of Performance, which changes will be subject to the Approval of the Authority as set forth in the DRDAP. For the convenience of the Parties, following a Transfer under this DDA, the Authority, Developer and the Transferee may agree to maintain a separate Schedule of Performance related to the obligations of such Transferee under this DDA. Any such separate Schedule of Performance will be maintained by the Authority in accordance with Section 28.35. Notwithstanding anything in this Section 1.9 or elsewhere in this Agreement, none of the Outside Dates in the Schedule of Performance shall apply to Developer's obligations under this Agreement from and after Completion by Developer of all items identified in the Schedule of Performance as "Community Facilities" and payment in full of the Subsidies and the Navy Payment.

2. Term of this DDA. The term of this DDA (the "**Term**") shall commence upon the Effective Date and shall terminate, unless earlier terminated as provided below, on the date that is the earlier of: (i) the thirtieth (30^{th}) anniversary of the Effective Date; and (ii) the last Certificate of Completion for the Project (including all Improvements contemplated under this DDA as of the Reference Date or Approved by the Authority at any time thereafter). This DDA shall also terminate, in whole or in part, to the extent provided under Section 3.8, Article 10, Section 11.4, and Article 16. Upon Developer's request, the Authority shall cause the lien of this Agreement to be released as to a particular Lot concurrently with the first sale of that Lot to a Vertical Developer, to be replaced by Vertical DDA/LDDA(s) in accordance with Section 4; provided, that (i) such Vertical DDA/LDDA may include the obligation to complete Transferable

Infrastructure (or, with Authority approval, other Infrastructure and Stormwater Management Controls) that has not been completed as of the first sale of the Lot, but (ii) Developer shall not be released of its obligation under this DDA to complete such Infrastructure and Stormwater Management Controls. Indemnities and other obligations that are intended to survive partial release, expiration or termination will survive any partial release, expiration or termination.

3. Project Phasing.

3.1 Phased Development Generally. The Project Site has been divided into four (4) "**Major Phases**" and, within each Major Phase, various "**Sub-Phases**", each of which is conceptually illustrated on the Phasing Plan. Subject to the terms and conditions in this DDA, the Authority shall convey portions of the Project Site owned or acquired by the Authority as provided in this DDA to Developer, and such portions shall be developed by Developer in phases under this DDA.

3.2 Phasing Goals. The phasing goals of the Project are intended to achieve an economically feasible project while balancing a number of competing interests, including ensuring that (i) the Associated Public Benefits are provided proportionately with the development of the Market Rate Units and in accordance with the Development Requirements; (ii) public right of ways, Infrastructure and Stormwater Management Controls are developed in an orderly manner consistent with the Infrastructure Plan, finished portions of the Project are generally contiguous, and isolated pockets of development are not surrounded by construction activity; (iii) the amount of Infrastructure and Stormwater Management Controls constructed is appropriate for the amount of Vertical Improvements constructed and the need to provide continuous reliable service to existing residents and businesses; (iv) unsold inventory of Market Rate Lots is minimized; (v) development can respond effectively to the Navy's schedule for environmental remediation or the Navy's conveyances of real property to the Authority; (vi) the returns to the Authority, the Navy and Developer are maximized; (vii) the value of the Project is maximized in order to maximize the public and community benefits that the Project can deliver; and (viii) the phases can be adjusted to respond to market conditions, cost and availability of financing and economic feasibility (collectively, the "**Phasing Goals**").

3.3 Major Phases. The Parties intend that Major Phases allow for planning of large mixed-use areas or neighborhoods within the Project Site. The Authority's consideration and Approval of each Major Phase Application in the manner set forth in the DRDAP (each, as amended from time to time, a "**Major Phase Approval**") is required before, or concurrently with, the Authority's consideration of and grant of a Sub-Phase Approval for any Sub-Phase in that Major Phase.

3.4 Sub-Phases. The Parties intend that Sub-Phases allow for more detailed planning of smaller-scale areas within the Major Phase, subject to adjustment in accordance with the DRDAP and Section 3.6 below. Sub-Phase boundaries shall correspond to the boundaries in the applicable Tentative Subdivision Map or as otherwise set forth in the Sub-Phase Approval. The Authority's consideration and Approval of each Sub-Phase Application in the manner set forth in the DRDAP (each, as amended from time to time, a "**Sub-Phase Approval**") is required before (i) the Authority's consideration and grant of Approval of any Vertical DDAs/LDDAs for that Sub-Phase and (ii) the submittal of an Application to the Planning Department for a Vertical

Approval for any Vertical Improvements for that Sub-Phase in accordance with the Vertical DDA/LDDAs.

3.5 Applications for, Approval of and Sequencing of Major Phases and Sub-Phases. During the Term, Developer shall apply for, and the Authority shall consider and grant or deny Approvals of, Major Phases and Sub-Phases in the manner and subject to the terms and conditions set forth in this DDA and the DRDAP. Applications for Major Phase Approvals (each, a "**Major Phase Application**") and for Sub-Phase Approvals (each, a "**Sub-Phase Application**") shall be submitted on or before the Outside Dates in the order set forth in the Phasing Plan (as the same may be updated from time to time as provided in Section 3.6 below). The "**Initial Sub-Phases**" collectively refer to the first two Sub-Phases on Treasure Island (Sub-Phase 1A and Sub-Phase 1B) and the first Sub-Phase on Yerba Buena Island (Sub-Phase YA), as described in the first Sub-Phase Application. The Initial Sub-Phases must include the Developable Lots on which the Replacement Housing Units triggered by the demolition of any existing housing units in the Initial Major Phase will be constructed as described in the Housing Plan. Developer shall submit Sub-Phase Applications for the Initial Sub-Phases on or before the applicable Outside Date set forth in the Schedule of Performance.

3.6 Changes to Phasing Plan. The Phasing Plan illustrates the size, order and duration of the Project's Major Phases and Sub-Phases given the Phasing Goals described above, and the parties' best estimates of the conditions forecast for the expected development period. The parties acknowledge and agree that many factors, including, but not limited to, general economic conditions, the local housing market, capital markets, general market acceptability, the adequacy of on-island services, and local tax burdens will determine the rate at which various Product Types within the Project can be developed and absorbed. Developer may request changes to the Phasing Plan (including changes to the Schedule of Performance that are necessary to reflect the revised phasing) consistent with the Phasing Goals as part of each Major Phase Application and/or Sub-Phase Application, and any such requested changes will be subject to the Approval of the Authority in accordance with the DRDAP. In determining whether to grant its Approval of the updated Phasing Plan (including changes to the Schedule of Performance that are necessary to reflect the revised phasing), the Authority may consider whether the updated Phasing Plan is consistent with the Phasing Goals; provided, however, with respect to a requested change in the order of Sub-Phases within a Major Phase, the Authority shall Approve such change if it reasonably determines that (i) the Associated Public Benefits will be developed proportionately with the development of the Market Rate Units and in accordance with the Development Requirements; (ii) the change in order will not impair the ability to comply with the Replacement Housing Obligation or any of the Authority's obligations under the TIHDI Agreement, the Transition Housing Rules and Regulations or the Public Trust Exchange Agreement; (iii) the development of the public right of ways, Infrastructure and Stormwater Management Controls will be orderly, finished portions of the Project will be generally contiguous, and isolated pockets of development will not be surrounded by construction activity; and (iv) the amount of Infrastructure and Stormwater Management Controls constructed is appropriate for the amount of Vertical Improvements constructed and the need to provide continuous reliable service to existing residents and businesses. The Authority also may request changes to the order of Major Phase Applications and Sub-Phase Applications, and any such requested changes will be subject to the Approval of Developer in its sole and absolute discretion. In determining whether to grant its Approval of such requested changes,

Developer may consider, among other matters, how such changes would affect Project Costs and ability to achieve the Developer Return.

3.7 Phasing of Conveyances to Developer. Following the Approval of a Sub-Phase Application and the applicable Tentative Subdivision Map and the satisfaction (or waiver by the Authority) of all conditions to the Authority's obligation to convey real property to Developer as set forth in Article 10, the Authority shall either (i) convey to Developer all or a portion of the property the Authority owns (or acquires as contemplated herein) that is part of that Sub-Phase, other than the "**Public Property**," which includes, without limitation, the Authority Housing Lots, the Community Facilities Lots, the Open Space Lots, the Police and Fire Station Lot, the Wastewater Treatment Facility Lot, the PUC Lot, the School Lot, the Sailing Center Lot, the Delancey Street Life Learning Center Lot (as all of the foregoing Lots are generally shown on Exhibit G attached hereto), the Submerged Lands and the public right of ways and other real property intended to be owned permanently by Governmental Entities, or (ii) upon the mutual agreement of Developer and the Authority, convey to Developer all or a portion of the property the Authority owns (or acquires as contemplated herein) that is part of that Sub-Phase (other than the Public Trust Parcels), subject to Developer's obligation to convey the Public Property back to the Authority as it directs. If Authority conveys any of the Public Property to Developer, then any conveyance of such Public Property from Developer back to the Authority shall be free and clear of any title exceptions or encumbrances other than those (1) that existed at the time of the conveyance from the Authority to Developer, (2) permanent recorded restrictions or covenants that are required as a part of Developer's obligations hereunder (and not including any mechanics or other liens or security instruments) or under the Development Requirements, (3) for ad valorem property taxes or assessments related to the period after Developer's ownership, or (4) requested by the Authority. All mapping and legal descriptions required for conveyances from the Authority to Developer under this DDA shall be prepared by Developer and Approved by the Authority Director and the Director of the Department of Public Works consistent with the Treasure Island/Yerba Buena Island Subdivision Code. Developer shall be responsible for all closing costs described in Section 10.4.3, including any title insurance premiums for a title insurance policy obtained by the Authority, with respect to such Public Property conveyances.

3.8 Effect of Failure to File Major Phase or Sub-Phase Applications in a Timely Manner; Right of the Authority to Offer Development Opportunity to Others.

3.8.1 If Developer fails to submit a Substantially Complete Major Phase or Sub-Phase Application to the Authority by the applicable Outside Date, then the Authority may notify Developer that the Authority intends to terminate Developer's right to obtain Approval of such Substantially Complete Major Phase or Sub-Phase Application and some or all future Major Phase Applications and Sub-Phase Applications. If Developer does not respond to such notice by filing the overdue Substantially Complete Major Phase Application or Sub-Phase Application within ninety (90) days after receipt of such notice, the Authority may set a date for a public meeting on such termination and notify Developer of the meeting date, after which the Authority may, with the Approval of the Authority Board following the public meeting (and subject to Section 3.8.2), (i) terminate Developer's rights to obtain Approval of such Major Phase Application or Sub-Phase Application, and (ii) terminate Developer's right to submit all future Major Phase Applications and Sub-Phase Applications, in each case by notifying

Developer before the date that Developer submits such overdue Major Phase Application or Sub-Phase Application. Upon any such termination, Developer's rights and obligations under this DDA for the affected real property shall, subject to Section 3.8.2, terminate and the Authority shall have the right to record a Notice of Termination as set forth in Section 28.36.

3.8.2 The Parties acknowledge that Project Site development will take place over many years and that the circumstances affecting such development may change during that period. Excluding the Initial Major Phase, if Developer reasonably determines that the development of any Major Phase or Sub-Phase in accordance with this DDA has become commercially infeasible for reasons other than the financial condition of Developer, then before the applicable Outside Date for Developer's submission of a Substantially Complete Major Phase or Sub-Phase Application, Developer may notify the Authority that Developer is willing to proceed with the applicable Major Phase Application or Sub-Phase Application only if the Authority agrees to specified changes to the requirements of this DDA to make the proposed development commercially feasible (the "**Requested Change Notice**"). The Requested Change Notice shall include a detailed description of all the terms and conditions of this DDA that Developer proposes to change and the reasons why Developer believes that development is infeasible without the proposed changes. If Developer submits a Requested Change Notice and there is no uncured Material Breach by Developer (other than the failure to submit a Substantially Complete Major Phase or Sub-Phase Application with reference to the Major Phase or Sub-Phase as to which a Requested Change Notice is timely given), then the Authority shall not terminate all or any part of this DDA under Section 3.8.1 until the Parties have negotiated proposed changes to this DDA for a period of not less than nine (9) months, subject to any extensions agreed to by Developer and the Authority (each in its sole discretion) and subject to Developer's cure of any then-existing Events of Default within the required cure period (other than the failure to submit a Substantially Complete Major Phase or Sub-Phase Application with respect to the Major Phase or Sub-Phase as to which a Requested Change Notice is given). If the Authority staff and Developer are able to agree to changes, then they shall promptly prepare a proposed amendment to this DDA, including an extension of the Schedule of Performance permitting Developer a reasonable time to submit Applications or amend existing Applications, for review and consideration by the Authority Board. Any such changes shall be subject to the Approval of the Authority in its sole and absolute discretion, following, if required, additional environmental analysis and review. The City, through its Board of Supervisors, in approving this DDA, has delegated to the Authority the power to make such modifications as are necessary and desirable to amend this DDA in accordance with this Section 3.8.2; provided, however, Material Modifications to this DDA shall require the approval of the Board of Supervisors, which the Board of Supervisors may give or withhold in its sole and absolute discretion. If the Authority staff and Developer are unable to agree on the changes to this DDA within the time period set forth above, or if either the Authority Board or the Board of Supervisors to the extent required does not Approve the proposed changes to this DDA, then the Authority may exercise its termination rights as set forth in Section 3.8.1.

3.8.2.1 Notwithstanding Section 3.8.2, Developer has reasonably determined in accordance with Section 3.8.2 that development of the Project in accordance with this Agreement with the level of Infrastructure and Associated Public Benefits required hereunder requires a change to the IFD Act that would increase the availability of tax increment for Project Infrastructure and Associated Public Benefits, including affordable housing. In

recognition thereof, commencing on the Reference Date, the Authority and Developer shall use diligent and good faith efforts to obtain State legislation to change the existing IFD Act to extend the date by which all tax allocation to any IFD formed on the Project Site will end, from 30 years from the adoption of the ordinance forming the IFD under the existing IFD Act to 40 years from that date under the amended IFD Act (the "**IFD Amendment**").

If the IFD Amendment has not occurred by the later of (i) five (5) years from the Effective Date or (ii) the Initial Closing under the Conveyance Agreement, then the provisions of Section 3.8.2 shall apply; provided, however, that any changes agreed upon by Developer and Authority staff in response to a renegotiation under this Section 3.8.2.1 shall be subject to the Approval of the Authority, not to be unreasonably withheld, and the Board of Supervisors in its sole and absolute discretion.

3.8.3 If Developer's right to submit Major Phase Applications or Sub-Phase Applications is terminated under Section 3.8.1 (following compliance with Section 3.8.2, if applicable), the Authority may in its sole discretion offer the development opportunity that was terminated (the "**Development Opportunity**") to other qualified developers under a request for proposals or other process determined by the Authority in its sole discretion. The Authority may require that the Development Opportunity conform to the material requirements of this DDA with respect to the applicable real property or may make such changes to the Development Opportunity as the Authority determines are appropriate under the circumstances; provided, that (i) if the Authority offers the Development Opportunity to others following termination under Section 3.8.1, the Authority must do so as part of an open and competitive process and, so long as Developer is not in Material Breach, Developer shall have the right to participate in the competitive process, and (ii) in formulating the Development Opportunity, the Authority will not permit uses that are incompatible with Developer's development rights under any portion of this DDA that has not been terminated. So long as the Authority offers the Development Opportunity under an open and competitive process that is consistent with the foregoing sentence and does not exclude Developer's participation as set forth above, Developer shall have no right to challenge, limit or contest the Authority's process or the offering of the Development Opportunity to others as set forth in this Section 3.8.3.

3.8.4 Upon any termination under Section 3.8.1, (i) the termination shall be without any cost reimbursement or other obligation to Developer except as provided in Sections 3.8 and 6.3 of the Financing Plan, and (ii) the Authority shall release Developer from all obligations that relate to the terminated portions of this DDA, including all Infrastructure and Stormwater Management Controls obligations and Associated Public Benefits that relate to the Major Phases or Sub-Phases at issue, but excluding any indemnities, Financial Obligations or other obligations that survive termination.

3.8.5 All references to "Developer" in this Section 3.8 shall be deemed to include all Affiliates of Developer, if applicable, but shall not include Third Parties.

3.9 Proforma, Summary Proforma and Proforma Updates. As of the Effective Date, Developer has prepared initial projections of its Project Costs and anticipated sources and uses of funds to pay Project Costs (as revised by Developer from time to time, the "**Proforma**") and Developer has delivered to the Authority a copy of the Proforma. The Proforma has been

placed on file at the Authority. Attached hereto as Exhibit S is a Summary Proforma that meets the requirements of Section 5.9.2 of the Conveyance Agreement. At the time Developer submits each Major Phase Application and Sub-Phase Application to the Authority, Developer shall deliver to the Authority for the Authority's Approval, with a copy to the Navy, an updated Proforma and updated Summary Proforma, in substantially the same form as the original Proforma and the Summary Proforma, respectively. In reviewing any Proforma, or Summary Proforma, the Authority will have the right to request that Developer provide additional documents or other information that is reasonably required to support its projections, methodology, and underlying assumptions.

4. Vertical DDA and Vertical LDDAs; Vertical Approvals.

4.1 Vertical DDAs and Vertical LDDAs. Following recordation of a Final Subdivision Map and Developer has Completed, or provided Adequate Security to the Authority for the Completion in accordance with the Schedule of Performance of, the Infrastructure and Stormwater Management Controls required by the Infrastructure Plan to service a particular Lot, Developer shall seek to Transfer Lots in accordance with Article 17 and enter into a Vertical DDA and/or Vertical LDDA with each Vertical Developer (including Developer and Affiliates of Developer) and the Authority that must be in substantially the form of the Vertical DDA or the Vertical LDDA to be Approved by Developer and the Authority prior to Developer's submittal of the first Major Phase Application. As a condition of Approval for the Initial Major Phase Application, the Parties shall have agreed upon the form of the Vertical DDA to be appended hereto as Exhibit H, and the form of Vertical LDDA to be appended hereto as Exhibit I (the "**Approved Vertical DDA Form**" and the "**Approved Vertical LDDA Form**", or collectively, the "**Approved DDA/LDDA Form**"), and the form of Ground Lease, as referenced in Section 10.1.2 hereof, to be appended hereto as Exhibit M ("**Ground Lease**"). Each Vertical DDA/LDDA must include (a) a legal description of the Lots subject to the Vertical DDA/LDDA; (b) a detailed description of the Vertical Developer's rights and obligations, including but not limited to the assumption by Vertical Developer of applicable obligations under the Community Facilities Obligations; (c) any obligations under this DDA that are assumed by Vertical Developer and, if applicable, from which Developer will be released; (d) the Indemnification obligations and releases of Vertical Developer as set forth in Article 11 and in the Developer Consent attached to the Interagency Cooperation Agreement; (e) if such Lots will contain Community Facilities Space, an undertaking by Vertical Developer to construct the applicable Community Facilities Space in accordance with the Community Facilities Obligations; (f) if such Lots will contain a Residential Project, an obligation by Vertical Developer to construct the number of Inclusionary Units allocated to the Lot or Lots in the Vertical DDA pursuant to the Housing Plan, if and when the Vertical Improvements are constructed and comply with other applicable requirements of the Housing Plan; (g) an agreement and covenant by Vertical Developer not to challenge the enforceability of any of the provisions or requirements of this DDA or the Vertical DDA/LDDA, including, if such Lots will contain a Residential Project, an agreement and covenant by Vertical Developer for the benefit of the Authority and Developer regarding the non-applicability of the Costa-Hawkins Act as set forth in Section 10 of the Housing Plan; (h) if the Infrastructure and Stormwater Management Controls for the Lots are not Completed, either (A) an assumption of the obligation to Complete the Infrastructure and Stormwater Management Controls in accordance with the Schedule of Performance, or (B) if Developer is retaining the obligation to complete the Infrastructure and Stormwater Management

Controls, an assumption of the risk of non-Completion and a waiver and release for the benefit of the Authority and the City regarding any failure to Complete the Infrastructure and Stormwater Management Controls; (i) if applicable, the obligation to pay Excess Land Appreciation in accordance with Section 1.3(k)of the Financing Plan; (j) if the Vertical DDA/LDDA will allow the development of Fractional Interest Units, the Vertical DDA/LDDA must include a mechanism establishing a Transient Occupancy in-lieu fee running with the land, payable in the same manner and subject to the same terms and conditions as the City's Tax on Transient Occupancy of Hotel Rooms (San Francisco Business and Tax Regulations Code, Article 7 (as it may be amended from time to time)); (k) a requirement to pay the Art Fee and the Jobs-Housing Linkage Fee in accordance with the terms and conditions of the Vertical DDA/LDDA; (l) the maximum number of off-street parking spaces that may be permitted on each Lot subject to the Vertical DDA/LDDA; (m) a requirement that the Vertical Developer obtain the Authority's Approval of any proposed amendments to the Design for Development prior to submitting the proposed amendments to the Planning Department; (n) a prohibition on submitting Vertical Applications to the Planning Department until the Authority has approved the applicable Sub-Phase Application; (o) a requirement that the Vertical Developer comply with the applicable requirements of the Jobs EOP; (p) the obligation to comply with the applicable Mitigation Measures as and when required by the Project MMRP; (q) an agreement to cooperate in effecting any required boundary adjustments as described in Section 10.5 hereof; and (r) such other matters as are deemed appropriate by Developer and are Approved by the Authority Director. Each such Vertical DDA/LDDA must be in recordable form and shall be Approved by the Authority Director provided the Vertical DDA/LDDA is substantially in the form of the Approved Vertical DDA Form or the Approved Vertical LDDA Form, as applicable, and is consistent with this DDA and the Development Requirements. Notwithstanding the foregoing, if Developer is then in Material Breach of any of its obligations in the applicable Sub-Phase, the Authority Director may elect, in his or her sole discretion, not to Approve such Vertical DDA/LDDA unless (i) if the Material Breach relates to the payment of any Financial Obligations, Developer cures the Material Breach, and (ii) for other Material Breaches, the Vertical DDA/LDDA includes a condition precedent in Authority's favor, requiring Developer, Vertical Developer and the Authority to have executed escrow instructions for the applicable Lot directing the escrow holder to hold the sale or transfer proceeds, less Developer's reasonable and customary closing costs paid through escrow, in a segregated account until (A) the Material Breach is cured and the Authority instructs escrow holder to release the funds, or (B) the Authority or Developer obtains a final and unappealable judgment in its favor regarding the Material Breach and the funds to be released from escrow. The Vertical DDA/LDDA shall also require the escrow instructions to direct the escrow holder to release the withheld funds to the applicable party in accordance with any such final non-appealable judgment. Any Material Modifications to the forms of the Vertical DDA or Vertical LDDA must be Approved by the Authority Board in its sole and absolute discretion. If a Vertical DDA/LDDA requires the Vertical Developer to Complete specified items of Infrastructure and Stormwater Management Controls, the Authority shall reasonably consider (taking into account the ability of Developer to provide such access without crossing real property owned by the Authority) any request by the applicable Vertical Developer to enter into one (1) or more Permits to Enter with such Vertical Developer to provide necessary access to the Lot(s) by crossing real property owned by the Authority. On or prior to the closing of the Transfer of such Lot, Developer shall record the

Vertical DDA/LDDA in the Official Records and promptly following the closing shall deliver an original copy of the Vertical DDA/LDDA to the Authority.

4.2 Off-Street Vehicle Parking. Standards for off-street parking accessory to development of Vertical Improvements is governed by Planning Code Section 249.52 (the Treasure Island / Yerba Buena Island Special Use District) (the "**SUD**") and included in the Design for Development. As shown on Figure 10 of the SUD, the maximum number of off-street car parking spaces is 1 for each dwelling unit calculated on an aggregate basis for all dwelling units constructed within the Project Site, but in no event more than 8,000 residential accessory spaces. The SUD provides for varying ratios of commercial parking that is also calculated on an aggregate basis Project-wide, except for off-street parking accessory to the Marina, which will be allocated pursuant to a separate Disposition and Development Agreement between the Authority and the Marina Developer.

Although the parking ratio is set on an aggregate basis Islands-wide, Planning Code Section 249.52(g)(iv)(D)(iv) disallows any new off-street parking to cumulatively exceed the applicable ratios, taking into account both built and entitled but not-yet-built Vertical Improvements at the following increments: every 2,000 net new housing units and every 100,000 gross square feet of non-residential uses in new or rehabilitated buildings (each, a "**Development Increment**"); provided, however, that for the first two Development Increments, a 10% exceedance will be allowed. In order to ensure that no Vertical DDAs/LDDAs are approved that would cause these parking ratios to be exceeded, this Section of the DDA provides for a mechanism for the Authority to approve, and Developer to allocate, off-street parking for Vertical Development.

4.2.1 Major Phase Applications Parking Data.

(a) Information to be Provided. Developer shall submit to the Authority with each Major Phase Application, a Parking Data Table consistent with the requirements of the DRDAP. The Parking Data Table will include the following information at a minimum:

(i) the total number of off-street parking spaces to be allocated to the Major Phase;

(ii) for any Major Phase after the Initial Major Phase, the total number of off-street parking spaces allocated in previously approved Major Phase Applications that have not yet been built or for which a Notice of Special Restrictions or equivalent instrument consistent with Section 4.2.3(c) below has not been recorded (subsections 4.2.1(a)(i) and (ii) collectively, the "**Allocated Parking**");

(iii) for any Major Phase Application after the Initial Major Phase, the number of off-street parking spaces that have been built and for which a Notice of Special Restrictions or equivalent instrument consistent with Section 4.2.3(c) below has been recorded, showing the number of parking spaces actually developed (any such parking, the "**Developed Parking**");

(iv) taking into account previously Allocated Parking, Developed Parking and unallocated parking for Authority Housing Lots as agreed by the Parties in accordance with Section 7.3 of the Housing Plan, the number of parking spaces for each land use that Developer may construct within that Major Phase in order to comply with Section 249.52(g)(iv)(D)(iv) (the "**Development Increment Remainder Parking**"). In evaluating the Parking Data Table and authorizing Applications for Vertical Approvals to be submitted to the Planning Department, the number of Development Increment Remainder Parking spaces available shall not include any unused or unallocated parking associated with Authority Housing Lots unless and until Authority has determined that such spaces shall not be constructed or reallocated to other Authority Housing Lots and the Parties have reached agreement on their reallocation to Developer in accordance with Section 7.3 of the Housing Plan.

As of the date of the first Major Phase Application, the Development Increment Remainder Parking will include the total number of off-street parking spaces for each land use that Developer is permitted to construct under the SUD within the Project Site up to the applicable Development Increment. For subsequent Major Phases the Development Increment Remainder Parking will be determined by calculating the total number of spaces allowed in that Development Increment for each land use that Developer is permitted to construct minus all Allocated Parking for each land use. To the extent that all Lots in any prior Sub-Phase have been fully developed with Vertical Improvements, Development Increment Remainder Parking shall also include the number by which the Allocated Parking approved in the applicable Sub-Phase Application exceeds the Developed Parking in that completed Sub-Phase, if any. Development Increment Remainder Parking will also include any unallocated parking for Authority Housing Lots as agreed by the Parties in accordance with Section 7.3 of the Housing Plan.

(b) Review and Approval. The Authority shall review the information submitted by Developer in the Parking Data Table and shall approve the off-street parking proposed by Developer for a Major Phase unless the amount of off-street parking proposed for the Major Phase would exceed the balance of the Development Increment Remainder Parking by more than 10% for the first two Major Phases, and not exceed the balance of the Development Increment Remainder Parking by any amount for subsequent Major Phases.

4.2.2 Sub-Phase Applications Parking Data. Developer shall submit as part of each Sub-Phase Application an updated Parking Data Table that will indicate how many off-street parking spaces are to be allocated to Vertical Developers on each Lot that is part of the Sub-Phase, including any off-street parking spaces that will be provided outside of a Lot to be located in a centralized parking facility. For any Lot in the Sub-Phase that is allocated fewer off-street parking spaces than the maximum number that would be permitted based on the off-street parking ratios specified in the SUD for the uses proposed on the Lot, the Developer shall have the right to assign those unallocated parking spaces to other Lots in the Sub-Phase or to other Sub-Phases of that Major Phase. In no event shall the number of Developed Parking spaces in a Sub-Phase exceed the number of Allocated Parking spaces for the Sub-Phase.

4.2.3 Vertical Development.

(a) Each Vertical DDA/LDDA shall establish the maximum number of off-street parking spaces that may be permitted on each Lot subject to the Vertical DDA/LDDA. The maximum number of off-street parking spaces permitted on any single Lot shall be the number of Allocated Parking spaces for that Lot approved in the applicable Sub-Phase Application.

(b) Vertical Development will be subject to the design review and approval process set forth in Planning Code Section 249.52.

(c) Upon the issuance of a Certificate of Occupancy for each Vertical Improvement constructed pursuant to a Vertical DDA/LDDA, the Vertical Developer shall record a notice of special restrictions or equivalent instrument against the Lot on which the Vertical Improvement is located, permanently restricting the number of off-street parking spaces permitted on the Lot, whether self-park, valet, stacked or other space efficient means, to the lesser of the Allocated Parking or the Developed Parking on the Lot. Vertical Developer shall record the notice of special restrictions or equivalent instrument within forty-five (45) days following issuance of the Certificate of Occupancy for the Vertical Improvement. The obligations of this Section 4.2.3(c) shall also apply to the Authority with respect to Authority Housing Units constructed by or caused to be constructed by the Authority, TIHDI, or Qualified Housing Developers.

4.2.4 Authority Housing Units. Parking for Authority Housing Lots shall be allocated in accordance with Section 7.3 of the Housing Plan. As provided therein, within each Major Phase, if and to the extent the Authority or a Qualified Housing Developer (including a Qualified Housing Developer selected by TIHDI with Authority Approval) does not wish to construct the full allotment of Parking Spaces permitted on an Authority Housing Lot and does not wish to use this permitted allotment on another Authority Housing Lot or on other Authority property in the Major Phase, then Developer shall have the right to use the unused parking allotment for a Market Rate Lot subject to terms and conditions agreed upon by the Parties.

4.3 Vertical Applications and Approvals. Developer or Vertical Developers shall submit Vertical Applications in the manner set forth in the SUD. Before Commencing a Vertical Improvement, Vertical Developers shall have entered into a Vertical DDA/LDDA in accordance with Section 4.1 and obtained all required Vertical Approvals necessary to commence construction of such Vertical Improvement in accordance with the SUD and, to the extent applicable, the DRDAP.

4.4 Conditions for Vertical Approvals. The Authority Director shall have no obligation to grant a Vertical Approval on Public Trust property, or to authorize submittal of an Application for a Vertical Approval on non-Public Trust property to the Planning Department, unless and until (i) the Authority has first granted the applicable Sub-Phase Approval, (ii) Developer has Completed, or provided Adequate Security to the Authority for the Completion of, the Infrastructure and Stormwater Management Controls required by the Infrastructure Plan to service the Lot in accordance with the Schedule of Performance, (iii) a Tentative Subdivision

Map that includes the applicable Lot has been approved in accordance with the TI/YBI Subdivision Code, and (iv) the applicable Vertical Developer is in compliance with its Vertical DDA/LDDA. The Authority shall enter into Vertical LDDAs with TIHDI and Qualified Housing Developers governing the construction of Authority Housing Units on the Authority Housing Lots to ensure that development on the Authority Housing Lots is consistent with the SUD and the Design for Development. Notwithstanding anything to the contrary above, there shall be no Vertical DDA/LDDA or Vertical Approval for the Public Property except that for Lots to be transferred to third parties for Vertical Improvements, including without limitation, the Sailing Center, the Environmental Education Center, the Wastewater Treatment Facility, the Cultural Park and the waterside improvements for the Marina, the Authority shall enter into appropriate agreements that will ensure consistency of development on the Public Property with the SUD, the Design for Development and this Agreement, as applicable. As set forth in the SUD, Authority must review and approve submittals to the Planning Department of Vertical Approval applications for compliance with applicable provisions of the Vertical DDA or in the absence of a Vertical DDA, is otherwise in compliance with the DDA and other applicable Development Requirements.

5. Reserved.

6. Land Acquisition. Developer will construct those portions of the Project for which it is entitled or obligated to construct on the Project Site. The Parties anticipate that the land in the Project Site will be acquired or otherwise made available in the manner described below.

6.1 Trust Exchange.

6.1.1 To implement the Exchange Act and to effectuate the planned reconfiguration of lands within the Project Site that are or may be held subject to (a) the public trust for commerce, navigation, and fishery, (b) a statutory trust imposed by the Conversion Act, or (c) both the public trust and a statutory trust (collectively, the "**Public Trust**"), the Authority agrees to enter into a separate title settlement, public trust exchange and boundary line agreement substantially in the form attached hereto as Attachment 1 (the "**Public Trust Exchange Agreement**"), subject to the approval of the California State Lands Commission ("**State Lands**"), the Authority Board and the City acting by and through the Board of Supervisors. The Public Trust Exchange Agreement provides that the Public Trust exchange as described therein (the "**Public Trust Exchange**") will occur in a series of phased closings (each, a "**Trust Exchange Closing Phase**") upon the satisfaction of certain conditions. The lands to be included in the Public Trust Exchange lie within Treasure Island and Yerba Buena Island, as described more fully in the Public Trust Exchange Agreement. A map showing the areas of Treasure Island that will be removed from the Public Trust and the areas of Yerba Buena Island that will become subject to the Public Trust as part of the Public Trust Exchange is attached to the Public Trust Exchange Agreement in Attachment 1. The Authority and Developer shall each use reasonable efforts to satisfy the conditions and diligently and timely complete the Public Trust Exchange under the Public Trust Exchange Agreement to achieve a configuration of Public Trust and non-Public Trust lands substantially similar to that set forth in the Public Trust Exchange Agreement as and when needed to enable Developer to satisfy its obligations under this DDA in accordance with the Schedule of Performance, and as otherwise consistent with Sub-Phase

Approvals. Without limiting the foregoing, Developer shall initiate and complete, at no cost to the Authority, all mapping and legal descriptions and take such additional actions as may be needed to effectuate the necessary Trust Exchange Closing Phase to allow for the timely closing of each Trust Exchange Closing Phase. The Parties acknowledge that, in accordance with the Public Trust Exchange Agreement, the governing body of State Lands (the State Lands Commission) must approve the Public Trust Exchange Agreement and certain conditions required by the Exchange Act must be satisfied prior to each Trust Exchange Closing Phase. Neither Developer nor the Authority shall engage in any activities that would be reasonably expected to jeopardize the Authority's ability to satisfy the conditions for the Public Trust Exchange or any Trust Exchange Closing Phase as set forth in the Exchange Act or the Public Trust Exchange Agreement.

6.1.2 The Public Trust Exchange Agreement anticipates that the first Trust Exchange Closing Phase (the "**Initial Closing Phase**") will include, among other things, the "**Phase 1 Area**" described and depicted in the Public Trust Exchange Agreement. Developer and the Authority shall each use reasonable efforts to cause the applicable parties to complete the Initial Closing Phase promptly following close of escrow for the first conveyance under the Conveyance Agreement.

6.1.3 After the Initial Closing Phase, and except as may otherwise be provided in the Public Trust Exchange Agreement, Authority shall initiate subsequent Trust Exchange Closing Phases (each, a "**Subsequent Closing Phase**") promptly upon the Authority obtaining the requisite land and otherwise being in a position to satisfy all closing conditions under the Public Trust Exchange Agreement and in the order and timing needed to correlate to Developer's phased development, as described in the Phasing Plan and any applicable Major Phase Approval. The Authority shall diligently prosecute the Subsequent Closing Phase to close; provided, that subject to satisfaction of the forgoing conditions, in no event shall Authority initiate a Subsequent Closing Phase later than thirty (30) days after Developer has submitted a Major Phase Application for the real property to be received by the Authority as part of that Subsequent Closing Phase. The Authority shall not be required to complete a Subsequent Closing Phase before it has acquired all necessary real property to be conveyed by the Authority as part of that Subsequent Closing Phase, and Developer has: (1) completed all mapping, surveys and legal descriptions necessary for the Subsequent Closing Phase, (2) paid or committed to pay all costs required under the applicable Public Trust Exchange Agreement to effectuate that Subsequent Closing Phase, and (3) submitted a Major Phase Application for the real property to be received by the Authority as part of that Subsequent Closing Phase.

6.1.4 The Public Trust Exchange Agreement would require the Authority to undertake certain non-native vegetation removal projects on Yerba Buena Island ("**Required Vegetation Removal**"). Developer shall cooperate with the Authority to ensure the timely completion of the Required Vegetation Removal consistent with the Authority's obligations under the Public Trust Exchange Agreement, and the costs of undertaking and completing the Required Vegetation Removal shall be a Project Cost.

6.2 Acquisition from the Navy. The Authority agrees to enter into the Conveyance Agreement with the Navy substantially in the form attached hereto as **Attachment 2**, subject to the approval of the Navy, the Authority Board and the City acting by and through

the Board of Supervisors. The Authority shall make commercially reasonable efforts to consummate the timely acquisition of the Project Site from the Navy in accordance with the Conveyance Agreement. The Authority and Developer shall use commercially reasonable and diligent efforts to complete the conveyances under the Conveyance Agreement. Without limiting the generality of any other conditions precedent to the Authority's obligation to convey real property under this DDA, the Parties agree it is a condition precedent to the Authority's obligation to convey any real property at the Project Site to Developer, and for Developer to take title to the same, that the applicable conveyance from the Navy under the Conveyance Agreement has been completed, and that all applicable Trust Exchange Closing Phases for the property have been completed. The Parties further understand and agree that the Project Site may be subject to deed restrictions and other regulatory agency requirements relating to the presence of any Hazardous Substances subject to Developer's rights set forth in Section 6.2.1 below.

6.2.1 Developer Rights to Comment on FOSTs. Section 3.4.1 of the Conveyance Agreement affords the Authority certain rights to comment upon any proposed FOSTs. The Parties agree that the Authority shall provide Developer the opportunity to comment on the proposed FOSTs and will incorporate Developer's comments and/or objections within the Authority's comments unless the Authority determines the comments are not reasonable.

6.2.2 Authority's Compliance with Conveyance Agreement. Authority shall diligently undertake all of its obligations under the Conveyance Agreement in a timely manner. In exercising its rights and carrying out its obligations under the Conveyance Agreement, Authority shall consult and coordinate closely with Developer and provide Developer with reasonable prior notice of all dispute resolution procedures occurring pursuant to Article 27 of the Conveyance Agreement, as well as all material meetings and conversations regarding the Conveyance Agreement, including the Major Phase Decisions, and shall allow Developer to participate in all such meetings except to the extent prohibited by the Navy. Developer shall reasonably cooperate with the Authority in connection with the Authority's enforcement of its rights and undertaking of its obligations under the Conveyance Agreement, including, without limitation, responding to Navy objections and participating in any conferences between the Authority and the Navy under Article 27 of the Conveyance Agreement.

6.2.3 Major Phase Decisions. Prior to or concurrently with each Major Phase Application or Sub-Phase Application, as applicable, the decisions described in Sections 6.2.3(a) through (d) below (collectively, the "**Major Phase Decisions**") shall be agreed upon by the Authority and the Developer in accordance with Section 5.6 of the Conveyance Agreement and Authority shall provide notice thereof to the Navy as more fully described in Section 5.7 of the Conveyance Agreement. The Authority shall also provide the Navy with notice of and the opportunity to approve any amendments or modifications to the Major Phase Decisions in connection with each Sub-Phase Application and during the course of each Sub-Phase, to the extent approved by Authority under the DRDAP. The Authority's approval shall be conditioned upon receipt of the Navy's approval of any such amendment or modification in accordance with Section 5.6 of the Conveyance Agreement. Any dispute between Authority and Developer with regard to a Major Phase Decision shall be resolved pursuant to the Expedited Arbitration

Procedure described in Section 15.1.2 hereof. The Major Phase Decisions consist of the following:

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

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

(c) Prior to Approval of each applicable Sub-Phase, minimum bid prices for the Residential Auction Lots for the Residential Auction Lots, the Non-Developer Critical Commercial Lots and the Non-Critical Commercial Lots located within that Sub-Phase, which shall be based on the Proforma, as updated prior to the submittal of each Sub-Phase Application, as well as any Re-Setting of the Minimum Bid Price, as described above.

(d) Prior to the Approval of each Major Phase, the Excess Land Appreciation Structure for that Major Phase for each Product Type in such Major Phase, as well as any re-evaluation of the Excess Land Appreciation Structure during any Major Phase that may occur in connection with the submittal of Sub-Phase Applications or the sale of Lots. For purposes of this Agreement and the Conveyance Agreement, the "**Excess Land Appreciation Structure**" is defined as the structure, procedures and metrics of the then-prevailing, industry standard market based participation in price appreciation greater than forecast at the time of such Lot sale (if any) for horizontal development land sellers.

6.2.4 Navy Caretaker Office. From and after conveyance of any Sub-Phase that includes the Navy Office as described in Article 13 of the Conveyance Agreement, Developer shall assume Authority's obligations to provide the Navy Office or a relocation premises provided in accordance with Article 13 of the Conveyance Agreement. In addition, Developer shall cooperate with the Authority's reasonable request to relocate the Navy Office prior to conveyance of the Sub-Phase that includes the Navy Office.

6.2.5 Redesign Trigger Event.

(a) The Parties anticipate that the environmental remedies selected by the Navy in Final Records of Decision for certain real property in the Project Site will require the imposition of land use and activity restrictions on such property. Such land use restrictions will be contained in quitclaim deeds from the Navy for such property or in other enforceable restrictions imposed on such property. The Parties acknowledge and agree that the Project described in Section 1.3 is the basis for Developer's financial expectations for development of the Project Site and the Authority's expectations for Associated Public Benefits. However, the Conveyance Agreement contemplates both (i) a scenario in which the Navy's Record of Decision for the Site 12 Development Parcel reflects environmental restrictions that would prohibit the timely development of the Site 12 Development Parcel (as defined in Section 4.2.2 of the Conveyance Agreement) in accordance with Project described in Section 1.3, and (ii) a termination of the Conveyance Agreement for failure to meet certain other closing conditions

(each, a "**Redesign Trigger Event**", as more particularly described in the Conveyance Agreement). If a Redesign Trigger Event occurs, then Developer shall comply with the procedures set forth in this Section 6.2.5.

(b) If a Redesign Trigger Event occurs, as described in Section 4.2.3 of the Conveyance Agreement, Developer shall have the right to seek such necessary third-party approvals or modifications to restrictions (including, without limitation, State legislation if necessary) to re-entitle, redesign and rebuild portions of the Project on portions of Site 24 and the surrounding area that will be freed of the Public Trust (identified on Exhibit L, attached hereto, as the "**Site 12 Redesign Site**") that are mutually agreed upon by the Parties, or on such other mutually agreed upon sites elsewhere on Treasure Island, in a manner that would permit the type of development proposed for the property that is the subject to the Redesign Trigger Event (including, without limitation, residential development of the type and density contemplated in the Design for Development) (the "**Redesign Plan**"). The Authority shall reasonably cooperate with Developer in such actions. The scope of the Redesign Plan shall be to the extent reasonably necessary, as determined by the Developer, to recapture the lost value to the Project resulting from the Redesign Trigger Event. The primary goal of any Redesign Plan shall be to recover an equivalent amount of development value attributable to the applicable parcel based on the level of development permitted by the Project and Developer's financial projections, or if the parcel is an open space parcel, based upon the lost value to the Project resulting from the redesign of the affected open space, while balancing the appropriate level of Associated Public Benefits. The Redesign Plan shall address the rebuilding of already constructed Infrastructure and Stormwater Management Controls to the extent necessary to accommodate the redesign, and shall identify the incremental level of additional Infrastructure and Stormwater Management Controls, if any, required as a result of the redesign.

(c) Work Program and Budget. Upon the occurrence of a Redesign Trigger Event, Developer and the Authority shall meet and confer to mutually agree on a work program and budget (the "**Work Program**" and the "**Redesign Budget**") for a Redesign Plan to be submitted to the Navy no later than one hundred eighty (180) days after a Redesign Trigger Event (as such date may be extended by the Navy in accordance with the terms of the Conveyance Agreement). The Work Program shall set forth the anticipated work program and schedule necessary to prepare, entitle and implement the Redesign Plan. The Redesign Budget shall estimate the anticipated costs necessary to prepare, entitle and implement the Redesign Plan (the "**Redesign Costs**"). Redesign Costs shall include, without limitation, all soft costs related to the Redesign Plan, including without limitation, costs associated with any subsequent environmental review that is required pursuant to CEQA, and hard costs related to the rebuilding, replacing, relocating or incremental cost of additional Infrastructure and Stormwater Management Controls as necessary to accommodate the Redesign Plan. If after Navy's ninety (90) day review process under Section 4.2.4 of the Conveyance Agreement, the Navy objects to the Work Program and Redesign Budget, Developer shall fully participate in the Authority's discussions with the Navy unless the Navy prohibits such participation, and the Authority shall consult and coordinate closely with Developer and provide Developer with reasonable prior notice of all dispute resolution proceedings pursuant to the terms of the Conveyance Agreement.

(d) Upon the Navy's approval of the Work Program and Redesign Budget, Developer shall diligently proceed with the planning, design and entitlement

activities reasonably necessary to implement the Redesign Plan. If, despite such efforts, Developer has not obtained all such necessary third-party approvals or modifications by the Outside Date for submittal of a Major Phase Application that includes the property subject to the Redesign Trigger Event, then such Outside Date shall be automatically extended by such further time as reasonably necessary to complete all aspects of redesign, including any further CEQA review, to a final binding, non-appealable result; provided, that Developer is diligently proceeding to obtain all such necessary third-party approvals or modifications. Developer shall thereafter submit a Major Phase Application for the applicable Major Phase that is consistent with the applicable third-party approvals, land use restrictions and modifications thereto that Developer obtains, if any. Following the Major Phase Approval thereof, if any, the Parties shall make adjustments to this DDA (including the Land Use Plan and other Exhibits) and use their respective commercially reasonable efforts to make adjustments to the Development Requirements, in each case to the extent necessary to enable development consistent with such Major Phase Approval.

7. Construction of Infrastructure.

7.1 Related Infrastructure; Unrelated Infrastructure.

7.1.1 Related Infrastructure. "**Related Infrastructure**" is Infrastructure and Stormwater Management Controls that are designated in the Infrastructure Plan or the Phasing Plan as part of or relating to development of a particular Sub-Phase, as it may be changed in a Major Phase Approval or Sub-Phase Approval (as set forth in the DRDAP), and may include Infrastructure or Stormwater Management Controls located outside of the Sub-Phase. Developer shall (i) following each Sub-Phase Approval and Developer acquisition of the required real property under Article 10 or otherwise, Commence the Related Infrastructure for the Sub-Phase on or before the Outside Date and (ii) diligently and continuously prosecute the Related Infrastructure to Completion in accordance with this Article 7, and in any event before the applicable Outside Date (the "**Infrastructure Obligations**").

7.1.2 Unrelated Infrastructure. "**Unrelated Infrastructure**" is Infrastructure and Stormwater Management Controls contemplated by the Infrastructure Plan but not yet required for development of a Sub-Phase for which Developer has obtained Sub-Phase Approval. Developer may elect to construct Unrelated Infrastructure before receipt of any particular Sub-Phase Approval upon applying to and receiving Approval to do so from the Authority Director. Such Approval may be withheld by the Authority Director if he or she reasonably determines that such construction will materially interfere with the Phasing Plan or with the timing of the availability of tax increment for other development within the Project Site. In connection with any such Approval, the Authority shall reasonably consider any request by Developer to enter into one (1) or more Permits to Enter under which Developer may construct the Unrelated Infrastructure.

7.2 Transferable Infrastructure.

7.2.1 Definition. "**Transferable Infrastructure**" means items of Related Infrastructure consisting of (1) final, primarily behind the curb, right-of-way improvements, including, sidewalks, light fixtures, street furniture, landscaping, and driveway

cuts**,** and (2) utility laterals serving the applicable Lot, including storm, sewer, water, reclaimed water, dry utilities and utility boxes.

7.2.2 Transferable Infrastructure. The purpose of this Section is to minimize the risk of damage to Infrastructure and Stormwater Management Controls from construction of Vertical Improvements on Market Rate Lots and to allow Developer and Vertical Developers to coordinate their respective construction. Developer may elect to Transfer any Lot to a Vertical Developer before Completion of Infrastructure and Stormwater Management Controls associated with the Lot unless the Lot is an Authority Housing Lot (which is governed by the Housing Plan) or Public Property. Any such Transfer shall not extend the Schedule of Performance for Completion of Infrastructure and Stormwater Management Controls for the applicable Sub-Phase except as otherwise provided in this Section. If Developer Transfers any Lot prior to Completion of applicable Transferable Infrastructure, then Developer shall have the right to transfer the obligation to Complete any or all items of Transferable Infrastructure to the Vertical Developer under the Vertical DDA/LDDA, provided, however, that no such transfer shall release Developer of its Infrastructure and Stormwater Management Controls obligations hereunder. If the Transfer of the Lot(s) occurs prior to the Infrastructure Completion date for that Sub-Phase, as shown on the Schedule of Performance, then notwithstanding the Schedule of Performance, the applicable Transferable Infrastructure shall be Completed upon the earliest of (i) issuance of a Certificate of Occupancy for the applicable Vertical Improvement, (ii) twenty-four months after the date of Transfer, or (iii) twelve (12) months after the Infrastructure Completion date for that Sub-Phase. For any Lots that have not been Transferred prior to the Infrastructure Completion date for that Sub-Phase, Developer may request that the date for Completion of Transferable Infrastructure for such Lots be extended concurrent with Vertical Development, which consent may be given or withheld in Authority's sole discretion. In addition, Developer may request Authority's approval to transfer the obligation for any other item of Infrastructure and Stormwater Management Controls other than Transferable Infrastructure to a Vertical Developer, which consent may be given or withheld by Authority in its sole discretion.

7.2.3 Security for Transferable Infrastructure. If Developer transfers the obligation to Complete Transferable Infrastructure, or subject to Authority approval, other Infrastructure and Stormwater Management Controls, to a Vertical Developer, then (i) Developer shall have the right to assign the applicable public improvement agreement to the applicable Vertical Developer consistent with such corresponding rights allowed under the Interagency Cooperation Agreement, and (ii) with Authority's Approval, Vertical Developer may provide Adequate Security to replace Developer's Adequate Security for the applicable items of Transferable Infrastructure so long as the replacement Adequate Security is equivalent to the Adequate Security to be released as reasonably determined by Authority, in which case Authority shall promptly release Developer's applicable Adequate Security.

7.3 Compliance with Standards. Developer shall Complete, or cause to be Completed, all Infrastructure and Stormwater Management Controls (i) in accordance with this DDA (including the Infrastructure Plan, the Transportation Plan Obligations, the Sustainability Obligations, the Community Facilities Obligations, the Housing Plan, the Project MMRP, the Phasing Plan, the Schedule of Performance and Section 7 of the Public Trust Exchange Agreement), and (ii) in a good and workperson-like manner, without material defects, in

accordance with the Construction Documents and all applicable Authorizations and the TI/YBI Subdivision Code. Without limiting the foregoing, the Infrastructure and Stormwater Management Controls located on and serving the Public Property and the Authority Housing Lots must be equivalent in quality, sizing, capacity and all other features to the Infrastructure and Stormwater Management Controls located on and serving the Market Rate Lots and the Commercial Lots, subject to any variations specifically set forth in the Infrastructure Plan and any reasonable variations related to physical conditions (such as sloping), use, or intensity of development.

7.4 Authority Conditions to Developer's Commencement of Infrastructure. The following conditions precedent shall be satisfied before Developer may Commence any Infrastructure and Stormwater Management Controls, unless expressly waived by the Authority in accordance with Section 7.5:

7.4.1 Developer shall have obtained (i) a Major Phase Approval and a Sub-Phase Approval for the real property on which the Infrastructure and Stormwater Management Controls are to be constructed (except for Unrelated Infrastructure and Related Infrastructure outside of the Sub-Phase), and (ii) all other Authorizations required herein from the Authority or any other Governmental Entities to Commence such Infrastructure and Stormwater Management Controls;

7.4.2 Developer shall have recorded in the Official Records a Transfer Map covering the real property on which the Infrastructure and Stormwater Management Controls are to be constructed (except for Unrelated Infrastructure and Related Infrastructure outside of the Sub-Phase) or has otherwise complied with the Subdivision Map Act, and Developer shall have received approval of a Tentative Subdivision Map covering the real property on which the Infrastructure and Stormwater Management Controls are to be constructed (except for Unrelated Infrastructure and Related Infrastructure outside of the Sub-Phase);

7.4.3 Developer shall have performed its obligations under the Financing Plan related to the applicable Sub-Phase as and when required, subject to the Authority having performed its obligations as and when required under the Financing Plan;

7.4.4 Developer shall have submitted to the Authority the Construction Documents for such Infrastructure and Stormwater Management Controls and such Construction Documents shall have been reviewed and Approved under the DRDAP;

7.4.5 any demolition or grading permit required in order to Commence the Infrastructure and Stormwater Management Controls shall have been issued by the City;

7.4.6 Developer shall not be in Material Breach of this DDA with respect to any obligations arising in the applicable Sub-Phase or with respect to Developer's Infrastructure and Stormwater Management Controls Obligations in the applicable Major Phase related to the Infrastructure and Stormwater Management Controls being constructed;

7.4.7 to the extent such Infrastructure and Stormwater Management Controls are to be located outside the Sub-Phase boundaries or on portions of the Project Site that the Navy has not yet transferred to the Authority, Developer shall have acquired all

easements, leases or licenses or otherwise made such arrangements with the Navy and the Authority as are necessary (and reasonably satisfactory to the Authority) to Commence and Complete such Infrastructure and Stormwater Management Controls; and

7.4.8 Developer shall have provided the Reversionary Quitclaim Deed to the extent required under Article 16 hereof, and Developer shall have provided, and the Authority Director shall have Approved, Adequate Security for Completion of the Related Infrastructure, and any Unrelated Infrastructure associated with the applicable Sub-Phase that Developer has elected to construct in accordance with Section 7.1.2, in favor of the Authority and, to the extent required under the TI/YBI Subdivision Code, the City.

7.5 Conditions for Benefit of the Authority. The conditions set forth in Section 7.4 are solely for the benefit of the Authority and may be waived only by the Authority Director (except that the condition in Section 7.4.2 shall not be waivable). Provided that Developer has not committed a Material Breach that remains uncured beyond any applicable cure period, the Authority shall take such actions as are required of the Authority under the DRDAP and this DDA to review, consider and grant Developer's request for necessary Approvals to satisfy the above conditions. If any of the conditions are not timely satisfied, they may be waived by the Authority Director or the Authority may extend the time for satisfaction of the conditions, as Approved by the Authority Director in his or her sole discretion (except that the condition in Section 7.4.2 shall not be waivable).

7.6 Developer Efforts to Satisfy Authority Conditions. Provided that the Authority has not committed a Material Breach that remains uncured beyond any applicable cure period, Developer shall use its diligent and reasonable efforts, and otherwise take such actions as are required under this DDA to cause the conditions set forth in Section 7.4 to be satisfied in sufficient time to enable Developer to meet the Outside Dates set forth in the Schedule of Performance; provided, that the foregoing shall not require Developer to pay any sum of money not otherwise required under this DDA.

7.7 Effect of Failure of Condition. The Parties expressly acknowledge and agree that a failure of condition in favor of the Authority for one Major Phase, Sub-Phase, Lot or Vertical Project shall not by itself be deemed the failure of a condition for any other Major Phase, Sub-Phase, Lot or Vertical Project except to the extent that such failure directly pertains to the other Major Phase, Sub-Phase, Lot or Vertical Project (e.g., the failure to satisfy a condition may prevent subsequent Sub-Phase Approvals if the Infrastructure and Stormwater Management Controls needed to service the proposed Sub-Phase has not Commenced), nor shall such failure relieve Developer or the Authority of an obligation that arose before the failure of such condition. The failure of a condition shall not, in and of itself, be an Event of Default; provided, that (i) the failure of Developer to comply with Section 7.6 may, following notice and the cure period set forth in Article 16, be an Event of Default, and (ii) the failure of the Authority to act upon an Application as and when required under the DRDAP shall not be a Material Breach but shall give rise to an Excusable Delay.

7.8 Completion of Developable Lots. As part of its Infrastructure obligations, Developer shall Complete all work necessary to create Developable Lots within the Project Site. To be a "**Developable Lot**", the following conditions shall be met:

7.8.1 a Final Subdivision Map creating a separate legal parcel for the Lot has been Approved and recorded in the Official Records;

7.8.2 The Lot has been graded and soil compacted in accordance with the applicable grading permit and in conformance with the geotechnical recommendations of the site as certified by Developer's geotechnical engineer;

7.8.3 the Lot is served by the Infrastructure and Stormwater Management Controls described in the Infrastructure Plan with respect to the Lot, except to the extent that items of Transferable Infrastructure remain outstanding and will be constructed by the applicable Vertical Developer or Completed after the Vertical Improvements, as described in Section 7.2 of this Agreement and Section 2.8 of the Housing Plan;

7.8.4 For a Lot for which the Navy has issued a FOST, the condition of the Lot shall, to the extent such compliance is within the control of Developer, comply with all applicable requirements in the FOST, Petroleum Corrective Action Plan, Management Plan (including operation and maintenance requirements applicable at the time the Developable Lot is created by the Developer) and any applicable restrictions in deeds or covenants;

7.8.5 all other obligations outside the boundaries of the Lot as required by applicable Governmental Entities have been fulfilled, or appropriate guarantees, bonds and/or subdivision improvement agreements acceptable to the City and the Authority are in place, as necessary to enable the issuance of a Building Permit to Commence construction on the Lot; and

7.8.6 for the Open Space Lots, Developer shall Complete the surface Improvements in accordance with the Parks and Open Space Plan, the Conceptual Parks and Open Space Master Plan (as defined in the DRDAP) and the applicable Major Phase and Sub-Phase Approvals.

7.9 ICT Rights. Developer shall have the right through private contracts with Vertical Developers to provide information and communications technology ("**ICT**") design, site development, installation, operations and services for all Vertical Improvements at the Project Site, excluding the Authority Housing Units and other Public Property (the "**ICT Rights**"). In connection with the ICT Rights, Developer shall have the right to install equipment related to the ICT in or on the real property that is or will become public right of way, subject to City and Authority Approvals in accordance with the Applicable Regulations. Developer's right shall not restrict the City or regulated entities (including certificated telecommunications carriers and franchised video providers) from installing communications and other facilities in or on the real property that is or will become public right of way. The ICT Rights shall be transferable by Developer and, to the extent that Developer Transfers portions of the Project Site to Vertical Developers as permitted in this DDA, Developer shall have the right to impose ICT requirements on the Vertical Improvements. The ICT Rights shall mean the right to: (i) define and establish the high level ICT designs, standards, architectures, plans, minimum specifications for all equipment, including any Internet Protocol ("**IP**") enabled devices, that may connect to the regulated public communications networks and fiber optic networks, whether wireless or fixed line, in buildings and common areas, excluding regulated telecommunications services ("**ICT Design**"); (ii) define and establish functional equipment standards for all ICT hardware and

software products and solutions, including any IP enabled devices ("**ICT Products and Solutions**"), compliant with the ICT Design; and (iii) review and approve any ICT Products and Solutions for compliance with the ICT Design. Notwithstanding anything to the contrary in this Section 7.9, a termination of this DDA by the Authority shall terminate Developer's rights under this Section 7.9 with respect to any portion of the Project Site as to which Developer's development rights are terminated. Nothing in this Section 7.9 shall prevent an Owner/Occupant or tenant of any Owner/Occupant at the Project Site from purchasing communications, video and other IP services from regulated entities including certificated telecommunications carriers and franchised video providers.

7.10 Wastewater Treatment Plant. The parties acknowledge that the Infrastructure Plan contemplates that the SFPUC will provide a new or upgraded wastewater treatment plant as needed to meet the flow and treatment requirements of the Project projected for each Major Phase. The Authority shall use commercially reasonable efforts to negotiate a Memorandum of Understanding with the SFPUC (the "**SFPUC MOU**") that includes the following provisions, subject to approval of the SFPUC MOU by the SFPUC Commission, the Authority Board and, if required, the Board of Supervisors: (i) the terms upon which SFPUC will provide a new or upgraded wastewater treatment plant for which the SFPUC will be responsible for the financing and construction; (ii) a process for SFPUC to provide a service plan in response to each Major Phase Application, setting forth SFPUC's planned upgrades or new improvements to the wastewater treatment operations for that Major Phase, as well as milestones during that Major Phase, such as target dates for planning, design, regulatory approvals and entitlements and permits necessary to meet the proposed service plan; (iii) a meet and confer process among the Authority, Master Developer and the SFPUC if the SFPUC fails to meet the milestones in the SFPUC MOU in order to discuss the applicable milestones and what actions may be needed to achieve the identified service upgrades; and (iv) a meet and confer process among the Authority, Master Developer and the SFPUC if at any time the SFPUC conditions its approval of any Subdivision Map or Building Permit application upon the completion of new or upgraded wastewater treatment facilities that are the responsibility of SFPUC under the PUC MOU, or if SFPUC comments as part of the Major Phase or Sub-Phase Application process that it will require such conditions, in order to develop a strategy to avoid or minimize any delays in issuance of any Subdivision Maps or Vertical Approvals resulting from the SFPUC's failure to meet its obligations under the SFPUC MOU. A potential strategy could include providing Master Developer with certain rights to undertake the development of the required wastewater treatment facilities (including the option of constructing separate facilities), on terms mutually agreed upon by Master Developer, SFPUC and the Authority. Authority and SFPUC's failure to execute the PUC MOU consistent with this Section 7.10 prior to submittal of the first Major Phase Application, or SFPUC's failure to meet its material obligations thereunder to construct wastewater treatment improvements in a timely manner, shall be grounds entitling Developer to submit a Requested Change Notice and invoke the procedures of Section 3.8.2.

8. Construction of Vertical Improvements/Required Improvements.

8.1 Vertical Improvements. Upon receipt of a Vertical Approval, the applicable Vertical DDA/LDDA will provides the Vertical Developer the right to Commence and construct the applicable Vertical Improvements at any time. The Vertical DDA/LDDAs provide that the Vertical Developer and the Authority must at all times comply with the

provisions of the SUD, the Design for Development and the DRDAP with respect to the Vertical Improvements.

8.2 Required Improvements. Developer shall Commence and Complete the Required Improvements in accordance with the Schedule of Performance. As described in Section 10.1.3, the Required Improvements to be constructed by Developer on land owned by the Authority that has not been conveyed to Developer by Quitclaim Deed or Ground Lease (i.e., the police/fire station and the ferry terminal), will be pursuant to a Permit to Enter between Authority and Developer. Developer's obligation for the five thousand (5,000) square foot interim grocery store consists of a grocery store, which may be located within an existing building or a new building, to provide basic grocery needs to Island residents. Developer's obligation for the fifteen thousand (15,000) square foot grocery store (the "**Required Retail**"), consists of Completion of a Developable Lot and core and shell building improvements (which may include retrofit or rehabilitation of existing buildings, or construction of new buildings) adequate to accommodate the Required Retail and the execution of a sublease with one or more qualified grocery tenants for operation of the Required Retail by the Outside Date for Completion of the Required Retail. Developer shall use commercially reasonable efforts to attract a grocery store tenant(s) that sell staples, fresh meat and fresh produce and includes a pharmacy. If despite its commercially reasonable efforts, Developer is unable to attract a grocery tenant that includes a pharmacy, then Developer in connection with its retail program elsewhere within the Project Site shall use commercially reasonable efforts to attract a pharmacy and/or medical clinic tenant. For purposes of attracting a pharmacy or medical clinic, "commercially reasonable efforts" means a targeted marketing program, which may be through established retail brokers, reasonably designed to attract pharmacies or medical clinics at then-prevailing market rents for suitable retail space constructed on the Project Site. In no event shall the provision of a pharmacy be considered a "Required Improvement" hereunder.

8.3 Marina Landside Improvements. Developer shall commence construction of the following Marina-related improvements within five (5) years after the Effective Date: such improvements needed for the following: pedestrian and vehicular access, utilities, parking, loading, sanitary facilities and showers for Marina users (which may be located in temporary facilities until permanent facilities are constructed) and other improvements as are reasonably required for both construction and permanent operations of the Marina functionally equivalent to those contemplated in the Marina Term Sheet, and, to the extent that such improvements or facilities are located on areas of the Project Site owned by or under Ground Lease to Developer, Developer shall grant the Marina access rights to such areas (including easements, licenses or otherwise) (collectively, the "Marina Access Improvements"). If Developer has not Commenced the Marina Access Improvements within five (5) years from the Effective Date (subject to Excusable Delay), the Authority may, in its sole discretion and as its sole remedy, terminate Developer's right to construct the Marina Access Improvements and the Authority shall work with the Marina Developer in connection with the Marina Developer's construction of the Marina Access Improvements at Developer's sole cost and expense and in accordance with the Design for Development. In such case, the Authority, Developer and the Marina Developer shall meet and confer regarding reasonable rights for access, utilities, loading and otherwise as are reasonably required for both construction and permanent operations of the Project by the Developer. Developer's obligation to the Marina Developer for the Marina Landside Improvements are limited to those obligations set forth in this Section 8.3; provided, however,

that nothing herein is intended to diminish the rights and obligations of the Marina Developer under the Marina Term Sheet. The Parties acknowledge that the Project Site does not include the Marina area shown on Exhibit B-1 and excluded from the legal description in Exhibit B-2. If the final description of the Marina property described in the final disposition and development agreement for the Marina executed in accordance with the Marina Term Sheet differs from that shown, the parties will prepare and record a replacement legal description reflecting the final boundaries of the Marina waterside area.**Issuance of Authorizations; Issuance of Certificates of Completion**.

9.1 Authorizations.

9.1.1 Developer and Vertical Developer, as applicable, must obtain from any City Agency or other Governmental Entity having jurisdiction over all or a portion of the Project Site any permit, approval, entitlement, agreement, permit to enter, utility service, subdivision map (including under the TI/YBI Subdivision Code), Building Permit or other authorization for the work they are required to perform under this DDA or the Vertical DDA/LDDA and as may be necessary or desirable to effectuate and implement such work (each, an "**Authorization**"). Authorizations required for the Project from the Authority or a City Agency shall be consistent with the Applicable Regulations and the Development Agreement. The Authority will reasonably cooperate with Developer and Vertical Developers upon request in obtaining these Authorizations, including, without limitation, executing any such Authorizations to the extent the Authority is required to execute the same as co-applicant or co-permittee, or as otherwise Approved by the Authority Director so long as such Authorizations are consistent with this DDA or the Vertical DDA/LDDA, as applicable. None of the Authority, Developer or any Vertical Developer will agree to the imposition of any conditions or restrictions in connection with obtaining any such Authorization if the same would create any obligations on the Authority's part not otherwise contemplated under this DDA or the Vertical DDA/LDDA, as applicable, without the Approval of the Authority, which may be given or withheld in the Authority's sole discretion. A signature by the Authority staff on any Authorization or application for an Authorization shall be conclusive evidence that the content of such application or Authorization is consistent with the Development Requirements, except to the extent the signature is based on material error or incorrect information supplied by the applicant.

9.1.2 Developer, with respect to Infrastructure and Stormwater Management Controls, and Vertical Developers, with respect to Vertical Improvements constructed by them, at no cost or expense to the Authority, shall be solely responsible for ensuring that the design and construction of their respective Improvements complies with any and all applicable laws and conditions or restrictions imposed by any City Agency or other Governmental Entity in connection with any Authorization, whether such conditions are to be performed on the Project Site or require the construction of Improvements or other actions off the Project Site. Any fines, penalties or corrective actions imposed as a result of the failure of Developer or a Vertical Developer to comply with the terms and conditions of any such Authorization shall be paid or otherwise discharged by Developer or Vertical Developer, as the case may be, and (i) the Authority shall have no liability, monetary or otherwise, for such fines and penalties, and (ii) such fines or penalties shall not be Project Costs.

9.1.3 Application for Building Permits shall be made in accordance with the SUD and the DRDAP.

9.1.4 Notwithstanding anything to the contrary above, the Authority shall have no obligation to execute any application for any Authorization that would impose costs or fees on the Authority unless the applicant arranges a reimbursement arrangement Approved by the Authority.

9.2 Issuance of Certificates of Completion.

9.2.1 Generally. When (i) Developer reasonably believes that it has Completed Related Infrastructure, or a portion thereof, or Unrelated Infrastructure, or a portion thereof, Developer shall request the Engineer to issue an Engineer's Certificate verifying that Developer has Completed the specified Infrastructure and Stormwater Management Controls in accordance with the Construction Documents or (ii) with respect to Vertical Improvements that are Required Improvements, Developer shall request the Architect to issue an Architect's Certificate verifying that Developer has Completed the specified Required Improvements in accordance with the Construction Documents. Upon issuance, Developer shall deliver to the Authority the Engineer's Certificate or Architect's Certificate, as applicable. Within twenty (20) days after the Authority's receipt of any such Engineer's Certificate or Architect's Certificate, as applicable (or any resubmittal pursuant to Section 9.2.4 hereof), the Authority shall either issue to Developer a Certificate of Completion for the applicable Infrastructure and Stormwater Management Controls or Required Improvements or provide to Developer a statement of the reasons for the failure to issue the Certificate of Completion as more particularly set forth in Section 9.2.4.

9.2.2 Effect of Certificate of Completion on Developer and Vertical Developer. For purposes of this DDA or the applicable Vertical DDA/LDDA only, the issuance of a Certificate of Completion shall be a conclusive determination of the Completion of the applicable Infrastructure and Stormwater Management Controls or Required Improvements in accordance with this DDA or the applicable Vertical DDA/LDDA, including without limitation with respect to the obligations to Commence and Complete the Infrastructure and Stormwater Management Controls or Required Improvements, as applicable, in accordance with the Construction Documents; provided, however, such determination shall not impair the Authority's right to indemnity under Article 22 or the City's or the Authority's right to require correction of any defects in accordance with the TI/YBI Subdivision Code. Developer or a Vertical Developer shall record the Certificate of Completion within forty-five (45) days following receipt thereof.

9.2.3 Effect of Certificate of Completion on any Person. Following recordation of the Certificate of Completion, any Person then owning or later purchasing, leasing or otherwise acquiring any interest in the applicable Major Phase, Sub-Phase, Lot or Vertical Project shall not, solely by virtue of such ownership, purchase, lease, or acquisition, or by virtue of such Person's actual or constructive knowledge of the contents of this DDA or the Vertical DDA/LDDA, as applicable, incur any obligation or liability under this DDA or the Vertical DDA/LDDA, as applicable for the construction, operation, restoration or rehabilitation of the Infrastructure and Stormwater Management Controls or Vertical Improvements for which the Certificate of Completion has been recorded; provided, that such Person shall be subject to any

Vertical DDA/LDDA to which it is a party, obligations of record and the Development Requirements. The Authority's issuance of any Certificate of Completion shall not relieve Developer, Vertical Developer or any other Person from any applicable building, fire or other construction code requirement, conditions to occupancy of any Improvement, or other applicable laws.

9.2.4 Authority Refusal to Issue a Certificate of Completion. If the Authority refuses or fails to issue a Certificate of Completion in accordance with Section 9.2.1, then the Authority shall provide to Developer or Vertical Developer, as applicable, a written statement setting forth the basis for such refusal or failure and the reasonable acts or measures that must be taken by Developer or Vertical Developer, as applicable, to obtain a Certificate of Completion. Developer or the Vertical Developer (as the case may be) may resubmit their request for a Certificate of Completion at any time after completion of such acts or measures required to obtain a Certificate of Completion.

9.2.5 Authority and City Cooperation Regarding Certain Certificates of Completion. The Parties acknowledge and agree that the Authority will forward all Engineer's Certificates for Infrastructure and Stormwater Management Controls that constitute public improvements under the TI/YBI Subdivision Code (the "**Public Improvements**") and the results of any inspection thereof to the Department of Public Works for its review and potential acceptance of such Public Improvements in accordance with the TI/YBI Subdivision Code and any applicable subdivision improvement agreement entered into by Developer and the City. The Authority shall use commercially reasonable efforts to cause the Department of Public Works to expeditiously review and the Board of Supervisors to accept such Public Improvements. The Parties acknowledge and agree that the Authority will forward all Architect's Certificates for Vertical Improvements and the results of any inspection thereof to DBI for its review in accordance with applicable City Authorizations. The Authority will use commercially reasonable efforts to cause DBI to expeditiously review and Approve the Vertical Improvements.

9.2.6 Use of Public Improvements Prior to Certificate of Completion. The Parties acknowledge and agree that Developer shall not be obligated to allow use of any Public Improvements by any Person, including the Authority, any City Agencies, any other Governmental Entity or any Third Parties, prior to the acceptance of such Public Improvements by the City and the issuance of a Certificate of Completion for such Public Improvements by the Authority.

9.2.7 Certain Certificates of Completion. Issuance of a Certificate of Completion by the Authority may be conditioned upon the following:

(a) for a Lot, on the Authority's determination that such Lot is a Developable Lot;

(b) for an Open Space Lot, on the Authority's determination that such Open Space Lot is a Developable Lot and that Developer has Completed all surface Improvements for such Open Space Lot in accordance with the Parks and Open Space Plan, the Conceptual Parks and Open Space Master Plan and the applicable Major Phase and Sub-Phase Approvals;

(c) for Public Improvements, on receipt of a certificate of completion from the City Engineer with respect to such Public Improvements delivered in accordance with any applicable subdivision improvement agreement; and

(d) for Required Improvements, a Temporary Certificate of Occupancy.

9.3 Substantial Completion. When (i) Developer reasonably believes that it has Substantially Completed Related Infrastructure, or a portion thereof, Unrelated Infrastructure, or a portion thereof, or the Required Improvements, or a portion thereof, (ii) Vertical Developer reasonably believes that it has Substantially Completed Required Improvements, or a portion thereof, or Transferable Infrastructure or a portion thereof, then such Person may request the Authority to determine that Substantial Completion of such Improvements has occurred; such request shall be accompanied by appropriate documentation to support such belief. Within sixty (60) days after the Authority's receipt of such request, the Authority shall take such actions as are reasonably necessary to reasonably determine whether such Improvements satisfy the applicable requirements for Substantial Completion set forth in the definition thereof and either issue to Developer or such Vertical Developer, as applicable, a notice of Substantial Completion of such Improvements or provide to Developer or such Vertical Developer a statement of the reasons for the failure to issue such notice. Any notice of disapproval shall set forth the basis for such disapproval and the reasonable acts or measures that must be taken by Developer or Vertical Developer, as applicable, to obtain such notice of Substantial Completion.

10. Terms for Conveyances to Developer.

10.1 General.

10.1.1 Fee Conveyances. Subject to receipt of applicable Sub-Phase Approvals and the terms of this DDA, including the satisfaction or waiver of the conditions set forth in Section 10.3, (a) the Authority shall convey to Developer, on a phased basis, certain real property owned or acquired by the Authority, as more particularly set forth in Section 3.7; and (b) Developer agrees to acquire such real property from the Authority, to cause Completion of the Infrastructure and Stormwater Management Controls and sell Lots to Vertical Developers, all to the extent required under and consistent with this DDA for land that is not subject to the Public Trust. Any real property conveyance from the Authority to Developer under this DDA shall be by an Authority Quitclaim Deed.

10.1.2 Ground Lease Conveyances. Subject to the terms of this DDA, upon satisfaction or waiver of the conditions set forth in Section 10.3, Authority shall enter into LDDAs and Ground Leases for the conveyance and development of the Critical Commercial and Non-Critical Commercial Lots located on Public Trust property, in accordance with the further terms and conditions of Section 17.2.1 hereof, which LDDAs shall be substantially consistent with Exhibit I, and which Ground Leases shall be substantially consistent with Exhibit M, attached hereto.

10.1.3 Permit to Enter. For all Infrastructure and Stormwater Management Controls and Required Improvements to be constructed by Developer on land owned by the Authority that has not been conveyed to Developer by Quitclaim Deed or Ground Lease, the Authority shall enter into a Permit to Enter with Developer. For any property still owned by the Navy that is reasonably required by Developer for staging or constructing Infrastructure and Stormwater Management Controls or Required Improvements, Authority shall coordinate with Navy to assign its rights to enter into a Permit to Enter onto Navy property to the extent permitted under the Navy Conveyance Agreement.

10.2 Escrow and Title.

10.2.1 Escrow. No later than sixty (60) days before the first scheduled conveyance from the Authority to Developer, Developer shall establish an escrow ("**Escrow**") in the City with the Title Company and shall promptly notify the Authority in writing of the Escrow number and contact person.

10.2.2 Title. The Authority agrees that it shall not cause to be created any exceptions to title other than exceptions created on behalf of or approved by Developer ("**Authority's Title Covenant**"). Promptly after Escrow opens, Developer shall cause the Title Company to deliver to the Authority and Developer preliminary title reports or commitments for title insurance for the property to be so conveyed, together with copies of all documents relating to title exceptions shown in the "Title Report" (collectively, a "**PTR Package**"). Other than exceptions existing at the time the Navy conveyed such property to the Authority (the "**Existing Navy Exceptions**") or created on behalf of Developer or with Developer's approval (which exceptions shall be deemed to include a Reversionary Quitclaim Deed delivered under Section 16.5 and deed restrictions required as part of a real property conveyance from the Navy, the Mitigation Measures or under the Housing Plan), Developer may object to any exceptions shown on the PTR Package that would materially and adversely affect Developer's ability to finance and use the real property as permitted under this DDA (excluding any Public Trust exception that will be removed in connection with a Public Trust Exchange). Developer must notify the Authority in writing of any such objection within twenty (20) days after Developer receives the complete PTR Package (the "**Title Objection Period**"). If Developer fails to so object within the twenty (20) day period, then all of the exceptions shown on the PTR Package will be deemed to be Permitted Exceptions. If Developer does so object within the twenty (20) day period, the Authority at its cost may, in its sole and absolute discretion, elect to remove or otherwise cause the Title Company not to show any exception to which Developer objected on the owner's title insurance policy to be issued to Developer at close of Escrow. If the Authority does so elect, it will notify Developer within thirty (30) days after receipt of Developer's objection. If the Authority elects not to remove the exception or fails to respond within the thirty (30) day period, then Developer shall have the right to (i) terminate this DDA as to the Lot or Lots affected by such exception, by notice to the Authority delivered within ten (10) days after Developer receives the Authority's notice that it has elected not to remove the exception or expiration of the thirty (30) day period, whichever occurs earlier, in which case the Authority can proceed to market the property to others without any cost reimbursement or other obligation to Developer except as provided in Section 6.3 of the Financing Plan, (ii) upon written notice provided to Authority within ten (10) days of Authority's election not to remove the exception or failure to respond, diligently proceed to take such actions necessary to remove the exception, which may

include obtaining an endorsement insuring over such exception subject to such conditions and requirements imposed by Title Company (and so long as Developer is diligently proceeding with removal of the title exception, such delay in close of Escrow shall be considered an event of Excusable Delay), or (iii) accept title to the real property subject to such exception. In any of the foregoing circumstances, if the title exception is a result of the Authority's breach of the Authority's Title Covenant, such breach shall be subject to the terms of Section 16.2.2(d). If Developer fails to so terminate or elect to cure within the ten (10) day period, then it shall be deemed to have elected to accept title as set forth in clause (iii) above. Exceptions that the Authority elects not to remove, or is deemed to have elected not to remove, and that Developer elects to accept, or is deemed to have accepted, will also be deemed to be Permitted Exceptions.

10.2.3 Quiet Title Action. The Authority, with Developer's cooperation and at Developer's cost, shall complete an action under the "**Destroyed Land Records Relief Law**" (California Code of Civil Procedure § 751.01 et seq., commonly referred to as the McEnerney Act) to remove any exception for claims by reason of the record title to the land not having been established and quieted under the provisions of the Destroyed Land Records Relief Law that show on the PTR Package and to which Developer timely objected under Section 10.2.2 (the "**Quiet Title Action**"). In the event that Developer accepts title subject to exceptions that would be eliminated by such Quiet Title Action, the Authority, with Developer's cooperation, shall complete the Quiet Title Action as soon as commercially reasonable and the Parties shall then undertake to cause the issuance of the title insurance prescribed above, or an amendment or endorsement, reflecting the elimination of such exceptions. At each close of Escrow, the Authority shall convey to Developer all of its right, title and interest to the property that is the subject of such close of Escrow by an Authority Quitclaim Deed or Ground Lease, as applicable, subject to the Authority's rights under the Reversionary Quitclaim Deed.

10.2.4 Title Policy. It is a condition to Developer's obligation to close Escrow on conveyances from the Authority to Developer that the Title Company shall be irrevocably committed to issue to Developer a CLTA owner's title insurance policy (or at Developer's option an ALTA owner's title insurance policy), with such endorsements, reinsurance and direct access agreements as Developer shall reasonably designate and the Title Company shall accept. The title policy will be in an amount designated by Developer and acceptable to the Title Company, and will insure that fee title to the property at issue and all appurtenant easements are vested in Developer, subject only to the Permitted Exceptions. If Developer elects to obtain an ALTA owner's policy, Developer shall be responsible for securing any and all surveys, engineering studies and other documents required to obtain an ALTA owner's policy, in sufficient time to permit close of Escrow as required by this DDA.

10.2.5 New Title Matters. If after the Title Objection Period has expired a new title exception not shown on the PTR Package arises that would materially and adversely affect Developer's use of the real property in question or the Project Site and that is not a Permitted Exception and is not caused by Developer or its Affiliates, then Developer may object to such new exception by notice to the Authority given within five (5) Business Days after Developer receives written notice from the Title Company of the new exception. If Developer fails to object within such period, then the new exception will be deemed to be a Permitted Exception. If Developer does object then the Authority may elect in the Authority's sole and absolute discretion, at its cost, to remove any new exceptions created by the Authority that are

not Permitted Exceptions before the close of Escrow, or to remove or otherwise cause the Title Company not to show any other new exception on the owner's title insurance policy to be issued to Developer at close of Escrow. If the Authority does so elect, it will notify Developer within thirty (30) days after receipt of Developer's objection. If such exception is caused by the Authority's breach of the Authority's Title Covenant set forth in Section 10.2.2 above, such breach shall be subject to the terms of Section 16.2.2(d) below. If the Authority elects not to remove the exception, or fails to respond within the thirty (30) day period, then Developer shall have the right to (i) terminate this DDA as to the affected property by notice to the Authority delivered within ten (10) days after Developer receives the Authority's notice that it has elected not to remove the exception or expiration of the thirty (30) day period, whichever occurs earlier, in which case the Authority can proceed to market the property to others without any cost reimbursement or other obligation to Developer except as specifically provided in Section 6.3 of the Financing Plan, (ii) upon written notice provided to Authority within ten (10) days of Authority's election not to remove the exception or failure to respond, diligently proceed to take such actions necessary to remove the exception, which may include obtaining an endorsement insuring over such exception subject to such conditions and requirements imposed by Title Company (and so long as Developer is diligently proceeding with removal of the title exception, such delay in close of Escrow shall be considered an event of Excusable Delay), (iii) accept title to the property in question subject to such exception. If Developer fails to so terminate or elect to cure within the ten (10) day period, then it shall be deemed to have elected clause (iii) above. Exceptions that the Authority elects not to remove, or is deemed to have elected not to remove, and that Developer elects to accept, or is deemed to have accepted, are also Permitted Exceptions.

10.3 Conditions Precedent to Close of Escrow for Real Property Conveyances from the Authority to Developer.

10.3.1 Developer Conditions to Close of Escrow or Enter Into LDDAs for Critical Commercial Lots. The following are conditions precedent to Developer's obligation to close Escrow for the conveyance of real property from the Authority to Developer (or, with respect to the Critical Commercial Lots on Trust Property, Developer's obligation to enter into an LDDA for the Critical Commercial Lots), to the extent not expressly waived by Developer by notice to the Authority.

(a) The Authority shall have performed all obligations under this DDA required to be performed by the Authority on or before the date for close of Escrow for such property and that affect the development of the applicable property; and

(b) The Authority shall not be in Material Breach under this DDA.

10.3.2 Authority Conditions to Close of Escrow. The following are conditions precedent to the Authority's obligation to close Escrow for the conveyance of real property from the Authority (or, with respect to Trust Property, the Authority's obligation to enter into an LDDA and Ground Lease for the applicable Trust Property to the extent such condition precedent is applicable), to the extent not expressly waived by the Authority by notice to Developer:

(a) Developer shall have performed all obligations under this DDA and the Schedule of Performance required to be performed by Developer on or before the date for close of Escrow for such property, including, without limitation, (i) paying on behalf of the Authority the Initial Consideration (as defined in the Conveyance Agreement) and any other sums then due and owing from the Authority to the Navy under the Conveyance Agreement as and when due under the Conveyance Agreement as set forth in Section 1.3(a) of the Financing Plan, (ii) paying all Financial Obligations then due and owing from Developer to the Authority, (iii) providing a Guaranty or other form of Adequate Security covering Developer's obligations in the Sub-Phase as set forth in Section 26.4, and (iv) executing and delivering the Reversionary Quitclaim Deed and irrevocable instructions from Developer to the Title Company to the extent required by Section 16.5.

(b) unless previously Approved by the Authority, Developer shall have provided, and the Authority shall have Approved, a detailed construction cost estimate for the Infrastructure and Stormwater Management Controls prepared by a cost estimator Approved by the Authority;

(c) all of the Authority's conditions to Commence the Infrastructure and Stormwater Management Controls as set forth in Section 7.4 shall have been satisfied or waived by the Authority;

(d) Developer shall have furnished certificates of insurance or duplicate originals of insurance policies and/or insurance binders that will provide the required coverage effective as of the date of Developer's ownership, as and to the extent required under the Insurance Requirements;

(e) The Authority has Approved for consistency with this Agreement, the form of the Master Covenants, Conditions and Restrictions ("**Master CC&Rs**") or the document annexing the Sub-Phase to the property encumbered by the Master CC&Rs, as applicable, which Master CC&Rs at a minimum must (i) include provisions requiring all occupants of Market Rate Units to purchase a monthly transit pass, as more particularly described in the Transportation Plan Obligations, (ii) obligate the master homeowner's association, or the applicable Lot owner or individual residential project homeowner's association, to provide for maintenance of the Neighborhood Parks (as shown in the Parks and Open Space Plan) and publicly accessible open space, landscaping and improvements, (iii) obligate the master homeowner's association, or the applicable Lot owner or individual residential project homeowner's association, to maintain all Stormwater Management Controls required to meet SFPUC stormwater management requirements to treat runoff from private development (buildings, courtyards, parks and open space, private alleys, etc.) in accordance with Section 12.3 of the Infrastructure Plan (Proposed Stormwater Treatment System); and (iv) obligate the master homeowner's association to comply with Section 6.3 of the Jobs EOP relating to "Covered Services" described in the Jobs EOP; and

(f) Developer shall not be in Material Breach of this DDA and the Authority shall not have delivered notice of an Event of Default by Developer, unless that Event of Default has been cured as set forth in Article 16.

10.3.3 Mutual Conditions to Close of Escrow. The following are conditions precedent to both Parties' obligations to close Escrow for each conveyance of real property from the Authority to Developer (or, with respect to the Critical Commercial Lots, Developer's and the Authority's obligation to enter into an LDDA for the Critical Commercial Lots to the extent such condition precedent is applicable), to the extent not expressly waived by both Developer and the Authority in writing (although the provisions of paragraphs (a) through (c) are not waivable):

(a) the Authority and State Lands shall have executed the Public Trust Exchange Agreement and the conditions in Article 6 regarding any applicable Public Trust Exchange have been met;

(b) the Authority and the Navy shall have executed the Conveyance Agreement;

(c) the City has approved, and the Authority with Developer's Approval has recorded, a Transfer Map for the applicable property or has otherwise complied with the California Subdivision Map Act and Developer shall have received approval of a Tentative Subdivision Map covering the real property to be conveyed within the Sub-Phase (except for Unrelated Infrastructure and Related Infrastructure outside of the Sub-Phase);

(d) this DDA shall not have terminated as to such real property;

(e) the Authority shall have fee title to the real property being conveyed;

(f) the Title Company shall be irrevocably committed to issue to Developer, upon Developer's payment of the premium, the title insurance required by Section 10.2.4 for the real property, although Developer may elect to take title subject to completion of the Quiet Title Action necessary to remove the exceptions subject to those actions, in which event the Authority and Developer will complete the Quiet Title Action as soon as commercially reasonable following close of Escrow;

(g) the Authority and Developer shall have agreed on the minimum bid price for the Residential Auction Lots and the Non-Critical Commercial Lots within the real property to be conveyed (the "**Minimum Bid Price**") and, if applicable, the Excess Land Appreciation Structure, either as part of a Major Phase Approval, or in connection Sub-Phase Application requesting a change to a previously approved Minimum Bid Price or Excess Land Appreciation Structure, which change has been approved by the Navy to the extent required under the Conveyance Agreement;

(h) in the event there are tenants or other occupants that are actually and lawfully occupying any portion of the property in the applicable Sub-Phase who are entitled under the Transition Housing Rules and Regulations or by applicable law to relocation assistance, such tenants or occupants have been provided Transition Benefits to which they are entitled in accordance with the Transition Housing Rules and Regulations or such applicable law

(the "**Transition Requirements**"), or this condition has otherwise been satisfied in accordance with the procedures set forth in Section 8.4(c) of the Housing Plan.

10.4 Close of Escrow.

10.4.1 Closing Deliveries. At least fifteen (15) days before the date specified for close of Escrow for each real property conveyance from the Authority to Developer, each Party shall furnish the Title Company with appropriate Escrow instructions consistent with, and sufficient to implement the terms of, this Article 10, and will contemporaneously furnish a copy of these instructions to the other Party. At least two (2) Business Days before the date specified for the applicable close of Escrow, each Party shall deposit into Escrow all documents and instruments it is obligated to deposit under this DDA, and at least one (1) Business Day before the date specified for close of Escrow, Developer shall deposit into Escrow all funds it is obligated to deposit under Section 10.4.3.

10.4.2 Conveyance of Title and Delivery of Possession. Provided that the conditions to the Authority's obligations and the conditions to Developer's obligations for the conveyance of the real property have been satisfied or expressly waived by the applicable Party, each as set forth herein, and the mutual conditions have been satisfied or mutually waived (subject to the limitation on waiver set forth in Section 10.3.3), the Authority shall convey to Developer, and Developer shall accept, the applicable real property at the close of Escrow.

10.4.3 Closing Costs and Prorations. Developer shall pay to the Title Company or the appropriate payee all title insurance premiums and endorsement charges, transfer taxes, recording charges and any and all Escrow fees in connection with each conveyance to Developer. Ad valorem taxes and assessments, if any, shall be prorated as of the applicable close of Escrow. Any such taxes and assessments, including supplemental taxes and escaped assessments, levied, assessed, or imposed for any period up to recordation of the Authority Quitclaim Deed or the Ground Lease, shall be borne by the Authority to the extent applicable.

10.4.4 Outside Closing Dates. Each of Developer and the Authority will use commercially reasonable efforts to satisfy the closing conditions set forth in Section 10.3 that are in its control, and will reasonably cooperate with the other Party (not including, unless otherwise required under this DDA, the expenditure of funds) to satisfy conditions that are in the other Party's control. The Authority in its sole and absolute discretion may terminate this DDA as to a particular Sub-Phase without cost or liability by notice to Developer if the Conveyance Agreement has been terminated as to the particular Sub-Phase; provided, however, that to the extent that such termination is subject to arbitration or judicial challenge under the terms of the Conveyance Agreement, such termination has been upheld by an arbitrator and not appealed by Authority, or has been upheld by a court of competent jurisdiction and such decision is final, binding and non-appealable. Upon such termination, the Parties shall have no further rights or obligations to each other under this DDA, except for rights and obligations that are expressly stated to survive termination of this DDA.

10.5 Post-Closing Boundary Adjustments. The Parties acknowledge that as development of the Project Site advances, the description of each parcel of real property may

require further refinements, which may require minor boundary adjustments between the Authority Housing Lots or other property the Authority owns (or acquires as contemplated herein) and parcels conveyed to Developer. The Parties agree to cooperate in effecting any such boundary adjustments required, consistent with this DDA and the Vertical DDA. The Authority and Developer shall include this provision in all agreements with Vertical Developers, TIHDI and Qualified Housing Developers, requiring such parties to cooperate with Developer and the Authority in such boundary adjustments.

10.6 Title Clearance. If the title policy issued to Developer upon the close of Escrow contains exceptions that would adversely affect the development of the real property or the Completion of the Infrastructure and Stormwater Management Controls as required under this DDA, and such exceptions may be removed by means of a Quiet Title Action or street vacation, then the Parties agree to take reasonable actions to eliminate such exceptions, at Developer's sole cost, by means of Quiet Title Action or a supplemental street vacation ordinance.

10.7 Conditions Precedent for Transfers of Lots to Vertical Developers. The following are conditions precedent to Developer's right to convey Lots to Vertical Developers (including entering into Vertical LDDAs for Lots located on Public Trust property to the extent the condition is applicable), unless waived by the Authority Director, although the provisions of paragraphs (a), (d), (e) and (f) shall not be waivable):

(a) the Authority Director shall have Approved the Vertical DDA/LDDA to be executed by Developer, the Authority and Vertical Developer, together with any agreements or documents required by this DDA to be incorporated in the Vertical DDA/LDDA, in accordance with Article 4; provided, however, that Authority Director shall not disapprove any Vertical DDA/LDDA that is substantially in the form of the Vertical DDA/LDDA Form and in compliance with this DDA, including Section 4.1, and all applicable exhibits attached hereto;

(b) Developer shall have satisfied the then current obligations under this DDA and the Schedule of Performance, including the Financing Plan, Housing Plan and the Community Facilities Obligations for the Lot;

(c) Developer shall have recorded the Master CC&Rs against the Lot, which shall be in the form Approved by the Authority in accordance with Section 10.3.2(e).

(d) If Developer is in Material Breach under this DDA, Developer shall have complied with the terms and conditions of Section 4.1 hereof;

(e) for the Transfer of any Lot under Section 17.2 or 17.3, Authority and Developer have complied with the procedures under Sections 17.4 and 17.5; and

(f) Developer shall have recorded in the Official Records a Final Subdivision Map covering the Lot.

11. Property Condition.

11.1 As Is.

11.1.1 The Parties acknowledge that the Authority will receive the Project Site in phases by quitclaim deeds from the Navy under the Conveyance Agreement. Subject to the provisions of Article 10, the Authority shall convey any and all property to be conveyed by the Authority to Developer under this DDA strictly in its "as is, where is" condition with all faults and defects and neither party shall take any actions that materially exacerbate the environmental condition of such property between the date the Navy conveys to the Authority and the date the Authority conveys to Developer. Subject to the provisions of Article 10, Developer agrees to accept the Project Site in its condition at the close of Escrow, acknowledges that notwithstanding anything to the contrary in Article 6 the Authority makes no express or implied representation or warranty as to the condition or title of any real property to be conveyed by the Authority to Developer under this DDA and acknowledges that all necessary physical and title due diligence shall be performed by Developer in accordance with this DDA.

11.1.2 Developer has been given the opportunity to investigate the Project Site fully, using experts of its own choosing, and the Authority shall continue to give Developer such opportunity under a Permit to Enter, with such reasonable conditions as the Authority may impose for any testing. In connection with such investigations, the Authority, at no cost to the Authority, shall cooperate reasonably with Developer and shall afford Developer access, upon not less than five (5) days' prior notice to the Authority, and otherwise at all reasonable times, to such non-privileged books and records as the Authority shall have in its possession or control relating to the prior use and/or ownership of the Project Site.

11.1.3 Developer acknowledges that no City Party has made any representation or warranty, express or implied, with respect to the Project Site, and Developer expressly releases the City Parties from all Losses (as defined in Section 22.1 below) arising out of or relating to the condition of any improvements, the size, suitability or fitness of the land, the existence of Hazardous Substances, compliance with any Environmental Laws, or otherwise affecting or relating to the condition, development, use, value, occupancy or enjoyment of the Project Site, excluding any Losses arising from any Release of a Hazardous Substance to the extent that it is caused, contributed to or exacerbated by a City Party. Nothing in this Agreement shall be construed as a release by Developer of any claims against the United States for any Losses, including without limitation any Losses arising from the Navy's violation of an Environmental Law or its failure to comply with a requirement of the Conveyance Agreement or the Federal Facility Site Remediation Agreement. Developer expressly understands that the portions of the Project Site conveyed by the Authority to Developer are being conveyed strictly in their "as is, where is" condition with all faults and defects. The provisions of this Section 11.1.3 shall survive the close of Escrow.

Developer acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT

TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Developer waives and relinquishes any right or benefit that it has or may have under Section 1542 of the California Civil Code or any similar or successor provision of law pertaining to the foregoing release.

11.1.4 After the close of Escrow, Developer shall comply with all provisions of Environmental Laws applicable to the real property conveyed to Developer, although Developer shall only be obligated to perform Environmental Remediation as follows:

(a) except as provided in paragraph (b) below, Developer shall perform all Environmental Remediation that may be required under any Environmental Law or this DDA, during the time of Developer's ownership, the cost of which shall be deemed a Project Cost, subject to the applicable limitations set forth in the Financing Plan; and

(b) Notwithstanding any other provision of this Agreement, Developer shall have no obligation to perform any Environmental Remediation that is the Navy's responsibility under the Conveyance Agreement, the Federal Facility Site Remediation Agreement, or applicable Law.

11.1.5 Except as set provided in Section 11.1.4(b), Developer shall perform such Environmental Remediation as may be required to perform its obligations under this DDA in accordance with the Schedule of Performance, the Infrastructure Plan, the Housing Plan, the Parks and Open Space Plan, the Sustainability Obligations, the Community Facilities Obligations, the Transportation Plan Obligations and the Phasing Plan.

11.1.6 The Authority releases Developer, its partners, Affiliates and owners, and the officers, partners, agents, employees and members of each of them (each, a "**Developer Party**"), for any Losses suffered by the Authority relating to (i) the Navy's violation of any Environmental Law or the Navy's failure to comply with a requirement of the Conveyance Agreement or the Federal Facility Site Remediation Agreement, or (ii) any Release of a Hazardous Substance, or any pollution, contamination or Hazardous Substance-related nuisance on, under or from the Project Site, or any other physical condition on the Project Site, to the extent the Release, pollution, contamination, nuisance or physical condition occurred or existed before the conveyance of such property to Developer; provided, however, that this release does not extend to Losses caused by: (A) any Release of a Hazardous Substance to the extent that it is caused, contributed to or exacerbated by a Developer Party or (B) breach of obligations assumed by a Developer Party under any agreement (including this DDA) under which the Developer Party assumes responsibility for any Environmental Remediation. The Authority reserves its rights to enforce Developer's obligations under this DDA and any and all of the foregoing agreements and to take such additional actions as may be set forth in such agreements.

The Authority acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

> A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

The Authority waives and relinquishes any right or benefit that it has or may have under Section 1542 of the California Civil Code or any similar or successor provision of law pertaining to the foregoing release.

11.2 Hazardous Substance Indemnification.

11.2.1 In addition to the Indemnifications set forth in Section 22, Developer shall Indemnify the City Parties from and against any and all Losses incurred by or asserted against any City Party in connection with, arising out of, or in response to, or in any manner relating to:

(a) Developer's breach of any obligation under this DDA with respect to Hazardous Substances;

(b) Developer's violation of any Environmental Law on or relative to the Project Site;

(c) a City Party's indemnification of the State under the Public Trust Agreement Exchange Agreement for the environmental condition of certain land conveyed to the State; provided that if this DDA is terminated for any reason, Developer's Indemnification under this clause (c) with respect to any real property for which Developer did not obtain a Sub-Phase Approval shall terminate on the earlier of (i) the date that the Authority enters into a new disposition and development agreement or similar agreement with a developer that covers the applicable real property, and (ii) four (4) years following the date of termination of this DDA with respect to such real property;

(d) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Project Site (including any Public Property) to the extent the Release, threatened Release, condition, contamination or nuisance commenced or was created during the period of Developer's ownership of such real property or was caused, contributed to, or exacerbated by Developer or others for whom Developer is responsible; provided, that this clause (d) shall not apply as to a City Party to the extent such violation, Release, threatened Release, condition, contamination or nuisance commenced or was created by or caused, contributed to or exacerbated by a City Party.

In addition, notwithstanding the termination language in clause (c) of the foregoing sentence, Developer's Indemnification under this Section 11.2.1 shall not terminate (x) with

respect to the real property for which Developer obtained a Sub-Phase Approval or (y) to the extent the indemnification obligation is covered under clauses (a), (b), or (d) of this Section 11.2.1. Subject to the foregoing, Developer's obligations under this Section 11.2.1 shall: (1) apply regardless of the availability of insurance proceeds; and (2) survive the expiration or other termination of this DDA and the Authority's issuance of the Certificate of Completion for all of the Infrastructure and Stormwater Management Controls related to such Lot.

However, if it is reasonable to assert that a claim for Indemnification under this Section 11.2.1 is covered by a pollution liability insurance policy or the indemnification provisions of Section 330 of the Fiscal Year 1993 National Defense Authorization Act (P.Law 102-484), pursuant to which the Authority and/or such City Party is an insured party or a potential claimant, then the Authority shall reasonably cooperate with Developer in asserting a claim or claims under such insurance policy or indemnity but without waiving any of its rights under this Section 11.2.1. Developer specifically acknowledges and agrees that it has an immediate and independent obligation to defend the City Parties from any claim that may reasonably fall or is otherwise determined to fall within the indemnification provision of this Section 11.2.1, even if the allegations are or may be groundless, false or fraudulent. Developer's obligation to defend under this Section 11.2.1 shall arise at the time such claim is tendered to Developer and shall continue at all times thereafter. Notwithstanding the foregoing, if a City Party is a named insured on a pollution liability insurance policy obtained by the Developer, such City Party will not seek indemnification from Developer under this Section 11.2.1 unless it has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Developer pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any City Party to pursue a claim for insurance through litigation prior to seeking indemnification from Developer.

11.2.2 In addition to the Indemnifications set forth in Section 22, Vertical Developers shall each Indemnify the City Parties from and against any and all Losses incurred by or asserted against any City Party in connection with, arising out of, in response to, or in any manner relating to (i) such Vertical Developer's violation of any Environmental Law on or relative to the Project Site or (ii) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from real property at the Project Site (including any Public Property) to the extent the Release, threatened Release, condition, contamination or nuisance occurred during the period of such Vertical Developer's ownership thereof or was caused, contributed to, or exacerbated by such Vertical Developer or others for whom such Vertical Developer is responsible, except, as to a City Party, to the extent such violation, Release, threatened Release, condition, contamination or nuisance was caused, contributed to or exacerbated by a City Party. A Vertical Developer's obligations under this Section 11.2.2 shall (1) apply regardless of the availability of insurance proceeds and (2) survive the expiration or termination of this DDA and the Authority's issuance of the Certificate of Completion for all of the Vertical Improvements for such Vertical Developer. However, if it is reasonable to assert that a claim for Indemnification under this Section 11.2.2 is covered by a pollution liability insurance policy or the indemnification provisions of Section 330 of the Fiscal Year 1993 National Defense Authorization Act (P.Law 102-484), under which the Authority and/or such other City Party is an insured party or a potential claimant, then the Authority shall reasonably cooperate with Vertical Developer in asserting a claim or claims under such insurance policy but without waiving any of its rights

under this Section 11.2.2. Each Vertical Developer shall specifically acknowledge and agree that it has an immediate and independent obligation to defend the City Parties from any claim that may reasonably fall or is otherwise determined to fall within the indemnification provision of this Section 11.2.2, even if allegations are or may be groundless, false or fraudulent. A Vertical Developer's obligation to defend shall arise at the time such claim is tendered to such Vertical Developer and shall continue at all times thereafter. Notwithstanding the foregoing, if a City Party is a named insured on a pollution liability insurance policy, such City Party will not seek indemnification from Vertical Developer under this Section 11.2.2 unless it has asserted and diligently pursued a claim for insurance under such policy and until any limits from the policy are exhausted, on condition that (i) Vertical Developer pays any self-insured retention amount required under the policy, and (ii) nothing in this sentence requires any City Party to pursue a claim for insurance through litigation prior to seeking indemnification from Vertical Developer.

11.2.3 The term "**Hazardous Substance**" means any material, waste, chemical, compound, substance, mixture, or byproduct that is identified, defined, designated, listed, restricted or otherwise regulated under Environmental Laws as a "hazardous constituent", "hazardous substance", "hazardous waste constituent", "infectious waste", "medical waste", "biohazardous waste", "extremely hazardous waste", "pollutant", "toxic pollutant", or "contaminant", or any other designation intended to classify substances by reason of properties that are deleterious to the environment, natural resources, wildlife or human health or safety, including, without limitation, ignitability, infectiousness, corrosiveness, radioactivity, carcinogenicity, toxicity and reproductive toxicity. Hazardous Substance includes, without limitation, any form of natural gas, petroleum products or any fraction thereof, asbestos, asbestos-containing materials, polychlorinated biphenyls ("**PCBs**"), PCB-containing materials, and any substance that, due to its characteristics or interaction with one or more other materials, wastes, chemicals, compounds, substances, mixtures or byproducts, damages or threatens to damage the environment, natural resources, wildlife or human health or safety.

11.2.4 The term "**Environmental Laws**" includes all applicable present and future federal, State and local laws, statutes, rules, regulations, ordinances, standards, directives, and conditions of approval, all administrative or judicial orders or decrees and all permits, license approvals or other entitlements, or rules of common law pertaining to Hazardous Substances, the protection of the environment, natural resources, wildlife, human health or safety, or employee safety or community right-to-know requirements related to the work being performed under this DDA or a Vertical DDA.

11.2.5 The term "**Release**" means any accidental or intentional spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the air, soil gas, land, surface water, groundwater or environment (including the abandonment or discarding of barrels, containers, and other closed receptacles containing any Hazardous Substance). The term includes a threatened "Release" but does not include any passive migration of a Hazardous Substance through the air, soil gas, land, surface water or ground water after the Hazardous Substance has been previously spilled, leaked, pumped, poured, emitted, discharged, injected, escaped, leached, dumped or disposed into the air, soil, gas, land, surface water or groundwater.

11.3 Environmental Insurance. The Parties shall obtain, at Developer's sole cost, pollution legal liability insurance as specified in the Insurance Requirements, except to the extent insurance meeting such specifications cannot be obtained for a commercially reasonable premium, in which case the failure to obtain such pollution legal liability insurance shall not be an Event of Default hereunder, but shall be considered an event of Force Majeure. The Authority and Developer each will use commercially reasonable efforts to obtain the environmental insurance policy proceeds when applicable, and will reasonably cooperate with each other in connection with pursuing claims under the policies.

11.4 Damage and Destruction. From and after the Effective Date, Developer shall assume all risk of damage to or destruction of real property to be conveyed to Developer under this DDA, subject to the terms of this Section 11.4. Since Developer plans to develop the Project Site, any existing improvements that are not required by a Major Phase Approval to remain do not have significant value for Developer, and therefore damage to or destruction of such improvements will not affect the Parties' rights and obligations under this DDA, which will continue in full force and effect without any modification except as set forth below. If permitted by applicable law, the Authority shall assign to Developer at close of Escrow any and all unexpended insurance proceeds and any uncollected claims and rights under insurance policies covering such damage or destruction, if any. But, if solely as a result of an earthquake, flood, other act of God or other casualty event outside of Developer's reasonable control occurring after the Effective Date but before close of Escrow for the real property in a Sub-Phase, the estimated cost to construct the Infrastructure and Stormwater Management Controls for the Sub-Phase, net of any available insurance proceeds, exceeds Developer's then current construction cost estimates (without reference to the damage or destruction) by more than twenty percent (20%), Developer shall have the right, as its sole remedy, to terminate this DDA as to the Sub-Phase in question by notice to the Authority; provided, however, that prior to termination, Developer may deliver a Requested Change Notice to the Authority in accordance with Section 3.8.2. In addition, if an earthquake or other event referenced above occurs, Developer will arrange with commercially reasonable promptness, in light of the circumstances, to have an updated construction cost estimate for the Infrastructure and Stormwater Management Controls for such Sub-Phase, and applicable Major Phase, prepared by a construction cost estimator Approved by the Authority Director. The updated construction cost estimate will reflect any additional costs caused by the earthquake or other event referenced above, and the estimator shall be instructed to deliver copies of its estimate to Developer and the Authority, each of whom will confirm receipt by notice to the other. If the updated construction cost estimate exceeds Developer's most recent prior construction cost estimate by at least the percentage specified above, then Developer may terminate this DDA for the real property in question by notice to the Authority within one hundred twenty (120) days after receipt of the updated estimate. If the updated estimate does not exceed the prior construction cost estimate by such percentage, Developer does not elect to terminate, or Developer fails to respond within such one hundred twenty (120) day period, the Parties' rights and obligations under this DDA will not be affected and this DDA shall continue in full force and effect without regard to such damage or destruction, provided, that Developer and the Authority shall reasonably revise the Schedule of Performance to reflect any additional time Developer may need to make adjustments to the Infrastructure and Stormwater Management Controls or other plans for the applicable property. The Authority will have no obligation to repair any improvements on the Project Site or have any liability for their damage or destruction, however caused.

11.5 Proportionality. If Developer's proposed termination of a Sub-Phase under Section 11.4 would result in a violation of the proportionality principle set forth in Section 1.7, as reasonably determined by the Authority Director, then the Authority Director shall so notify Developer and the Parties shall negotiate in good faith for a proposed resolution that maintains the benefit of the bargain for both Parties. The period of such good faith negotiations shall be Administrative Delay. If the Parties are unable to reach agreement within one hundred twenty (120) days after Developer's receipt of the Authority's notice, then either Developer or the Authority may submit the matter to arbitration under Section 15.2.

11.6 Deed Restrictions. The Parties anticipate that the environmental remedies selected by the Navy in Final Records of Decision for certain real property in the Project Site will require the imposition of land use and activity restrictions on such property. Such land use restrictions will be contained in quitclaim deeds from the Navy for such property or in other enforceable restrictions imposed on such property.

12. Amendments to Transaction Documents. The Authority shall not approve, recommend, or forward to the Board of Supervisors or any City Agency or Governmental Entity for approval any termination of or amendment, supplement, or addition to any component of the Transaction Documents or Development Requirements (an "**Amendment Action**") unless consistent with this Section 12.

12.1 Before Issuance of the Last Certificate of Completion. Before issuance of the last Certificate of Completion for the Project (including all Horizontal and Vertical Improvements contemplated under this DDA as of the Reference Date or Approved by the Authority at any time thereafter), the Authority may only take an Amendment Action without Developer's Consent if such Amendment Action would be permitted under the Development Agreement.

12.2 Following Issuance of the Last Certificate of Completion. Following issuance of the last Certificate of Completion for the Project (including all Improvements contemplated under this DDA as of the Reference Date or at any time thereafter) within the Project Site, the Authority may take an Amendment Action without Developer's Consent if the Amendment Action would be permitted under the Development Agreement. The provisions of this Section 12.2 shall survive the termination of this DDA.

12.3 Prior to Completion of Reimbursements under Financing Plan or Acquisition and Reimbursement Agreement. To the extent that the Authority has any outstanding obligations to Developer under the Financing Plan or any Acquisition and Reimbursement Agreement, the Authority may not without Developer's Consent take an Amendment Action that would adversely affect in any material respect (i) the continuing rights and obligations of Developer under this DDA, (ii) the Authority's ability to satisfy its obligations to Developer under this DDA (including, but not limited to, the Financing Plan and any Acquisition and Reimbursement Agreement) or (iii) the amount or timing of any payments due to Developer from the Funding Sources under this DDA (including the Financing Plan and any Acquisition and Reimbursement Agreement) unless such Amendment Action would be permitted under the Development Agreement.

12.4 Developer's Consent. As used in this Article 12, "**Developer's Consent**" means the prior written consent of Treasure Island Community Development, LLC, acting as Master Developer, except to the extent that the right to provide such consent (i) has been Transferred under Section 21.3, in which case Developer's Consent shall mean the prior written consent of the applicable Transferee, or (ii) has been pledged to a Mortgagee, in which case Developer's Consent shall also mean the prior written consent of the Mortgagee to the extent the Mortgage documentation so requires or (iii) has been granted to a Vertical Developer under a Vertical DDA/LDDA, in which case Developer's Consent shall mean the prior written consent of the applicable Vertical Developer; provided, that Developer's Consent shall only apply to a Party if that Party is affected by the proposed Amendment Action. Any Person entitled to give Developer's Consent shall have the right to grant or deny such consent in its sole discretion. Developer's Consent shall not be required of a Person that is then in Material Breach or has committed an Event of Default unless and until the Material Breach or Event of Default has been cured.

12.5 Notice Regarding Amendment Action. At least fifteen (15) Business Days before proposing or taking any Amendment Action, the Authority shall provide notice of such Amendment Action to Developer and each Vertical Developer, including the text of any such Amendment Action.

13. Compliance with Plans and Policies; Payment of Subsidies.

13.1 Compliance with Plans and Obligations. Developer and the Authority shall each at all times comply with the applicable provisions of the following Plans and Obligations, which are attached hereto and incorporated herein by this reference:

13.1.1 the Financing Plan

13.1.2 the Housing Plan;

13.1.3 those provisions of the Community Facilities Plan set forth in Exhibit F attached hereto (the "**Community Facilities Obligations**");

13.1.4 the Parks and Open Space Plan (including the provisions of the Habitat Management Plan incorporated therein);

13.1.5 the provisions of the Transportation Plan set forth in Exhibit N attached hereto (the **"Transportation Plan Obligations"**);

13.1.6 the Infrastructure Plan; and

13.1.7 those provisions of the Sustainability Plan set forth in Exhibit O attached hereto (the "**Sustainability Obligations**").

13.1.8 Jobs and Equal Opportunity Program. Developer, the Authority and, to the extent required in its Vertical DDA/LDDA, each Vertical Developer, shall at all times comply with the Treasure Island Jobs and Equal Opportunity Program attached hereto as Exhibit P (the "**Jobs EOP**").

13.2 Relocation Plans. The Authority shall consult with the Developer regarding, and the Authority and Developer shall cooperate in effecting, any relocations required pursuant to the Transition Requirements in an efficient manner and in accordance with relocation plans prepared by Developer and Approved by the Authority, including but not limited to the Transition Housing Rules and Regulations. Notwithstanding the foregoing, any and all relocation obligations shall be performed and satisfied in accordance with applicable law.

13.3 Developer Subsidies. Developer shall pay to Authority the following subsidies (collectively, the "**Subsidies**"):

13.3.1 Open Space Annual Subsidy: Developer shall pay to the Authority a subsidy for the costs of operating and maintaining Improvements constructed pursuant to the Parks and Open Space Plan in accordance with Section 2.7 of the Financing Plan.

13.3.2 Transportation Subsidies:

(a) Developer shall pay to the Authority a subsidy for the costs of the operation of transit facilities as provided for in the Transportation Plan in accordance with this Section (the "**Annual Transportation Subsidy**"). Developer shall pay the Annual Transportation Subsidy in annual installments (each, an "**Annual Transportation Subsidy Payment**") commencing on June 30 of the year that operation of the first new on-island shuttle, AC Transit bus or ferry begins service to or within the Project Site and each year thereafter (each a "**Transportation Subsidy Payment Date**"), provided, however, that for the first year only, the Annual Transportation Subsidy Payment shall be paid within thirty (30) days after the first new on-island shuttle, AC Transit bus or ferry begins service if service commences after June 30 of that year.

(b) Starting with the Reference Date, Authority shall be credited with a non-cash "**Transportation Subsidy Account**" balance of Thirty Million Dollars ($30,000,000). The amount of each Annual Transportation Subsidy Payment shall be the lesser of (i) the amount of subsidy needed for transit facility operations as shown in the annual budget adopted by the Treasure Island Transportation Management Agency ("**TITMA**"), and (ii) an "**Annual Transportation Subsidy Maximum Amount**" of Four Million Dollars ($4,000,000.00). If the Annual Transportation Subsidy Payment in any year is less than the Annual Transportation Subsidy Maximum Amount, then the unused amount shall be applied to the Annual Transportation Subsidy Maximum Amount for the subsequent year, and such amount shall become the new Transportation Subsidy Maximum Amount for that year.

(c) The Annual Transportation Subsidy Payment shall reduce the Transportation Subsidy Account balance by a corresponding amount. At the end of each Authority Fiscal Year, commencing at the end of the Authority Fiscal Year in which the Reference Date occurs, the Transportation Subsidy Account balance remaining after the Annual Transportation Subsidy Payment has been made shall be credited with interest based on the increase in the Index over the prior twelve month period (except that the first interest credit shall be based on the period from the Reference Date to the end of the Authority Fiscal Year in which the Reference Date occurs). Developer's obligation to pay the Annual Transportation Subsidy shall cease when the Transportation Subsidy Account balance has been exhausted. Developer

shall have no obligation to increase the available balance in the Transportation Subsidy Account at any time after the account is first established.

(d) If upon Completion of the southern breakwater, as described in the Infrastructure Plan, there remains an unused balance in the Transportation Subsidy Account, Developer, upon Authority's written request, shall pay all unused amounts to Authority.

(e) Authority shall assign all Transportation Subsidy Payments to TITMA to the extent required, provided, however, that in all events such funds shall be restricted to use for operating transit and maintaining transportation facilities in accordance with TITMA's governing documents and approved budget. Commencing in the year prior to the first year in which the Transportation Subsidy Payment occurs and each year thereafter, Authority shall meet and confer with Developer and the TITMA to review a preliminary budget and transit service plan anticipated for the upcoming year. This meet and confer process shall be coordinated with the TITMA's budgeting process and any consultations by TITMA with the Water Emergency Transit Agency, AC Transit, or other transit providers. Developer shall have the right to comment on the preliminary budget and service plan, and propose revisions reasonably designed to achieve cost savings, efficiencies or better transportation operations. Authority shall cooperate with Developer and the TITMA in good faith to implement such reasonable revisions proposed by Developer, other than as a result of the accrual of interest earnings set forth herein.

(f) Transportation Capital Contributions Subsidy: Developer shall pay Authority a "**Transportation Capital Contributions Subsidy**" in accordance with this Section. Starting on the Reference Date, Authority shall be credited with a non-cash "**Transportation Capital Contribution Account**" balance of One Million Eight Hundred Thousand Dollars ($1,800,000), adjusted annually at the end of each Authority Fiscal Year by the increase in the Index over the prior twelve month period (except that the first interest credit shall be based on the period from the Reference Date to the end of the Authority Fiscal Year in which the Reference Date occurs). Upon request by the SFMTA when required to pay for the purchase of a Muni bus necessary to serve the Project, Developer shall pay SFMTA the lesser of (i) 20% of the cost of the SFMTA bus, or (ii) Three Hundred Thousand Dollars ($300,000) adjusted by the percentage increase, if any, between the Index published in the month prior to the Reference Date and the Index published for the month prior to the applicable payment (or if no Index is published for the applicable month, the Index for the closest preceding month for which the Index is published). Each SFMTA bus payment shall reduce the Transportation Capital Contribution Account balance. If at the time SFMTA purchases its sixth bus, there remains an unused balance in the Transportation Capital Contribution Account, Developer upon Authority's written request, shall pay all unused amounts to SFMTA.

(g) Additional Transportation Subsidy. Notwithstanding anything in this Agreement to the contrary, after the first certificate of occupancy (whether temporary or final) has been issued for the 4,000th dwelling unit on the Project Site, the Authority and the San Francisco County Transportation Authority ("**SFCTA**") shall have the right in accordance with the process described in this Section 13.3.2(g) to require further

commitments from Developer to reduce automobile car trips during the peak hour and improve transit usage.

(i) Within one year after the issuance of the certificate of occupancy for the 4000th dwelling unit on the Project Site, the Authority shall (x) prepare, at Developer's cost, a report that analyzes the travel behavior of island residents, (y) hold a duly noticed public meeting of the Authority's Board of Directors on the report, and (z) make a recommendation to the SFCTA regarding the need to implement additional transportation demand management programs to reduce automobile car trips during the peak hour and improve transit usage.

(ii) In the event that the report shows the residential transit mode share, measured as a percentage of residential transit trips out of the total residential off-Island person-trips, during the weekday morning and evening peak hour is 50% or less, then, within ninety (90) days of the report and the Authority's recommendation to the Clerk of the SFCTA, the SFCTA may require that the Developer pay to TITMA an additional transportation subsidy (the "**Additional Transportation Subsidy**") in the total amount of $5 million, in five (5) consecutive annual installments of $1 million each. The annual installments of the Additional Transportation Subsidy shall commence on June 30 of the year that the SFCTA requires the Additional Transportation Subsidy, provided that for the first year only, the annual Additional Transportation Subsidy payment shall be paid within thirty (30) days of the SFCTA's demand. The Additional Transportation Subsidy shall accrue interest in the same manner as provided in this Section 13.3.2 with respect to the Annual Transportation Subsidy.

13.3.3 Community Facilities Subsidy:

(a) As part of each Major Phase Application and Approval, the Developer and the Authority shall meet and confer to determine which Community Facility Obligations (as set forth in Exhibit F) will be met within that Major Phase and related Sub-Phases with the final determination to be made by the Authority as part of the Major Phase Approval. The Authority and the Developer will meet and confer to discuss whether the physical space for the applicable community facility will be developed by Developer in connection with its development of an identified Sub-Phase or if Developer will pay a subsidy to the Authority for the Authority to provide such space within the identified Sub-Phase (in either case, the "**Community Facilities Subsidy**"), with the final determination to be made by the Authority as part of the Major Phase Approval.

(b) If the Major Phase Approval provides that Developer will develop the community facility, then in connection with the Sub-Phase Application that contains the applicable community facility, Developer shall submit to Authority for its review and Approval a budget and program description detailing the use of the funds for the applicable community facility and the proposed size of the community facility. If Developer is to pay the Community Facilities Subsidy to Authority, then in connection with the Sub-Phase Approval that contains the applicable community facility, Authority shall submit to Developer for its review and Approval a budget and program description detailing the use of the funds for the applicable community facility. It shall be reasonable for the applicable reviewing Party to withhold its Approval if the proposed community facility is inconsistent with the Community Facility

Obligation, if the amounts requested are budgeted for programming and/or operations, as opposed to capital expenditures, or if the proposed budget amount would exceed the Major Phase Community Facilities Maximum Amount (as described in the following paragraph).

(c) Starting with the Reference Date, Authority shall be credited with a non-cash Community Facilities account balance of Twelve Million Dollars ($12,000,000), which includes a Two Million Five Hundred Thousand Dollars ($2,500,000) subsidy for the child-care facility described in the Community Facilities Obligations. If the Major Phase Approval requires Developer to develop the community facility, Developer shall develop the community facility as part of the applicable Sub-Phase. If the Major Phase Approval requires Developer to pay the Community Facilities Subsidy to Authority, it shall do so within thirty (30) days after Authority's request made at any time after Commencement of the applicable Sub-Phase. In either case, the maximum amount of the applicable Community Facilities Subsidy that Developer is obligated to pay (i.e. either the maximum amount to be expended by Developer on all hard and soft costs for its development of the Community Facility or the maximum amount to be paid to Authority if Authority is to construct the Community Facility) shall be the lesser of (i) the amount of subsidy Approved by Parties as part of the Sub-Phase Application, and (ii) a "**Major Phase Community Facilities Maximum Amount**" of Two Million Three Hundred Seventy Five Thousand Dollars ($2,375,000.00), excluding the amount for the child-care facility. If the Community Facilities Subsidy in any Major Phase is less than the Major Phase Community Facilities Maximum Amount for that Major Phase, then the unused amount shall be applied to the Major Phase Community Facilities Maximum Amount for the next Major Phase for which an Application is submitted to the Authority, and such amount shall become the new Major Phase Community Facilities Maximum Amount for that Major Phase.

(d) Each Community Facilities Subsidy payment (i.e., the amount either paid by Developer to Authority, or the actual amount expended by Developer for reasonable and customary hard and soft costs for construction of the applicable Community Facility as evidenced by invoices, proofs of payment and other reasonably satisfactory evidence submitted to Authority of total hard and soft costs incurred by Developer upon Completion of the applicable community facility) shall reduce the Community Facilities account balance by the corresponding amount. Each year, the Community Facilities account balance remaining after a Community Facilities Subsidy payment has been made shall be credited with interest based on the increase in the Index over the prior twelve month period (except that the first interest credit shall be based on the period from the Reference Date to the end of the Authority Fiscal Year in which the Reference Date occurs). Developer's obligation to pay the Community Facilities Subsidy shall cease when the Community Facilities account balance has been exhausted. Developer shall have no obligation to increase the available balance in the Community Facilities account at any time after the account is first established, other than as a result of the accrual of interest as set forth herein.

(e) If, upon Approval of the Major Phase Application of Major Phase 4, there remains a balance in the Community Facilities account, Developer, upon Authority's written request, shall pay an amount equal to the unused balance to Authority for uses consistent with the Community Facilities Plan.

13.3.4 Developer Housing Subsidy. Developer shall pay to the Authority a subsidy for the development of Authority Housing Units on the Authority Housing Lots and the implementation of the Transition Housing Rules and Regulations (the **"Developer Housing Subsidy**"). The Developer Housing Subsidy shall be paid over time as set forth in the Housing Plan, and shall equal the total number of Market Rate Units allowed to be constructed on each Market Rate Lot as set forth in the Vertical DDA for such Lot multiplied by Seventeen Thousand Five Hundred Dollars ($17,500), subject to the minimum and maximum requirements set forth in Section 6.1(b) of the Housing Plan. In addition, Developer shall pay to the Authority the Housing Costs payment described in Section 3.6 of the Financing Plan.

13.3.5 School Improvement Payment:

(a) Developer shall pay to the Authority a Five Million Dollar ($5,000,000) subsidy to be used only for the refurbishment of school facilities on Treasure Island (the "**School Subsidy**"). Commencing on the Reference Date, Authority shall be credited with a non-cash School Subsidy account balance of Five Million Dollars ($5,000,000). At the end of each Authority Fiscal Year, commencing at the end of the Authority Fiscal Year in which the Reference Date occurs, the School Subsidy account balance shall be credited with interest based on the percentage increase in the Index over the prior twelve (12) months (except that the first interest credit shall be based on the period from the Reference Date to the end of the Authority Fiscal Year in which the Reference Date occurs). Developer shall have no obligation to replace the available balance in the School Subsidy account at any time after the account is first established, other than as a result of the accrual of interest as set forth herein.

(b) The School Subsidy shall be payable to Authority for use by the San Francisco Unified School District ("**SFUSD**") or the Authority (through a qualified school of its choosing), if SFUSD or the Authority (through a qualified school of its choosing) undertakes the refurbishment of the existing school on Treasure Island for use as a K-5 or K-8 school by obtaining a building permit and commencing work. Notwithstanding the foregoing, if SFUSD or the Authority has not obtained a building permit and commenced work on the school prior to issuance of a building permit for the 2,500th Residential Unit, then at any time thereafter prior to SFUSD or the Authority obtaining a building permit to commence refurbishment work of the existing school facilities for a K-5 or K-8 school, Developer shall be entitled to identify a qualified school operator subject to the Authority's Approval to enter into an LDDA and a Ground Lease with the Authority for the refurbishment of the existing school facilities as a K-5 or K-8 school, or at such other location on the Project Site as Approved by the Authority. Such Ground Lease shall be at no rent and on such other terms as are mutually agreed-upon by the parties, and the School Subsidy shall be applied to the refurbishment of the existing school by the applicable school operator for use as a K-5 or K-8 school.

13.3.6 Ramps/Viaduct Subsidy. Developer shall pay a subsidy to the Authority for reimbursement for the costs of construction of ramps and viaduct improvements on Yerba Buena Island (the "**Ramps Subsidy")**. The Ramps Subsidy shall be equal the "TIDA Reimbursement Obligation" due from the Authority to the SFCTA in accordance with Section 4 of the Memorandum of Agreement for Project Management and Oversight, Engineering and Environmental Services for the Yerba Buena Improvements Project dated July 1, 2008, as amended (the "**SFCTA MOA**"). The Ramps Subsidy shall be payable to the Authority (or at the

Authority's request, directly to the SFCTA) as a City Cost, in accordance with Section 19.8 hereof, and the amounts and the due dates for payment of the Ramps Subsidy shall be consistent with the TIDA Reimbursement Obligation under Section 4 of the SFCTA MOA, as amended.

13.3.7 Fill Payment: Developer shall have the right to use dirt from the fill stockpile located on a portion of the Project Site that is the subject of the agreement between Authority and D.A. McCosker Construction Co., dated June 8, 2010 (the **"Soil Stockpile**"), from time to time during construction of Infrastructure and Stormwater Management Controls. Developer's use of the fill shall be pursuant to a Permit to Enter. Developer shall pay Authority for the use of the fill at the rate of Three Dollars and Fifty Cents ($3.50) per cubic yard as such fill is removed from the Soil Stockpile in accordance with the Permit to Enter. If any fill remains in the Soil Stockpile after December 31, 2015, Developer shall pay Authority a fill removal subsidy based on the remaining amount of fill times $3.50 per cubic yard, in three (3) equal annual installments commencing on February 1, 2016, up to a maximum amount of One Million Dollars ($1,000,000).

13.3.8 TIHDI Job Broker Program Subsidy. Developer shall pay the TIHDI Job Broker Program Subsidy to fund the TIHDI Job Broker program in accordance with the terms of Section 9 of the Jobs EOP.

14. [Reserved].

15. Resolution of Certain Disputes.

15.1 Arbitration Matters and Expedited Issues.

15.1.1 Each of the following is an "**Arbitration Matter**" following notice from one Party to another Party that a dispute exists as to such matter: (i) disapproval by the Authority of Construction Documents for Infrastructure and Stormwater Management Controls, but not the failure of the Authority to grant a Certificate of Completion (and any consent necessary from the Department of Public Works or any other City Agency shall not be governed by this DDA); (ii) the Parties' failure to reach agreement under Section 11.5 [Proportionality]; (iii) the failure of the Authority Director to Approve a Vertical DDA or Vertical LDDA; (iv) disputes under Articles 17 [Sale of Lots], Article 24 [Excusable Delay]; (v) the sufficiency of Adequate Security provided under Article 26, but not any disputes regarding the right to call or act upon Adequate Security or the failure of an obligor of Adequate Security to perform its obligations under the Adequate Security; (vi) disputes related to the Work Program and Redesign Budget described in Section 6.2.5; and (vii) disputes under provisions set forth in Exhibits to this DDA that call for or permit arbitration and do specify a specific arbitration process.

15.1.2 Each of the following is an "**Expedited Arbitration Matter**" following notice from on Party to another Party that a dispute exists as to such matter: (i) Major Phase Decisions; (ii) proposed amendments to appraisal instructions (pursuant to Section 17.4.2); (iii) proposed additions or subtractions to the Qualified Appraiser Pool (pursuant to Section 17.4.1); or (iv) proposed additions or subtractions to the Pre-Approved Arbiters List (pursuant to Section 15.3.1).

15.1.3 Any other provision of this Agreement notwithstanding, (i) Expedited Arbitration Matters shall be resolved by binding arbitration in accordance with the expedited dispute resolution procedure set forth in Section 15.3.2, (ii) Arbitration Matters shall be resolved by non-binding arbitration in accordance with the non-binding arbitration procedures set forth in Section 15.3.3, and (iii) such other disputes under this Agreement shall be resolved either by non-binding arbitration in accordance with the non-binding arbitration procedures set forth in Section 15.3.3 if the Parties mutually agree, or barring such mutual agreement as to a particular other dispute, in accordance with this Agreement and all applicable laws.

15.2 Good Faith Meet and Confer Requirement.

15.2.1 With respect to any dispute regarding an Arbitration Matter or an Expedited Arbitration Matter, the Parties shall make a good faith effort to resolve the dispute prior to submitting the dispute to arbitration. Within five (5) Business Days after a request to confer regarding an identified matter, representatives of the Parties who, if permissible, are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting (or such longer time as each Party may agree each in its sole discretion), the matter shall immediately be submitted to the expedited dispute resolution process set forth in Section 15.3.2 for Expedited Arbitration Matters and the general dispute resolution process set forth in Section 15.3.3 for Arbitration Matters.

15.2.2 With respect to any other dispute arising hereunder this DDA, the Parties shall make a good faith effort to resolve the dispute in the most expeditious manner possible. Within five (5) Business Days after receipt of the notice of dispute, representatives of the affected Parties shall meet to resolve the dispute. If the Parties are unable to resolve the dispute in good faith within ten (10) Business days after receipt of the notice of dispute, the Parties shall either agree within ten (10) Business Days after receipt of the notice of dispute to proceed with the non-binding arbitration procedures set forth in Section 15.3.3, or barring such agreement, either Party may proceed unilaterally as permitted by this Agreement or by law. Notwithstanding the foregoing, if Developer or the Authority Director (but not the Authority Board) fails to Approve a matter as to which it is required by this DDA to be reasonable, the Party who requested the Approval shall have the right to submit the matter of whether the failure to Approve was reasonable to the arbitration procedures set forth in Section 15.3.3.

15.3 Dispute Resolution Procedures.

15.3.1 Arbiters. The arbitrator ("**Arbiter**") of Arbitration Matters and Expedited Arbitration Matters will be selected by mutual agreement of the parties to be determined no later than thirty (30) days prior to the Initial Closing under the Conveyance Agreement from a list of pre-approved Arbiters attached hereto as Exhibit Q (the "**Pre-Approved Arbiters List**"). The Arbiter will hear all disputes under this Agreement unless the Arbiter is not available to meet the time schedule set forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on the Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, the parties shall mutually agree on the selection of an Arbiter to serve for the purposes of this dispute. The Arbiter appointed must meet the Arbiters' Qualifications. The "**Arbiter's Qualifications**" shall be defined as at least ten (10) years experience in a real property professional capacity, such as a real estate appraiser, broker, real

estate economist, or attorney, in the Bay Area. The Parties shall review the Pre-Approved Arbiters List on an annual basis, determine the continued availability and willingness to serve of each Arbiter, and may at that time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbiter List, by notice in writing to the other Party. Any such notice will be accompanied by supporting documentation of the new proposed Arbiter's qualifications or with the reasons for seeking to remove an Arbiter from the Pre-Approved Arbiters List, as applicable. The other Party shall have fifteen (15) Business Days to respond in writing to such request, and failure to respond shall be deemed consent so long as the notice shall include a statement providing that the failure to respond in such fifteen (15) Business Day period shall be deemed consent. If the other Party objects, the Parties shall confer pursuant to Section 15.2.2 and thereafter such disputes (if still unresolved after conferring) shall be referred to arbitration pursuant to Section 15.3.2. Notwithstanding the foregoing, if based upon the annual review or at any time during the Term, the Parties become aware that an Arbiter has become unavailable to serve in any prospective Arbitration or has expressed an unwillingness to continue to serve, the Parties shall replace that Arbiter with a new Arbiter mutually agreed-upon by the Parties.

15.3.2 Expedited Dispute Resolution Procedure. The Party(ies) disputing any Expedited Arbitration Matter shall, within fifteen (15) Business Days after submittal of the dispute to arbitration, submit a brief with all supporting evidence to the Arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within five (5) Business Days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within twenty-five (25) Business Days after the initiation of the arbitration, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter shall be submitted to the Arbiter (with copies to all Parties) within ten (10) Business Days after the Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within ten (10) Business Days after submission of such additional briefs, and no later than forty-five (45) Business Days after the initiation of the arbitration. The decision of the Arbiter will be final, binding on the Parties and non-appealable.

15.3.3 Non-Binding Arbitration Process for Other Disputes.

(a) Election to Participate in Non-Binding Arbitration. For Arbitration Matters and other disputes under this DDA that the parties agree to arbitrate in accordance with Section 15.2.2, the Parties shall submit the dispute to non-binding arbitration by notifying the Arbiter (selected as described in Section 15.3.1) of the dispute within ten (10) Business Days after expiration of the good faith meet and confer provisions of Section 15.2. Thereafter, within ten (10) Business Days, each Party to the dispute shall submit to the Arbiter and serve on the other Party to the non-binding arbitration a short statement of the dispute and a proposed discovery and hearing schedule.

(b) Preliminary Hearing. Within twenty (20) Business Days after notice of the election to participate in non-binding arbitration, the Arbiter shall conduct, either telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbiter

shall decide discovery and briefing issues and set dates, including a hearing date. In resolving discovery issues, the Arbiter shall consider expediency, cost effectiveness, fairness, and the needs of the Parties for adequate information with respect to the dispute.

(c) Retention of Consultants. The Parties by mutual agreement may retain consultants to assist the Arbiter in the course of Arbitration, if requested by the Arbiter. In his or her request, the Arbiter shall provide to all Parties to the dispute an explanation for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of the service. All Parties to the dispute must approve the retention of the consultant and, if retention of the consultant is approved, how the Parties will share the cost of the consultant. The consultant's cost shall not exceed $10,000 without the prior written consent of the Parties to the dispute.

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

(e) Additional Procedural Requirements. The procedural rules of the non-binding arbitration under Section 15.3.3 shall be supplemented by any non-conflicting non-binding arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from time to time, applicable to commercial non-binding arbitration, and may be modified by agreement of the Parties.

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

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

15.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

(a) Disputes Involving Arbitrability of Disputes. The Arbiter shall decide any dispute involving either the right to have a disputed matter submitted to non-binding arbitration or whether the matter is properly the subject of the expedited dispute resolution procedure pursuant to Section 15.3.2. The Parties to such dispute shall provide notice of the dispute and submit in writing their respective positions regarding the dispute to the Arbiter. No such submission shall exceed ten double spaced pages. The Arbiter shall make his or her decision within five (5) days of the last submission.

(b) No Res Judicata or Collateral Estoppel Effect. Any determination or finding of any non-binding arbitration conducted pursuant to this Article shall

not have any res judicata or collateral estoppel effect in any other non-binding arbitration conducted pursuant to this Article, or in any other action commenced by any person(s) or entity(ies) whomsoever in state or federal court, whether or not Parties to this Agreement.

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

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

16. Event of Default; Remedies.

16.1 General. Except as otherwise provided in Article 15, if a Party breaches any of its obligations under this DDA, the Party to whom the obligation was owed (the "**Notifying Party**") may notify the breaching Party of such breach. The notice shall state with reasonable specificity the nature of the alleged breach, the provisions under which the breach is claimed to arise and the manner in which the failure of performance may be satisfactorily cured. Failure to cure such breach within the time period specified in Section 16.2 shall be an "**Event of Default**" by the breaching party; provided, an Event of Default by Developer or an Affiliate of Developer shall be, at the Authority's option, an Event of Default by Developer and all of Developer's Affiliates; but provided further, that notwithstanding Section 21.10 (Liability for Default) (A) no Event of Default by Developer or an Affiliate of Developer with respect to the Infrastructure and Stormwater Management Controls, Required Improvements and other horizontal obligations of Developer under this DDA (i.e., all obligations other than Developer or an Affiliate of Developer acting in its capacity as a Vertical Developer, if applicable) shall be deemed to be an Event of Default by Developer or an Affiliate of Developer in its capacity as a Vertical Developer with respect to Developable Lots, and (B) no Event of Default by a Vertical Developer (including Developer and Affiliates of Developer when acting as a Vertical Developer) shall be deemed to be an Event of Default by Developer or an Affiliate of Developer with respect to its Infrastructure and Stormwater Management Controls obligations under this DDA unless such Event of Default relates to a Vertical Developer's failure to complete Transferable Infrastructure obligations that were transferred to the Vertical Developer in accordance with Section 7.2 and Developer fails to cure such Event of Default.

16.1.1 Upon delivery of a notice of breach, the Notifying Party and the breaching Party shall promptly meet to discuss the breach and the manner in which the breaching Party can cure the same. If before the end of the applicable cure period the breach has been cured to the reasonable satisfaction of the Notifying Party, the Notifying Party shall issue a written acknowledgement of the other Party's cure of the matter which was the subject of the notice of breach.

16.1.2 If the alleged breach has not been cured or waived within the time permitted for cure, the Notifying Party may (i) extend the applicable cure period or (ii) institute such proceedings and/or take such action as is permitted in this DDA with reference to such breach.

16.2 Particular Breaches by the Parties.

16.2.1 Event of Default by Developer . The Parties agree that each of the following shall be deemed to be an Event of Default by Developer under this DDA:

(a) Developer knowingly causes or allows to occur, as to itself, a Significant Change or a Transfer not permitted under this DDA, or inadvertently causes or allows to occur such a Significant Change or Transfer and in any case the Significant Change or Transfer is not reversed or voided within thirty (30) days following receipt of notice from the Authority by Developer;

(b) following a Sub-Phase Approval, Developer fails to Commence or Complete the Infrastructure and Stormwater Management Controls in the Sub-Phase by the applicable Outside Dates for Commencement and Completion, or abandons its work on such Infrastructure and Stormwater Management Controls without the Approval of the Authority Director for more than sixty (60) consecutive days, or a total of one hundred and twenty (120) days, and such failure or abandonment continues for a period of forty-five (45) days following Developer's receipt of notice from the Authority;

(c) Developer defaults under the provisions of any Exhibit and fails to cure the same within the time provided in such Exhibit or, if not so provided, within thirty (30) days following receipt of notice from the Authority, or if such default is not susceptible of cure within thirty (30) days, if Developer fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time;

(d) Developer fails to pay any amount required to be paid to the Authority under this DDA (including all Exhibits), and such failure continues for a period of thirty (30) days following receipt of notice of such non-payment from the Authority to Developer;

(e) Developer fails to submit any Substantially Complete Major Phase Application or Sub-Phase Application by the applicable date set forth in the Schedule of Performance, and such failure continues for a period of thirty (30) days following receipt of notice from the Authority to Developer;

(f) Developer fails to provide Adequate Security, including the Base Security, as required under this DDA, or once it has provided Adequate Security fails to maintain the same as required under this DDA (including, but not limited to, the failure of a Guarantor to meet the Minimum Net Worth Requirement or the occurrence of a Significant Change to Guarantor under any Guaranty), and such failure continues for forty-five (45) days following receipt of notice from the Authority to Developer (provided, that Developer shall immediately, upon receiving notice from the Authority Director to such effect, suspend all

activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Project Site during any period during which Adequate Security is not maintained as required by this DDA);

(g) the obligor of any Adequate Security, including the Base Security, commits a default under the applicable security instrument or revokes or refuses to perform as required under the Adequate Security, and Developer does not replace the Adequate Security within forty-five (45) days following Developer's receipt of notice from the Authority; provided, that (i) Developer shall immediately, upon receiving notice from the Authority Director to such effect, suspend all activities (other than those needed to preserve the condition of improvements or as necessary for health or safety reasons) on affected portions of the Project Site during any period during which the Adequate Security is not maintained as required by this DDA, (ii) any cure period for a default under the Adequate Security shall run concurrently with the above forty-five (45) day period, (iii) such default may be cured by the obligor to the extent provided under the terms of the Adequate Security; and (iv) upon receipt by the Authority of any replacement Adequate Security, the Authority shall return the original Adequate Security;

(h) Developer fails to perform its obligations relating to the Housing Plan and such failure continues for sixty (60) days following Developer's receipt of notice from the Authority, or if such failure is not susceptible to cure within sixty (60) days, if Developer fails to promptly commence such cure within sixty (60) days after its receipt of such notice and thereafter diligently prosecutes the same to completion within a reasonable time;

(i) Developer fails to convey to the Authority or to another Governmental Entity any of the Public Property as and when required under this DDA, and such failure continues for thirty (30) days following Developer's receipt of notice from the Authority;

(j) Developer fails to Commence or Complete the Required Improvements by the Outside Dates for Commencement and Completion set forth in the Schedule of Performance, or abandons its work on such Required Improvements without the Approval of the Authority Director for more than sixty (60) consecutive days, or a total of one hundred and twenty (120) days, and such failure or abandonment continues for a period of forty-five (45) days following Developer's receipt of notice from the Authority; or

(k) Developer fails to perform any other agreement or obligation to be performed by Developer under this DDA, and such failure continues past any cure period specified in this DDA, or if no such cure period is specified, then within sixty (60) days after receipt by Developer of notice from the Authority (and, for a failure that is not susceptible of cure within sixty (60) days, if Developer fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time).

16.2.2 Event of Default by the Authority. The Parties agree that each of the following shall be deemed an Event of Default by the Authority under this DDA:

(a) the Authority fails to convey real property to Developer as and when required by this DDA, and such failure continues for a period of thirty (30) days

following the Authority's receipt of notice from Developer (and, for a failure that is not susceptible of cure within thirty (30) days, if the Authority fails to promptly commence such cure within thirty (30) days following its receipt of such notice and thereafter diligently prosecute the same to completion);

(b) the Authority fails to perform its obligations under the Financing Plan or any Acquisition and Reimbursement Agreement, including but not limited to a failure to make payments owing to Developer from the Funding Sources in accordance with the terms of the Financing Plan or any Acquisition and Reimbursement Agreement, and such failure continues for a period of thirty (30) days following the Authority's receipt of notice from Developer (and, for a failure that is not susceptible of cure within thirty (30) days, if the Authority fails to promptly commence such cure within thirty (30) days following its receipt of such notice and thereafter diligently prosecutes the same to completion);

(c) the Authority defaults under any agreement attached to this DDA to which it is a party (including the Interagency Cooperation Agreement or any of the Land Acquisition Agreements), and fails to cure such default within thirty (30) days following the receipt of notice from Developer that the time given for cure in such agreement has expired, or if such default is not susceptible of cure within thirty (30) days, the Authority fails to promptly commence such cure within thirty (30) days following its receipt of such notice and thereafter diligently prosecutes the same to completion; or

(d) the Authority fails to perform any other agreement or obligation to be performed by the Authority under this DDA, and such failure continues past any cure period specified in this DDA, or if no such cure period is specified, then within sixty (60) days after receipt by the Authority of notice from Developer, and, for a failure that is not susceptible of cure within sixty (60) days, if the Authority fails to promptly commence such cure within thirty (30) days after its receipt of such notice and thereafter diligently prosecute the same to completion within a reasonable time.

16.2.3 Material Breach. "**Material Breach**" means:

(a) for the Authority, an Event of Default that materially adversely affects Developer's or a Vertical Developer's ability to proceed timely with the Project or any significant portion thereof without substantially increased costs, including an Event of Default by the Authority arising from the failure to make payments from the Funding Sources in accordance with the Financing Plan or any Acquisition and Reimbursement Agreement;

(b) for Developer, an Event of Default under Section 16.2.1(a) [Unpermitted Transfers], or Section 16.2.1(b) [Infrastructure], or Section 16.2.1(j) (Required Improvements);

(c) for the Authority and Developer**,** an Event of Default that culminates in an arbitration or judicial action that results in a final judgment for payment or performance (beyond any applicable appeal period), and the Party against whom the judgment was made fails to make the required payment or perform the required action in accordance with

the judgment within sixty (60) days following the final, unappealable judgment or any longer period as may be specified in the judgment itself; and

(d) for the Developer, the failure to pay any Financial Obligations and Indemnification obligations as and when such payments are due and such failure continues for a period of thirty (30) days following receipt of notice of such non-payment from the Authority to Developer. The Parties acknowledge and agree that the Authority shall not be required to obtain a final judgment for a Material Breach under this Section 16.2.3(d) as a condition to pursuing remedies under 16.3.3(e).

16.3 Remedies.

16.3.1 Specific Performance. Upon an Event of Default, the aggrieved Party may institute proceedings to compel injunctive relief or specific performance to the extent permitted by law (except as otherwise limited by or provided in this DDA) by the Party in breach of its obligations, including without limitation, seeking an order to compel payment of amounts due under this DDA (including under the Financing Plan, the Housing Plan, the Community Facilities Obligations, the Transportation Plan Obligations, the Parks and Open Space Plan, the Infrastructure Plan, the Schedule of Performance and Article 19). Nothing in this Section 16.3.1 shall require a Party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such Party.

16.3.2 Limited Damages. The Parties have determined that except as set forth in this Section 16.3.2, (i) monetary damages are generally inappropriate, (ii) it would be extremely difficult and impractical to fix or determine the actual damages suffered by any Party as a result of a breach hereunder and (iii) equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this DDA. Except as otherwise expressly provided below to the contrary (and then only to the extent of actual damages and not consequential, punitive or special damages, each of which is hereby waived by the Parties), no Party would have entered into or become a Party to this DDA if it were to be liable in damages under this DDA. Consequently, the Parties agree that no Party shall be liable in damages to any other Party by reason of the provisions of this DDA, and each covenants not to sue the other for or claim any damages under this DDA and expressly waives its right to recover damages under this DDA, except as follows: actual damages only shall be available as to breaches that arise out of (a) the failure to pay sums as and when due (1) under this DDA (including under the Financing Plan, the Housing Plan, the Transition Housing Rules and Regulations, Community Facilities Obligations, the Transportation Plan Obligations, the Parks and Open Space Plan, the Infrastructure Plan, the Schedule of Performance and Article 19), but subject to any express conditions for such payment set forth in this DDA or (2) under any Acquisition and Reimbursement Agreement, but subject to any express conditions for such payment as set forth therein, (b) the failure to make payment due under any indemnity in this DDA, (c) the requirement to pay attorneys' fees and costs as set forth in Section 28.5, or when required by a arbitrator or a court with jurisdiction, and (d) to the extent damages are expressly permitted under any agreement among or between any of the Parties other than this DDA, including but not limited to any Permit to Enter. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this DDA, with interest

as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

16.3.3 Certain Exclusive Remedies. The exclusive remedy:

(a) for the failure to submit any Substantially Complete Major Phase Application or any Substantially Complete Sub-Phase Application, or to obtain any Major Phase Approval or Sub-Phase Approval, shall be the remedies of the Authority set forth in Sections 3.8.1, 3.8.2 and 3.8.3;

(b) for the failure to Commence Infrastructure and Stormwater Management Controls or to provide Adequate Security upon such Commencement, shall be the remedy of the Authority set forth in Section 16.4 or Section 16.5;

(c) for the failure to Complete Infrastructure and Stormwater Management Controls that has been Commenced, shall be (1) first, an action on the Adequate Security for that Infrastructure and those Stormwater Management Controls to the extent still available, and (2) thereafter, if the Authority is unable to recover upon such Adequate Security within a reasonable time (including by causing the obligor of any Adequate Security to Commence and Substantially Complete such Infrastructure and Stormwater Management Controls), the remedies in Sections 16.4 and 16.5 (and the Authority shall return any unused portion of the Adequate Security relating to such Infrastructure and Stormwater Management Controls following the Authority's exercise of its remedies under Sections 16.4 and 16.5);

(d) for the failure to pay money (other than the Financial Obligations, which failure shall be subject to Section 16.3.3(e)), shall be a judgment (in arbitration or a competent court) to pay such money (with interest as provided by law), together with such costs of collection as are awarded by the judge or arbitrator, subject to Section 16.2.3(c); and

(e) for the failure to pay Financial Obligations, the Developer must make payments under protest while the Parties are pursuing mediation, arbitration or judicial resolution of the dispute. If Developer fails to pay any such amounts under protest as required under this Section 16.3.3(e), the Authority shall have the remedies in Sections 16.4 and 16.5, in addition to any remedies provided under the Financing Plan for such Material Breach.

16.4 Termination. Upon the occurrence of a Material Breach by Developer or an Affiliate of Developer, the Authority may, subject to the last sentence of Section 16.1, terminate this DDA in whole or in part as to Developer and/or one or more Affiliates of Developer upon an Authority Board determination to terminate following a public meeting. Upon the occurrence of a Material Breach by the Authority, Developer, or an Affiliate of Developer, as the case may be, may terminate this DDA as to the terminating Party only. The Party alleging a Material Breach shall provide a Notice of Termination to the breaching Party, which Notice of Termination shall state the Material Breach, the portions of the real property covered by this DDA (or the Major Phases and Sub-Phases) to be terminated, and the effective date of the termination (which shall, in no event, be sooner than ninety (90) days from the date of delivery of the Notice of Termination); provided, that the Authority Director may give this

Notice of Termination before the date of the Authority Board action on the proposed termination so that the Authority termination notice period may run simultaneously with the public notice period for the Authority Board action. If such termination occurs, neither the breaching Party nor the Notifying Party shall have any further rights against or liabilities to the other under this DDA as to the terminated portions of this DDA except as set forth in Section 28.29. By way of illustration of the foregoing sentence, if on the date of termination by the Authority Developer is constructing Infrastructure and Stormwater Management Controls in a Sub-Phase and the Material Breach is not related to that Sub-Phase, then Developer shall have the right to Complete such Infrastructure and Stormwater Management Controls and to hold and sell the Lots in the Sub-Phase to which such Infrastructure and Stormwater Management Controls relates in accordance with the terms of this DDA.

16.5 Authority's Exercise of Reversion Right upon Failure to Substantially Complete Infrastructure; Release of Rights of Reverter.

16.5.1 A condition precedent to the Authority's obligation to close Escrow for the conveyance of fee title to or a ground leasehold interest in real property from the Authority to Developer after Sub-Phase Approval shall be Developer's execution and delivery to the Title Company of a recordable quitclaim deed in the form attached hereto as Exhibit R (with only such changes as may be Approved by Developer and the Authority Director, the "**Reversionary Quitclaim Deed**") conveying fee title to or the ground leasehold interest in, the applicable property from Developer to the Authority. The Reversionary Quitclaim Deed shall be delivered with irrevocable instructions from Developer to the Title Company, in a form Approved by the Authority, directing the Title Company to comply with the Authority's direction to record the Reversionary Quitclaim Deed upon receipt of the Reversionary Recordation Notice and releasing and indemnifying the Title Company from any and all liability resulting from the Title Company's compliance with such instructions. Notwithstanding the foregoing, if prior to close of Escrow for a Sub-Phase, Developer increases the amount of Adequate Security for the applicable Sub-Phase to meet the requirements of Section 16.5.4 hereof, then Developer shall have no obligation to deliver a Reversionary Quitclaim Deed for the applicable Sub-Phase and such delivery shall not be a condition precedent to Authority's obligation to convey fee title to or the ground leasehold interest in, the applicable property.

(a) The Authority's right to exercise the right of reverter remedy contained in this Section 16.5 (the "**Right of Reverter**") shall be as follows:

(i) shall be limited to an Event of Default under Sections 16.2.1(b), 16.2.1(j) and 16.2.3(d) (a "**Reversionary Default**");

(ii) shall not become operative until the Authority has delivered notice (the "**Reversionary Cure Notice**" which may be coupled with a Notice of Termination) to Developer and all affected Mortgagees, as the case may be, or their successors for whom the Authority has been provided an address, detailing the facts and circumstances of the Reversionary Default and providing all such Persons with a concurrent period of ninety (90) days from the delivery of such notice to commence to cure, or cause Developer to cure, the Reversionary Default; provided, that the Authority may not direct the Title Company to record the Reversionary Quitclaim Deed if Developer or such Persons commence the cure within the

ninety (90) day period specified above and continue to diligently prosecute the cure without interruption to Substantial Completion (provided, that the Authority may exercise such right if the Reversionary Default is not cured within one hundred eighty (180) days following the date on which the Reversionary Cure Notice was sent by the Authority);

(iii) shall be subject to the provisions of Article 20, although any cure periods provided in Article 20 shall run concurrently with the ninety (90) day cure period provided above;

(iv) shall be subject to Section 16.5.4 regarding the Developer's right to cause a release of the Right of Reverter; and

(v) with respect to a Reversionary Default under Section 16.2.1(b) or Section 16.2.1(j) shall automatically and without further documentation terminate upon the earliest to occur of:

(A) Substantial Completion of the applicable Infrastructure and Stormwater Management Controls or Required Improvement;

(B) issuance of the applicable Certificate of Completion;

(C) as provided in paragraph (b) below; and

(D) as provided in paragraph (c) below.

(b) With respect to a Reversionary Default under Section 16.2.1(b) or Section 16.2.1(j) , the Authority Director shall have the right, in his or her sole discretion, to release a Reversionary Quitclaim Deed and terminate the Authority's rights under this Section 16.5 upon (i) the Completion of a significant portion of the Infrastructure and Stormwater Management Controls or the Required Improvements, as applicable, within the real property described in the Reversionary Quitclaim Deed, as determined by the Authority Director following receipt of appropriate backup information from Developer, including a certificate from the Engineer or DBI with respect to the Required Improvements confirming the degree of Completion, or (ii) the Authority holding Adequate Security for the Completion of the applicable Infrastructure and Stormwater Management Controls or Required Improvements, in form and content satisfactory to the Authority Director and consistent with the requirements of Section 16.5.4.

(c) Notwithstanding any other provision of this Article 16, following a Reversionary Default, the Authority shall not be entitled to cause the Reversionary Quitclaim Deed to be recorded if (1) the Authority recovers the cost of causing the Infrastructure and Stormwater Management Controls or the Required Improvements to be Completed from the Adequate Security provided by Developer for that purpose or (2) the obligor of any Adequate Security Commences to cure the Reversionary Default within sixty (60) days following demand by the Authority and such Infrastructure and Stormwater Management Controls or Required Improvements, as applicable, is diligently prosecuted and Substantially Completed within a reasonable time thereafter. In the event that the Authority elects not to pursue such Adequate

Security or pursues such Adequate Security but is unable, in the normal course and utilizing good faith efforts, to achieve the results in clause (1) or clause (2) above within a reasonable time, then the Authority may record the Reversionary Quitclaim Deed in accordance with this Section 16.5 and the Authority shall thereafter release and return the unused portion of any Adequate Security upon the expiration of the Reversionary Contest Period (if there has been no challenge or contest to such recordation) or upon or in accordance with a final, unappealable judicial determination (if there has been such a challenge or contest to the Authority's recordation of the Reversionary Quitclaim Deed).

(d) Subject to paragraph (a) above, if the Authority believes that it is entitled to exercise the right to direct the Title Company to record the Reversionary Quitclaim Deed, then, with the Approval of the Authority Board following a public meeting (which meeting may be the same as an Authority Board meeting for declaring a Material Breach and authorizing a Notice of Termination), the Authority may send to the Title Company a notice that Developer has committed a Reversionary Default for the property in question, with a copy to Developer and to any Mortgagee that has requested notice as set forth in Section 20.4, and direct the Title Company to record the appropriate Reversionary Quitclaim Deed and provide a conformed copy of such recorded Reversionary Quitclaim Deed to the Authority, such Mortgagee and Developer (such notice, the "**Reversionary Recordation Notice**").

(e) If the Authority's right to direct the Title Company to record a Reversionary Quitclaim Deed terminates for any reason, then the Authority shall, upon Developer's request, promptly instruct the Title Company to return the Reversionary Quitclaim Deed to Developer.

(f) The Title Company's recordation of the Reversionary Quitclaim Deed shall not affect in any manner the rights of any Mortgagee or Developer to contest the Authority's right to exercise the remedy contained in this Section 16.5. No Mortgagee or Developer shall have any rights against the Title Company for recording the Reversionary Quitclaim Deed following receipt of the Reversionary Recordation Notice. However, Developer or any affected Mortgagee must bring any action contesting the Authority's right to exercise the remedy contained in this Section 16.5 (f) in any judicial proceeding concerning such recordation initiated by the Authority prior to the recordation, if Developer and the affected Mortgagee (if it requested notice under Section 20.4) receive notice of such action as set forth in Section 20.4 (i.e., any Mortgagee that fails to request notice under Section 20.4 cannot complain about its failure to receive notice, and shall be treated as if it had received notice for purposes of this Section 16.5), or (ii) if no such action is initiated by the Authority, then within sixty (60) days following recordation of the Reversionary Quitclaim Deed (in either case, the "**Reversionary Contest Period**"); otherwise, Developer and the affected Mortgagees shall be precluded from challenging the Authority's action. In the event that the Authority's recordation of the Reversionary Quitclaim Deed is denied through legal proceedings initiated by Developer or any Mortgagee, (1) the Authority shall promptly take corrective action to abrogate the effect of the Reversionary Quitclaim Deed, (2) the Schedule of Performance shall be equitably adjusted, (3) Developer or the Mortgagee shall thereafter prosecute to Completion the applicable Infrastructure and Stormwater Management Controls or Required Improvements in accordance with the terms of this DDA and the Vertical DDA/LDDA applicable to the Infrastructure and Stormwater Management Controls and Required Improvements, and (4) the

Authority's right to cause the recordation of the Reversionary Quitclaim Deed shall terminate upon Substantial Completion of the Infrastructure and Stormwater Management Controls or the Required Improvements, as applicable, as set forth in paragraph (a) above, provided that such termination shall not diminish the Authority's right to exercise any and all other remedies available to the Authority hereunder, including, without limitation, looking to the Adequate Security, if Developer fails to Complete the applicable Infrastructure and Stormwater Management Controls or Required Improvements.

16.5.2 Payment of Special Taxes Following Recordation of Reversionary Quitclaim Deed. Following the recordation of any Reversionary Quitclaim Deed, the property covered thereby shall remain a Taxable Parcel, notwithstanding the Authority's ownership of such property, and the Authority shall pay any ad valorem taxes, Project Special Taxes, or other taxes or fees used to secure or pledged for payment of debt service with respect to any Public Financing as and when such taxes are due for such property or would have been due but for the Authority's recordation of the Reversionary Quitclaim Deed.

16.5.3 Resale of Property Following Recordation of Reversionary Quitclaim Deed. Following recordation of a Reversionary Quitclaim Deed and either (i) the expiration of the Reversionary Contest Period without Developer or any affected Mortgagee having contested the Authority's right to record the Reversionary Quitclaim Deed or (ii) if such contest is filed, the entry of a final, non-appealable judgment upholding such recordation or the expiration of any relevant appeal periods without an appeal having been filed, the Authority shall diligently market and sell the property acquired pursuant to the Reversionary Quitclaim Deed to any Qualified Buyer for not less than the fair market value of such property, as determined by the Authority Director after due inquiry. The proceeds of any such sale shall be distributed in the following order of priority: (1) to the Authority to the extent of its actual costs and expenses incurred in connection with the Reversionary Default and marketing of the property; (2) to pay any Project Special Taxes and other taxes or fees due and owing with respect to such property, up to the date of sale; (3) to repay the amounts due under each Mortgage applicable to such property in the priority of their liens on such property before the recordation of the Reversionary Quitclaim Deed; (4) to the Authority to the extent of any unpaid Authority Costs; (5) to Developer in accordance with the formula set forth in Section 6.3 of the Financing Plan, if applicable; and (6) the remainder, if any, to the Authority for use within the Project Site. This Section 16.5.3 shall survive the termination of this DDA until all proceeds of sale have been distributed in accordance herewith.

16.5.4 Release of Right of Reverter. At any time prior to the occurrence of a Reversionary Default, Developer shall have the right to cause the Authority to release the Right of Reverter as to any Sub-Phase by increasing the Secured Amount of the Adequate Security as follows: (i) if securing an obligation to pay money, one hundred twenty-five percent (125%) of the amount of such secured payment, and (ii) if securing an obligation to construct, one hundred twenty-five percent (125%) of the estimated cost of Completion of such construction as such cost is Approved by the Authority Director and Developer with reference to the applicable construction contracts entered into by Developer providing additional Adequate Security for the Sub-Phase (the "**Increased Adequate Security**"). Developer shall be relieved of its obligation to provide the Reversionary Quitclaim Deed for a particular Sub-Phase if Developer provides the Increased Adequate Security prior to close of Escrow for that Sub-Phase.

Developer shall also have the right to cause the Authority to release the Right of Reverter as to any Sub-Phase upon a showing that the amount of Adequate Security held by Authority for that Sub-Phase equals at least one hundred twenty-five percent (125%) of the remaining construction costs and monetary obligations within the Sub-Phase. For example, if the Secured Amount for Developer's obligations within a Sub-Phase were $12,500,000 and Authority held Adequate Security for $12,500,000, then Developer shall have the right to cause the Authority to release the Right of Reverter as to that Sub-Phase upon Substantial Completion and payment of $2,500,000 of the obligations secured by the Adequate Security, so long as the Adequate Security of $12,500,000 remained in place. If Developer elects to cause the Right of Reverter to be released in accordance with this Section 16.5.4, Developer shall deliver to the Authority the increased Adequate Security for the Sub-Phase or evidence reasonably satisfactory to Authority that the Adequate Security held by Authority equals at least one hundred twenty-five percent (125%) of the remaining cost of the secured obligations. Upon such delivery, the Authority shall send to the Title Company, with a copy to the Developer, a notice that Developer has complied with the provisions of this Section 16.5.4, together with an executed and recordable Release of Rights of Reverter (the "**Reverter Release**") releasing the Authority's Right of Reverter as to the Sub-Phase for which the Increased Adequate Security has been provided. The notice shall direct the Title Company to record the appropriate Reverter Release and provide a conformed copy of such recorded Reverter Release to the Authority, any Mortgagee requested by Developer, and Developer (such notice, the "**Reverter Release Recordation Notice**").

16.6 Independence of Major Phases, Sub-Phases and Vertical Improvements. Subject to the Authority's termination rights as set forth in Sections 3.8.1, 3.8.2, 3.8.3, 16.3.3 and 16.4, the Parties expressly recognize and agree that (i) an Event of Default as to one Sub-Phase shall not by itself be the basis for an Event of Default for other Sub-Phases for which Developer or an Affiliate of Developer has obtained a Sub-Phase Approval and (ii) an Event of Default for a Vertical Developer shall not be an Event of Default for Developer, an Affiliate of Developer or other Vertical Developers. Notwithstanding the foregoing, an Event of Default pertaining to the failure to Commence or to Complete Infrastructure and Stormwater Management Controls or Required Improvements in a Major Phase or Sub-Phase will be deemed an Event of Default for all future Major Phases for which there has not been a Major Phase Approval and all Sub-Phases for which there has not been a Sub-Phase Approval, provided, that this sentence shall not apply to a Major Phase that has been Transferred to a Third Party pursuant to an Assignment and Assumption Agreement that was Approved by the Authority Director. Nothing in this Article 16 shall be deemed to supersede or preclude the rights and remedies of the City or the Authority to require compliance with any Approval, Authorization, or other entitlement granted for the development or use of the Major Phase, Sub-Phase or Vertical Improvement, which rights and remedies shall be in addition to the rights and remedies under this Article 16.

16.7 Reserved.

16.8 Rights and Remedies Cumulative. Except as expressly limited by this DDA (such as in Sections 16.3.2 and 16.3.3), the rights and remedies of the Parties contained in this DDA shall be cumulative, and the exercise by any Party of any one or more of such remedies shall not preclude the exercise by it, at the same or different times, of any other remedies contained in this DDA for the same breach by the applicable Party. In addition, the remedies provided in this DDA do not limit the remedies provided in other agreements and

documents. Otherwise, except as provided in this Section 16.8, neither Party shall have any remedies for a breach of this DDA by the other Party except to the extent such remedy is expressly provided for in this DDA.

16.9 No Implied Waiver. No waiver made by a Party for the performance or manner or time of performance (including an extension of time for performance) of any obligations of the other Party or any condition to its obligations under this DDA shall be considered a waiver of the rights of the Party making the waiver for a particular obligation of the other Party or condition to its own obligation beyond those expressly waived in writing.

17. Transfer and Development of Lots.

17.1 In General. Developer will Transfer Lots to Vertical Developers (including Affiliates of Developer, when acting as a Vertical Developer) who will construct Vertical Improvements on such Lots in accordance with the terms of the Vertical DDA or LDDA. Developer will be entitled to Transfer Lots to Vertical Developers prior to issuance of a Certificate of Completion for the Infrastructure and Stormwater Management Controls, so long as Developer retains ultimate responsibility for Completion of the Infrastructure and Stormwater Management Controls in accordance with the Schedule of Performance and Authority holds Adequate Security therefore. The Parties acknowledge that except as otherwise provided for certain Commercial Lots described in Section 17.2 hereof, and Required Improvements, there shall be no Outside Date for the Transfer or Vertical Development of Market Rate Lots and Commercial Lots.

17.2 Commercial Lots. Certain Lots designated for commercial use or development in the Land Use Plan (collectively, the "**Commercial Lots**") will be divided into two groups. The first group (the "**Critical Commercial Lots**"), consists of Blocks M-1A and M-1B and Buildings 1, 2 and 3 identified on the Land Use Plan. The second group **(**the "**Non-Critical Commercial Lots**") consists of Blocks C2-H, Y1-H and the Senior Officers Quarters Historic District ("**SOQHD**") identified on the Land Use Plan, and any of the Critical Commercial Lots that Developer elects not to develop under Section 17.2.1.

17.2.1 Developer Rights and Timing for Development of Critical Commercial Lots. Developer by itself or in joint ventures with other development partners ("**Developer Commercial JVs**"**)** shall have the right, but not the obligation, to develop the Critical Commercial Lots, subject to the timing set forth in this Section 17.2.1; provided, Developer shall have the obligation to develop the Required Improvements in accordance with the Schedule of Performance. Except as may otherwise be provided under the Schedule of Performance for Required Improvements, there shall be no Outside Date for development or Transfer of Blocks M-1A and M-1B; provided, however, that if Developer elects not to develop Block M-1A or M-1B, then it shall Auction the Lot in accordance with Section 17.2.6 and enter into a Vertical DDA with the successful bidder. For Buildings 1, 2 or 3, except as may otherwise be provided under the Schedule of Performance for Required Improvements and the Community Facilities Obligations, Developer shall have entered into an LDDA and Ground Lease with Authority for uses consistent with the Development Requirements including this DDA within ten (10) years for Buildings 1 and 2, and fifteen (15) years for Building 3, after the Major Phase Approval is granted for the Major Phase in which the Critical Commercial Lot is located, or if it

has elected not to develop the applicable Lot, shall have Auctioned the LDDA and Ground Lease opportunity within the same time periods in accordance with Section 17.2.6. Failure to meet the timeframes established in this Section 17.2.1 (excluding timeframes set forth in the Schedule of Performance for Required Improvements or Community Facilities Obligations) shall not be a default under this DDA, but Authority shall thereafter have the right to develop or market and ground lease the applicable Critical Commercial Lot to third parties for development, subject to the restrictions on use set forth in Section 21.12, and Developer shall no longer have any rights to such applicable Critical Commercial Lots under this Agreement.

17.2.2 Development and Timing of Non-Critical Commercial Lots. Developer shall Auction the vertical development and ground lease rights to Block C2-H in accordance with Section 17.2.6 at such time as is deemed appropriate by Developer, in its sole discretion. Developer shall Auction the vertical development and ground lease rights to Block Y1-H and the SOQHD in accordance with Section 17.2.6 no later than five (5) years after the Outside Date in the Schedule of Performance for Completion of Infrastructure and Stormwater Management Controls related to the applicable Lot (or at such earlier time as is provided in the following sentence with respect to the SOQHD, or at such earlier or later time as is mutually agreed-upon by the Parties, each in their sole discretion). If Developer has not offered Block Y1-H or the SOQHD for Auction within the time required hereunder, or with respect to the SOQHD, prior to such date the Authority identifies an economically viable user that will renovate all or a portion of the SOQHD in accordance with the Secretary of Interior Standards, then Authority shall thereafter have the right to develop or market and ground lease the applicable Non-Critical Commercial Lot to third parties for development, subject to the restrictions on use set forth in Section 21.12, and Developer shall no longer have any rights to such applicable Critical Commercial Lot under this Agreement.

17.2.3 Transfer of Non-Critical Commercial Lots. Developer shall Transfer by Auction in accordance with Section 17.2.6 any Non-Critical Commercial Lot through a Vertical DDA, or with respect to a Non-Critical Commercial Lot on Public Trust property, a Vertical LDDA. The Authority shall enter into a Vertical DDA or LDDA with the Developer, provided the Authority has not exercised it right to develop or market and ground lease such Lot in accordance with Section 17.2.1 or Section 17.2.2 above, and the successful bidder for the applicable Non-Critical Commercial Lot, which Vertical DDA or Vertical LDDA shall include such additional terms and conditions, including a scope of development, that reflect the uses and financial offer negotiated with the successful bidder, which terms shall be Approved by Authority and Developer. The applicable Non-Critical Commercial Lots on Public Trust property shall be ground leased directly by the Authority to the Vertical Developers.

17.2.4 Revenues from Critical Commercial Lots. If Developer by itself or through a Developer Commercial JV develops the Critical Commercial Lots, the sales price or capitalized ground lease rent (as the case may be) for the Critical Commercial Lots purchased by or ground leased to Developer or the Developer Commercial JVs (the "**Critical Commercial Lots Payment**") shall be derived from the Proforma (including the financial model of any Vertical Development that requires subsidy) prepared by Developer and Approved by the Authority in connection with the Approval of the Sub-Phase Application that contains the applicable Critical Commercial Lot, showing reasonable detail of projected revenues, expenses, subsidies and/or target returns associated with the Critical Commercial Lots, acknowledging that

to the extent that the Critical Commercial Lots require subsidy for development as reasonably determined by Developer, which determination must be supported by the independent appraiser letter report described below, the Critical Commercial Lots Payment may be zero dollars ($0.00). Developer will provide this information derived from the Proforma to an independent appraiser having at least ten (10) years experience in the San Francisco retail leasing market mutually agreed upon by Developer and the Authority, and shall provide to the Navy and the Authority a letter report confirming the appropriateness of Developer's assumptions related to the Critical Commercial Lots. No potential or actual investor or lender shall be prohibited by an exclusivity agreement between the Developer and other investors or lenders from participating in any financing of any Commercial Lot or any other commercial product type developed by parties other than Developer.

17.2.5 Transfer by Developer of Developed Critical Commercial Lots. Developer or a Developer Commercial JV may, in its sole discretion, subsequently convey any of the developed Critical Commercial Lots (the "**Developed Critical Commercial Lots**") to a third party; provided, however, that any and all revenues received by Developer or a Developer Commercial JV arising from or associated with the conveyance of the Developed Commercial Lots shall be included in Gross Revenues. Transfer of the Developed Critical Commercial Lots shall be by sale, or by sub-Ground Lease or assignment of Ground Lease in accordance with the terms thereof, provided, however, with respect to the first transfer of a Ground Lease by Developer or a Developer Commercial JV, the transferee shall be required to pay a transfer price based upon the fair market value for the right to occupy the applicable Developed Critical Commercial Lot on the terms and conditions of the Ground Lease, including the ground rent under the Ground Lease of zero dollars ($0.00), if applicable. If Developer elects to transfer a Developed Critical Commercial Lot to a Developer Commercial JV, the transfer price shall be determined in accordance with the Appraisal Process described in Section 17.4 hereof. If Developer or a Developer Commercial JV elects to transfer a Developed Critical Commercial Lot to a non-Affiliated third-party entity (such parcel, a "**Non-Developer Critical Commercial Lot**"), the transfer price shall be determined by Auction pursuant to the Auction process applicable to Commercial Lots, as set forth in Section 17.2.6 below.

17.2.6 Auction Process for Commercial Lots. The Auction for any Non-Critical Commercial Lot to the extent required hereunder shall require a mutually agreed upon minimum bid price based on the Proforma prepared by the Developer and Approved by the Authority in connection with the Approval of the Sub-Phase Application that contains the applicable Non-Critical Commercial Lot. The minimum bid price shall be set and confirmed by an independent appraiser letter according to the process described in Section 17.2.4 no sooner than three (3) months prior to the commencement of the Auction period. The Non-Critical Commercial Lot subject to the Auction will be submitted for offer for a reasonable period of time, as determined by Developer and the Authority, through licensed commercial real estate brokers having at least five (5) years experience in Bay Area commercial real estate selected by Developer. The pool of qualified bidders in the Auction of any Non-Critical Commercial Lots or any Non-Developer Critical Commercial Lots shall be determined by the Authority and Developer prior to the applicable Auction based on the Auction Bidder Selection Guidelines applicable to Commercial Lots (attached hereto as Exhibit T). The pool of qualified bidders in the Auction of any Non-Critical Commercial Lot or any Non-Developer Critical Commercial Lot and the minimum bid price for the Auction of the Non-Developer Critical Commercial Lots shall

be provided to the Navy and the Authority at least ten (10) days prior to the applicable Auction. If no minimum bids from qualified bidders are received for the Non-Critical Commercial Lots at the close of the Auction period, Developer and/or its Affiliates will have the option, to be exercised by written notice within sixty (60) days after the close of the Auction period, to purchase such Non-Critical Commercial Lots based upon an appraisal in accordance with Section 17.4 hereof. If Developer does not timely exercise the option to purchase unsold Non-Critical Commercial Lots, the Authority and Developer shall within one hundred twenty (120) days after the expiration of the Auction period, mutually agree upon a new minimum bid price to be used in a new Auction, which may take the form of adjustment to the Proforma minimum bid price or an appraisal. If the Parties are unable to agree on a new minimum bid price within the allotted time, the matter shall be submitted to the dispute resolution procedure of Section 15.3.2 (Expedited Dispute Resolution Procedure). Within six (6) months after establishment of the new minimum bid price, Developer shall re-bid the Non-Critical Commercial Lot. If no qualified bids are received for the Non-Developer Critical Commercial Lots that are acceptable to Developer, Developer shall reserve the right to withdraw the Non-Developer Critical Commercial Lot from sale and re-bid the Non-Developer Critical Commercial Lot at such future time as Developer's deems appropriate in its reasonable judgment, but in no event later than two (2) years after the prior Auction.

17.3 Sale of Market Rate Lots. Developer has the right to purchase Market Rate Lots for up to sixty percent (60%) of the Market Rate Units (the "**Developer Lots**"), at a purchase price established by the Appraisal Process described in Section 17.4. Market Rate Lots for approximately twenty percent (20%) of the Market Rate Units shall be available for purchase at a purchase price established by the Appraisal Process by joint ventures in which the Developer or its Affiliates have no more than a fifty percent (50%) ownership interest and under which a non-Affiliated joint venture partner exercises management control as the "managing partner" (or member, as the case may be) of the joint venture entity (collectively, the "**JV Lots**"). In order to ensure that the Developer Lots and JV Lots are sold at fair market value, Market Rate Lots for approximately twenty percent (20%) of the Market Rate Units will be offered for sale via Auction (collectively, the "**Residential Auction Lots**") in accordance with Section 17.5. No potential or actual investor or lender shall be prohibited by an exclusivity agreement between the Developer and other investors or lenders from participating in any financing of any Market Rate Lot or any other residential product type developed by parties other than Developer.

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

position by at least 15%. Before the close of escrow for any Sub-Phase, the Developer will provide to the Authority and the Navy a list of equity investors for that Sub-Phase. During the implementation of any Sub-Phase, Developer will provide to the Authority and the Navy immediately prior to the sale of any parcels to an Affiliate of Developer or the equity investors of that Major Phase, a notice of such Affiliate sale which notice shall describe why the sale is permitted under the terms of this Agreement. Prior to the close of any sale directly to Developer, Developer shall provide to the Authority and the Navy a letter from a real estate broker or licensed real estate professional familiar with the Bay Area market who is not an Affiliate of Developer and has no equity investment in Developer in such Sub-Phase, finding that the acquisition and development of the Market Rate Lot by Developer is appropriate in the context of then-existing market conditions. The basis of such findings could include, but is not limited to, establishing a new product type, initiating or establishing a new product type, initiating or establishing the development of a new phase in the Project, responding to changes in market conditions, or other similar market-based factors. Any disputes arising out of this Section 17.3.1 shall be referred to the arbitration process for Expedited Arbitration Matters set forth in Section 15.3.2 hereof.

17.4 Appraisal Process. The process described in this Section 17.4 (the "**Appraisal Process**") shall apply to the Developer Lots, the JV Lots, those Developed Critical Commercial Lots for which an appraisal is required under Section 17.2.5, and those Non-Critical Commercial Lots for which an appraisal is required under Section 17.2.6. The Authority and Developer shall confer and select an appraiser from the Qualified Appraiser Pool for each such Developed Critical Commercial Lot, Non-Critical Commercial Lot, Developer Lot or JV Lot to be appraised. An appraisal used for the purpose of determining the parcel sale price (or Ground Lease rent, if applicable) shall be updated if a sales contract (or Ground Lease) for such parcel has not been executed within one (1) year from the date of the appraisal.

17.4.1 Qualified Appraiser Pool. Appraisals of any Developed Critical Commercial Lots required to be appraised by Section 17.2.5, Non-Critical Commercial Lots for which an appraisal is required under Section 17.2.6, the Developer Lots and JV Lots shall be conducted by a qualified appraiser, which for purposes of this DDA shall be defined as an appraiser (i) licensed in the State of California as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an Affiliate of the Developer and has no equity investment in the Developer or the Project investors, (iv) who has particular experience with coastal California real property transactions involving the Product Type that is the subject of the appraisal, and (v) who has no conflict of interest as evidenced by contractual relationships with Developer either existing or in the immediately prior twenty-four (24) months, unless a conflict waiver is obtained from the Authority (and, if required under the Conveyance Agreement, the Navy). The Parties have agreed upon a list of pre-qualified appraisers, which list is attached hereto as Exhibit U (the "**Qualified Appraiser Pool**"). From time to time, either Party may propose in writing to add or subtract additional persons meeting the above qualifications. If the Parties disagree on a proposed addition or subtraction, then the Parties shall follow the dispute resolution procedure for Expedited Arbitration Matters set forth in Section 15.3.2.

17.4.2 Appraisal Instructions. The selected appraiser shall appraise the applicable Developer Lot, JV Lot, Developed Critical Commercial Lot (to the extent subject to appraisal by Section 17.2.5), or Non-Critical Commercial Lot (to the extent subject to appraisal by Section 17.2.6) utilizing appraisal instructions substantially in the form of those attached hereto as Exhibit V, as the Parties hereto may agree to amend from time to time which agreement shall not be unreasonably withheld, conditioned or delayed. If an Excess Land Appreciation Structure is established in a Major Phase by Product Type, such structure will be deemed to apply to all Market Rate Lots of that Product Type in the applicable Major Phase, and the appraisal instructions shall incorporate such terms. If an Excess Land Appreciation Structure established for a Major Phase is later revised in connection with a Sub-Phase Approval in accordance with Section 6.2.3(d) hereof, then such structure will be deemed to apply to all Market Rate Lots in the applicable Sub-Phase and the appraisal instructions shall incorporate such terms. If material changes are proposed to appraisal instructions, including assumptions, special assumptions, limiting conditions, hypothetical conditions, and other special instructions, the requesting Party shall propose such amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution procedure for Expedited Arbitration Matters set forth in Section 15.3.2.

17.4.3 Notification of Appraisal. Developer, on behalf of the Authority, shall provide to the Navy, with a copy to the Authority, documentation of appraiser selection and appraisal instructions prior to the commencement of an appraisal, and shall provide a copy of the complete appraisal promptly following completion of such appraisal.

17.5 Auction Process for Residential Auction Lots. The Authority and Developer prior to the approval of any Major Phase Application, shall jointly determine the pool of qualified bidders for each Auction of a Residential Auction Lot based on the Auction Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit W) set forth for each Product Type, as agreed upon by the Parties. In the event no qualified third party bids are received at or above the minimum bid price for the Residential Auction Lots (as determined in the Major Phase Decisions described in Section 6.2.3), Developer and/or its Affiliates will have the option by written notice within sixty (60) days after the close of the Auction period to purchase such Residential Auction Lots at the minimum bid price and any Residential Auction Lots so acquired by Developer shall not be deemed to apply against the percentage limits otherwise applicable to the Developer Lots or the JV Lots. If Developer does not timely exercise the option to purchase unsold Residential Auction Lots, then the Authority and Developer shall within one hundred twenty (120) days after the expiration of the Auction period mutually agree upon a new minimum bid price to be used in a new Auction (the "**Re-Setting of the Minimum Bid Price**"). If the Parties are unable to agree on a new minimum bid price within the allotted time, the matter shall be submitted to the dispute resolution procedure for Expedited Arbitration Matters set forth in Section 15.3.2. The Re-Setting of the Minimum Bid Price may take the form of adjustment to the Proforma minimum bid price or an appraisal.

17.5.1 Timing of Residential Auction Lots Selection. The Residential Auction Lots will be selected by mutual agreement by the Authority and the Developer prior to approval of each Major Phase Application, as such selection may be revised in a subsequent approved Sub-Phase Application. The Residential Auction Lots will be offered for sale at such time as reasonably deemed appropriate by Developer in light of then-current market conditions

and such sale shall be subject to Completion of Infrastructure and Stormwater Management Controls serving the applicable Residential Auction Lot.

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

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

17.5.4 Conveyance Agreement Exhibits. Exhibits Q, T, U, V, W and X referenced in this Article 17 are also exhibits to the Conveyance Agreement and, subject to Section 28.38 hereof, will be attached to this DDA in the form attached to the executed version of the Conveyance Agreement.

18. Mitigation Measures.

18.1 Mitigation Measures. Developer and the Authority agree that the construction and subsequent operation of the Infrastructure and Stormwater Management Controls, Vertical Improvements and Required Improvements, if applicable, shall be in accordance with the mitigation measures identified in the Project MMRP (the "**Mitigation Measures**"). Developer shall comply with and perform the Mitigation Measures as and when required by the Project MMRP except for those Mitigation Measures or portions of Mitigation Measures for which the performance obligations are expressly obligations of the Authority, the City or another Governmental Entity. The responsibility to implement applicable Mitigation Measures shall be incorporated by Developer or the Authority, as applicable, into any applicable contract or subcontract for the construction or operation of the Improvements, including the Vertical DDA/LDDAs. The Authority shall comply with and perform the Mitigation Measures or portions of Mitigation Measures that are the obligation of the Authority as and when required, and shall use good faith efforts, consistent with the Interagency Cooperation Agreement, to cause the necessary City Agencies to comply with and perform the Mitigation Measures or portions of Mitigation Measures that are the obligations of the City as and when required.

19. Authority Costs.

19.1 Authority Costs and Revenues.

19.1.1 "**Authority Costs**" means all costs and expenses actually incurred and paid by the Authority in accordance with the Authority's annual budget approved by the Authority Board and the Board of Supervisors (the "**Annual Authority Budget**"), including costs and expenses relating to performing the Authority's obligations under this DDA, other Authority contracts and grants, and the Conversion Act.

19.1.2 "**Authority Revenues**" means all revenues payable to Authority for each applicable year, including projected Interim Lease Revenues, Marina Revenues and any other sources of revenue received by Authority from any sources whatsoever other than Developer or Vertical Developers.

19.1.3 The Parties acknowledge that the Annual Authority Budget shall comply with applicable requirements of the Conversion Act, the Public Trust, the Conveyance Agreement and the City's Charter.

19.2 Annual Budget. Within ninety (90) days after the Effective Date, the Authority and Master Developer shall meet and confer to create a base line budget ("**Base Line Budget**") that includes projected Authority Costs and Authority Revenues. On or before May 1 with respect to Fiscal Year 2012-13 and each subsequent Authority Fiscal Year during the term of this DDA, the Authority and Master Developer shall meet and confer regarding the Authority Costs reasonably expected to be incurred and Authority Revenues reasonably expected to be received during that succeeding Authority Fiscal Year. Prior to such meetings, the Authority shall prepare a preliminary budget (the "**Annual Preliminary Budget**") estimating the anticipated Authority Cost and Authority Revenues. The preliminary budget of Authority Costs shall include (i) the staff positions for all Authority staff, (ii) a general description of the duties of each such staff person relative to the Project, (iii) an identification of each third-party professional expected to be paid by the Authority during such year together with a description of the expected duties of such professional, the method of compensation and the expected total cost of such professional for such year, (iv) a general description of the costs and expenses related to the operation and maintenance of NSTI, including compliance with the terms of the TIHDI Agreement to provide assistance to TIHDI and TIHDI Member Organizations, subject to Section 19.3 below, and (v) a general description of the costs and expenses related to the management and implementation of the Project. The Annual Preliminary Budget shall include a projection of anticipated revenues payable to Authority for the year, including projected Authority Revenues. Based on such meetings and other relevant information available to the Authority, the Authority shall update such Annual Preliminary Budget for Authority Costs for such Authority Fiscal Year, broken down by fiscal quarter and including the information set forth in clauses (i) through (v) above (an "**Annual Authority Draft Budget**") and deliver the same to Master Developer. The Parties acknowledge that the Annual Authority Draft Budget is subject to review and approval by the Authority Board and the Board of Supervisors in their sole and absolute discretion. The Parties further acknowledge and agree that the Annual Authority Budget may need to be modified by the Authority and the Board of Supervisors from time to time during the Authority Fiscal Year.

19.3 Community Service Costs. The Parties acknowledge that the Base Line Budget will include certain line items to provide community services consistent with the amounts and types of Authority's existing practice on NSTI. If Authority proposes in any Authority Fiscal Year to make any material increase to the scope or funding levels of such services, prior to including any such material changes in the Annual Authority Draft Budget, the Authority shall provide Master Developer with a list of all changes, including types and amounts of funding proposed, with a written justification describing the need, the amount, the benefit to the community and an explanation as to why such need is unlikely to be met without the amount of additional funding requested. Authority shall meet and confer with Master Developer to discuss the proposed increase.

19.4 Reporting. Within ninety (90) days following the end of each calendar quarter during the term of this DDA, the Authority Director shall deliver to Developer a summary of Authority Costs and Revenues incurred during such quarter together with a comparison of the Authority Costs and Revenues incurred with those set forth in the relevant Annual Authority Budget (an "**Authority Costs and Revenue Report**"). Each Authority Costs and Revenue Report shall contain a certification by the Authority Director that such Authority Costs and Revenue Report, to his or her knowledge, is complete and complies with the terms of this Article 19. The summary shall be in a reasonably detailed form and shall include (i) a general description of the services performed and Authority Costs incurred, (ii) the fees and costs incurred and paid by the Authority under the Interagency Cooperation Agreement, (iii) the fees and costs of third-party professionals and copies of invoices from such third-party professionals; and (iv) all other costs and expenses of Authority in carrying out its duties. The Authority shall provide such additional information and supporting documentation as Developer may reasonably request regarding Authority Costs incurred. The Authority and Developer shall cooperate with one another to develop a reporting format that satisfies the reasonable informational needs of Developer without divulging any privileged or confidential information of the Authority, the City, or their respective contractors. The Authority Costs and Revenue Report shall be binding on Developer in the absence of error demonstrated by Developer within six (6) months of Developer's receipt of the same.

19.5 Payment of Authority Costs. The Authority may from time to time establish a fee for service mechanism for Authority Costs incurred by it pursuant to this DDA, although such mechanism may not result in higher Authority Costs than if the system outlined in Section 19.2 were observed. Any such fees collected shall be shown in the Authority Costs and Revenue Report for purposes of determining the Authority Costs due and owing from Developer under this DDA.

19.6 Payment for Shortfall in Authority Costs. In each calendar quarter, Authority shall apply all Authority Revenues against all Authority Costs described in each Authority Costs and Revenues Report in accordance with the requirements of applicable laws, including the Conversion Act and the City's Charter. Developer shall reimburse Authority for the amount by which the Authority Costs exceed Authority Revenues and reasonable reserves for that quarter, as shown in the Authority Costs and Revenues Report, no later than sixty (60) days after the receipt of the Authority Costs and Revenue Report from the Authority. The Parties shall meet and confer in good faith to resolve any disputes regarding an Authority Costs and Revenue Report. In addition to the other remedies provided in this DDA, the Authority shall

have the right to terminate or suspend any work for a Party under this DDA upon such Party's failure to pay amounts due and owing hereunder, and continuing until such Party makes payment in full to the Authority. No such failure to pay by a Party shall affect the Authority's obligations to any other Party under this DDA.

19.7 Interim Lease Revenues. The Authority shall collect and distribute Interim Lease Revenues in accordance with the priority set forth in Section 6.1 of the Financing Plan.

19.8 Payment of City Costs and Ramps Payment. Under the Development Agreement and the Interagency Cooperation Agreement, City Agencies must submit quarterly invoices for all City Costs incurred by the City Agency for reimbursement under the Development Agreement, which invoices shall be gathered by Authority. Authority shall gather all such invoices so as to submit one combined City bill to Developer each quarter. As described in the Development Agreement and the Interagency Cooperation Agreement, Developer shall pay City for all City Costs during the Term within thirty (30) days following receipt of a written invoice. Developer shall not be obligated for the payment of any City Cost that is not invoiced to Developer within twelve (12) months from the date the City Cost was incurred. Amounts due for the Ramps Subsidy in accordance with the SFCTA MOA, as amended (as more particularly described in Section 13.3.6 hereof), shall be invoiced within thirty (30) days prior to each due date thereunder, and shall be payable as a City Cost to the SFCTA or the Authority, as directed.

20. Financing; Rights of Mortgagees.

20.1 Right to Mortgage. Developer and any Person to whom any of them Transfers its respective interest in this DDA, as permitted under this DDA (collectively and individually, as the case may be, a "**Mortgagor**") shall have the right, at any time and from time to time during the term of this DDA, to grant a mortgage, deed of trust or other security instrument (each a "**Mortgage**") encumbering all or a portion of such Mortgagor's respective ownership interest in all or a portion of the Project Site, together with such Mortgagor's interest in any Project Accounts relating to such portions of the Project Site (including the right to receive payments from the Funding Sources or other revenue emanating from the Project Site) for the benefit of any Person (together with its successors in interest, a "**Mortgagee**") as security for one or more loans related to the Project Site made by such Mortgagee to the Mortgagor to pay or reimburse costs incurred in connection with obligations under this DDA, subject to the terms and conditions contained in this Article 20. Without limiting the foregoing, no Mortgage shall be granted to secure obligations unrelated to the Project Site or to provide compensation or rights to a Mortgagee in return for matters unrelated to the Project Site. A Mortgagee may Transfer all or any part of or interest in any Mortgage without the consent of or notice to any Party; provided, however, that the Authority shall have no obligations under this DDA to a Mortgagee unless the Authority is notified of such Mortgagee. Furthermore, the Authority's receipt of notice of a Mortgagee following the Authority's delivery of a notice or demand to Developer or to one or more Mortgagees under Section 20.4 shall not result in an extension of any of the time periods in this Article 20, including the cure periods specified in Section 20.5.

20.2 Certain Assurances. The Authority agrees to cooperate reasonably with each Mortgagor or prospective Mortgagor in confirming or verifying the rights and obligations of the Mortgagee.

20.3 Mortgagee Not Obligated to Construct. Notwithstanding any other provision of this DDA, including those that are or are intended to be covenants running with the land, a Mortgagee, including any Person who obtains title to all or any portion of or any interest in the Project Site as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, including (a) any other Person who obtains title to real property in the Project Site or such portion from or through such Mortgagee or (b) any other purchaser at foreclosure sale, shall in no way be obligated by the provisions of this DDA, to Commence or Complete Infrastructure and Stormwater Management Controls or Required Improvements or to provide any form of Adequate Security for such Commencement or Completion. Nothing in this Section 20.3 or any other Section or provision of this DDA, shall be deemed or construed to permit or authorize any Mortgagee or any other Person to devote all or any portion of the Project Site to any uses, or to construct any improvements, other than uses or Improvements consistent with the Development Requirements.

20.4 Copy of Notice of Default and Notice of Failure to Cure to Mortgagee. Whenever the Authority shall deliver any notice or demand to a Mortgagor for any breach or default by such Mortgagor in its obligations or covenants under this DDA, the Authority shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the portion of the Project Site or any interest in the revenues therefrom or related thereto that is the subject of the breach or default who has previously made a written request to the Authority for a copy of any such notices. The Authority's notice shall be sent to the address specified by such Mortgagee in its most recent notice to the Authority. In addition, if such breach or default remains after any cure period permitted under this DDA, as applicable, has expired, the Authority shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the Authority to provide such notice required by this Section 20.4 shall extend, for the number of days until notice is given, the time allowed to the Mortgagee for cure.

20.5 Mortgagee's Option to Cure Defaults. Before or after receiving any notice of failure to cure referred to in Section 20.4, each Mortgagee that has received interest in real property shall have the right (but not the obligation), at its option, to commence within the same period as Developer to cure or cause to be cured any Event of Default, plus an additional period of (a) thirty (30) days to cure a monetary Event of Default and (b) sixty (60) days to cure a non-monetary Event of Default that is susceptible of cure by the Mortgagee without obtaining title to the applicable real property. If an Event of Default is not cured within the applicable cure period (or cannot be cured by the Mortgagee without obtaining title to the applicable real property), the Authority nonetheless shall refrain from exercising any of its remedies for the Event of Default and shall permit the cure by Mortgagee of such Event of Default if, within the Mortgagee's applicable cure period: (i) the Mortgagee has a recorded security interest in the applicable real property and notifies the Authority in writing that the Mortgagee intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject real property; (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and diligently pursues such foreclosure to completion; and (iii) after obtaining title, the

Mortgagee diligently proceeds to cure those Events of Default: (A) that are susceptible of cure by the Mortgagee; and (B) of which the Mortgagee has been given written notice by the Authority under Section 20.4 or thereafter. Notwithstanding the foregoing, no Mortgagee shall be required to cure any Event of Default that is personal to the Mortgagor (by way of example and not limitation, such Mortgagor's bankruptcy, failure to submit required information in the possession of such Mortgagor), and the completion of a foreclosure and acquisition of title to the applicable real property by the Mortgagor shall be deemed to be a cure of such Events of Default. Although no Mortgagee is obligated to do so, any Mortgagee that directly or indirectly obtains title and that properly Completes the Infrastructure and Stormwater Management Controls or Improvements relating to the applicable portion of Project Site in accordance with this DDA shall be entitled, upon written request made to the Authority, to a Certificate of Completion.

20.6 Mortgagee's Obligations with Respect to the Property. Except as set forth in this Article 20, no Mortgagee shall have any obligations or other liabilities under this DDA unless and until it acquires title by any method to all or some portion of or interest in the Project Site (referred to as "**Foreclosed Property**") and expressly assumes Developer's rights and obligations under this DDA in writing. A Mortgagee (or its designee) that acquires title to any Foreclosed Property (a "**Mortgagee Acquisition**") shall take title subject to all of the terms and conditions of this DDA to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this DDA from and after the Mortgagee Acquisition. Upon completion of a Mortgagee Acquisition and written assumption of Developer's rights and obligations under this DDA, the Authority shall recognize the Mortgagee as the Developer under this DDA. The Authority shall have no right to enforce any obligation under this DDA personally against any Mortgagee unless such Mortgagee expressly assumes and agrees to be bound by this DDA in a form Approved by the Authority. However, the Authority shall have the right to (i) terminate this DDA with respect to the Foreclosed Property if the Mortgagee does not agree to assume the rights and obligations of Developer relating to the Foreclosed Property in writing within ninety (90) days following a Mortgagee's acquisition of title to the Foreclosed Property, and (ii) exercise its rights under Section 16.5 with respect to Foreclosed Property (regardless of whether there has been a foreclosure) in the event that a Mortgagee does not cure a Reversionary Default within the time permitted for cure herein. If a Mortgagee or any Person who acquires title to real property in the Project Site from a Mortgagee assumes obligations to construct Improvements under this DDA, the Schedule of Performance with respect to the Foreclosed Property shall be extended as needed to permit such construction.

20.7 No Impairment of Mortgage. No default by a Mortgagor under this DDA shall invalidate or defeat the lien of any Mortgagee. Neither a breach of any obligation secured by any Mortgage or other lien against the mortgaged interest nor a foreclosure under any Mortgage shall defeat, diminish, render invalid or unenforceable or otherwise impair Developer's rights or obligations or constitute, by itself, a default under this DDA.

20.8 Multiple Mortgages. If at any time there is more than one Mortgage constituting a lien on a single portion of the Project Site or any interest therein, the lien of the Mortgagee prior in time to all others on that portion of the mortgaged property shall be vested with the rights under this Article 20 to the exclusion of the holder of any other Mortgage;

provided, however, that if the holder of a senior Mortgage fails to exercise the rights set forth in this Article 20, each holder of a junior Mortgage shall succeed to the rights set forth in this Article 20 only if the holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 20 and holders of junior Mortgages have provided written notice to the Authority under Section 20.4. No failure by the senior Mortgagee to exercise its rights under this Article 20 and no delay in the response of any Mortgagee to any notice by the Authority shall extend any cure period or Developer's or any Mortgagee's rights under this Article 20. For purposes of this Section 20.8, in the absence of an order of a court of competent jurisdiction that is served on the Authority, a title report prepared by a reputable title company licensed to do business in the State and having an office in City, setting forth the order of priorities of the liens of Mortgages on real property may be relied upon by the Authority as conclusive evidence of priority.

20.9 Cured Defaults. Upon the curing of any Event of Default by a Mortgagee within the time provided in Section 20.5, the Authority's right to pursue any remedies for the cured Event of Default shall terminate.

21. Transfers and Assignment.

21.1 Developer's Right to Transfer Major Phases and Sub-Phases. Developer shall have the right to Transfer to a Transferee, in each case upon compliance with the provisions of this Section 21.1: (i) the right to submit Major Phase Applications for one or more Major Phases, excluding the Initial Major Phase; (ii) the right to submit Sub-Phase Applications within any Major Phase(s), excluding the Initial Sub-Phases within the Initial Major Phase; (iii) the right to develop any Major Phases for which a Major Phase Approval has been obtained, excluding the Initial Major Phase; and (iv) the right to develop any Sub-Phase within a Major Phase for which a Sub-Phase Approval has been obtained, excluding the Initial Sub-Phases within the Initial Major Phase. The Authority Board's Approval shall be required for a Transfer pursuant to this Section 21.1. Such Approval will not be unreasonably withheld, delayed or conditioned if the Transferee or Persons Controlling the Transferee:

(a) have experience acting as the developer of projects similar in size and complexity to the development opportunity being Transferred (the "**Experience Requirement**"), as determined by the Authority Board in its reasonable discretion;

(b) satisfy the Net Worth Requirement;

(c) if the Transfer is under clause (i) or clause (ii) above, commit to submit a Major Phase Application and all Sub-Phase Applications for the development opportunity being Transferred, no later than the Outside Date for submission of the Major Phase Application or Sub-Phase Application, as applicable, or (B) ninety (90) days following the Authority's Approval of the proposed Transfer if the Authority's Approval occurs within the ninety (90) day period before the Outside Date for submission of the Major Phase Application or Sub-Phase Application, as applicable;

(d) enter into an Approved Assignment and Assumption Agreement, as set forth in Section 21.6, provided that (i) for a Transfer under clause (ii) or (iv) the Approved

Assignment and Assumption Agreement does not release Developer of its obligations hereunder as to the applicable Sub-Phase, and (ii) as to a Transfer under clause (i) or (iii), the Approved Assignment and Assumption Agreement does not release Master Developer of its obligations under Section 1.5 as Master Developer;

(e) provide Base Security and any Adequate Security as and to the extent required under Article 26, which shall apply to the obligations assumed by the Transferee unless replacement Base Security or Adequate Security is provided by the Transferee and Approved by the Authority Director; and

(f) have not been suspended, disciplined, debarred or prohibited from contracting with the City or the Authority.

Developer and any proposed Transferee shall provide detailed information to the Authority to demonstrate the Transferee's satisfaction of the above requirements, a proposed Assignment and Assumption Agreement, and such additional documents and materials as are reasonably requested by the Authority Director. Upon the Authority Director's receipt of the foregoing, the Authority Director shall submit the proposed Transfer to the Authority Board at the next regularly-scheduled meeting of the Authority Board for which an agenda has not yet been finalized and for which the Authority can prepare and submit a staff report in keeping with Authority standard practices. The Authority Board shall Approve or disapprove a request for Transfer. The consideration, if any, paid by the Transferee to Developer in connection with the proposed Transfer shall be treated as Gross Revenues.

21.2 Developer's Right to Transfer Lots. Subject to satisfaction of the conditions set forth in Section 10.7, Developer (and any Transferee) shall have the right without separate Approval of Authority pursuant to this Article 21 to Transfer Lots to Vertical Developers in accordance with the requirements of this DDA, including Article 17.

21.3 Developer Affiliate Transfers; Reorganizations. Developer shall have the right at any time to Transfer all or a portion of its rights and corresponding obligations under this DDA without the Approval of the Authority (except as set forth in this Section 21.3) if (i) Developer is not then in Material Breach, (ii) the Transferee is Controlled by Developer or by a Person that Controls Developer, or the Transferee is Approved by the Authority Director if the Transferee is an Affiliate of Developer that is not Controlled by Developer or by a Person that Controls Developer, and (iii) the Transferee or Persons Controlling the Transferee satisfy the Experience Requirement. Any such Transfer may be effected by the consolidation or merger of Developer into or with any other business organization whether or not Developer is the surviving entity under applicable law if the foregoing requirements are otherwise met. Any Transferee under this Section 21.3 shall be deemed an Affiliate of Developer, and therefore a Developer Party, under this DDA, and accordingly, (A) Developer's Base Security and any Adequate Security shall apply to the obligations assumed by the Transferee unless replacement Base Security or Adequate Security is provided by the Transferee and Approved by the Authority Director, and (B) the cross-default provisions set forth in Sections 3.8, 16.1 and 16.4 shall apply to Events of Default by Developer and the Transferee. Notwithstanding the foregoing, Developer may request that the cross-default provisions of this DDA not apply as between Developer and the Transferee in connection with any Transfer to an Affiliate under this Section

21.3, provided, that any such request shall be subject to review and Approval by the Authority Board in its sole discretion.

21.4 One Developer Retains Responsibility for All Infrastructure Within Each Major Phase. Before the receipt of a Major Phase Approval, Developer may Transfer all of its rights and obligations as Developer (but not as Master Developer) under this DDA for the entirety of a Major Phase (other than the Initial Major Phase) to a Transferee subject to the Authority Board's Approval as set forth in Section 21.1. Following a Major Phase Approval, Developer (or a Transferee, if applicable) shall have the right to Transfer the obligation for submitting all Sub-Phase Applications (other than the Initial Sub-Phases in the Initial Major Phase) and Completing any or all Infrastructure and Stormwater Management Controls for Sub-Phases within that Major Phase (other than the Initial Sub-Phases in the Initial Major Phase and excluding any Transferable Infrastructure within a Lot that is to be constructed by a Vertical Developer), to a Transferee subject to the Authority Board's Approval as set forth in Section 21.1, provided, however, that Developer and the Transferee of that Major Phase, if applicable shall not be released from the obligations hereunder to submit Sub-Phase Applications and to Complete all Infrastructure and Stormwater Management Controls within that Major Phase, and shall remain ultimately responsible for Completion of all Infrastructure and Stormwater Management Controls within that Major Phase. Developer may enter into construction contracts and similar agreements with third parties as may be needed to assist Developer or the Transferee of that Major Phase, as applicable, in satisfying the foregoing obligations, which contracts or agreements shall not be subject to Approval by the Authority under Section 21.1 or 21.5, provided, however, that no such contract or agreement shall serve to release Developer from its obligations to submit Sub-Phase Applications and to Complete all Infrastructure and Stormwater Management Controls within that Major Phase.

21.5 Authority's Approval of a Transfer. In addition to the Transfers permitted by Sections 21.1 through 21.3, Developer may Transfer some or all of its interest in this DDA with the Approval of the Authority Board, which the Authority Board may give or withhold in its sole discretion. Developer may also Transfer a portion of its interest in this DDA that is less than an entire Major Phase but includes the remainder of an entire Major Phase, together with the corresponding rights and obligations of Developer under this DDA, if the Authority Board Approves the proposed Transferee and the proposed Assignment and Assumption Agreement, which Approval shall not be unreasonably withheld if the Transferee, or Persons Controlling the Transferee, satisfy the Net Worth Requirement and the Experience Requirement, and the Assignment and Assumption Agreement meets the applicable requirements of Section 21.6.

21.6 Assignment and Assumption Agreement; Release.

21.6.1 Any Transfer described in Sections 21.1 and 21.3 through 21.5 (other than a transfer of the obligation to complete Transferable Infrastructure in accordance with Section 7.2) shall be under an Assignment and Assumption Agreement that includes: (a) a legal description of any real property being Transferred; (b) a detailed description of the rights and obligations under this DDA to be assigned to and assumed by Transferee, which must include all of the Indemnifications and releases by Developer in this DDA and in the Developer consent attached to the Interagency Cooperation Agreement and shall expressly recite any obligations of Developer that will not be Transferred (e.g., the Parties understand and agree that upon any such

assignment and assumption, all references to Developer in this DDA, excluding references in Sections 1.5 and 21.13 shall include the Transferee except as expressly noted in the Assignment and Assumption Agreement); (c) the obligations under this DDA that are assumed by the Transferee; (d) the Transferee's obligations under the Housing Plan, and an acknowledgement of the Authority's rights if Inclusionary Milestones under the Housing Plan are not satisfied with respect to the Project as a whole; (e) an agreement and covenant by the Transferee not to challenge the enforceability of any of the provisions or requirements of this DDA, including, if such Lots will contain a Residential Project, an agreement and covenant by the Transferee for the benefit of the Authority and Developer regarding the non-applicability of the Costa-Hawkins Act as set forth in Section 10 of the Housing Plan; (f) if the Infrastructure and Stormwater Management Controls for any adjoining real property is not Completed, an assumption of the risk of non-Completion and a waiver and release for the benefit of the Authority and the City regarding any failure to Complete the Infrastructure and Stormwater Management Controls; and (g) such other matters as are deemed appropriate by Developer and are Approved by the Authority Director. Each such Assignment and Assumption Agreement must be in recordable form and Approved by the Authority Director, although the Authority Director may elect, in his or her sole discretion, not to Approve any Assignment and Assumption Agreement (i) that does not include the items listed above, or (ii) if Developer is then in Material Breach of its obligations under this DDA.

21.6.2 Upon the consummation of any Transfer described in Sections 21.1(i), 21.1(iii), 21.3, or 21.5, including receipt of the Approved Assignment and Assumption Agreement, the Authority shall provide to Developer or other transferor a written release from any obligations under this DDA that are permitted to be released under this DDA and are expressly Transferred to and assumed by the Transferee under the Approved Assignment and Assumption Agreement (subject to the terms of approval by Authority), including in such release any obligations of Developer that accrued before the date of the Transfer to the extent the same are expressly assumed by the Transferee in the Assignment and Assumption Agreement. The release shall be provided within thirty (30) days after the effective date of such Transfer in a form prepared and Approved by the Authority, consistent with this Section 21.6.2. Except as provided in Sections 16.1 and 16.6 and as may otherwise be contained in an Assignment and Assumption Agreement Approved by the Authority Board, nothing in this Section 21.6 shall limit the Authority's right to take action against all Affiliates of Developer upon an Event of Default by an Affiliate of Developer as set forth in this DDA.

21.7 Exceptions. The provisions of this Article 21 shall not be deemed to prohibit or otherwise restrict Developer's (i) grant of easements, leases, subleases, licenses or permits to facilitate the development, operation and use of the Project Site, in whole or in part, (ii) grant or creation of a Mortgage permitted under Article 20, (iii) sale or transfer of all or any portion of the Project Site or any interest in the Project Site pursuant to a foreclosure or the exercise of a power of sale contained in such a Mortgage or any other remedial action in connection with the Mortgage, or a conveyance or transfer in lieu of foreclosure or exercise of such power of sale, or (iv) any Transfer to the Authority, the City, or any other Governmental Entity contemplated by this DDA. In addition, nothing in this Article 21 shall require the Authority to Approve any Transfer (excluding a Transfer of Lots subject to the satisfaction of the conditions set forth in Section 10.7 of this DDA) by Developer if Developer is in Material Breach.

21.8 Notice of Transfer. For any Transfer permitted under this Article 21 (but not including under Section 21.2) without the Approval of the Authority, Developer shall provide the Authority with notice of any Transfer not less than thirty (30) days before the effective date of the Transfer (unless a shorter period is Approved by the Authority Director in his or her sole discretion). Developer shall include with such notice the identity, address, contact person and telephone number of the proposed Transferee, the proposed Assignment and Assumption Agreement, including a clear statement of the assumed obligations of Developer under this DDA and satisfactory evidence that the proposed Transferee possesses the required qualifications. Developer shall also provide any additional information and materials reasonably requested by the Authority Director. This provision shall not create any obligation on or duty of a Mortgagee other than as set forth in Article 20.

21.9 Transfer of DDA Obligations and Interests in Property. Other than with respect to a Mortgagee whose security does not include real property, (i) Developer's rights and obligations under this DDA may be Transferred only in conjunction with the Transfer of the portion of the real property (or the right to acquire such real property on the terms of this DDA) to which the rights and obligations apply and (ii) the Transferee shall succeed to all of Developer's rights (including without limitation the right to Transfer) and obligations under this DDA that relate to the property or development opportunity Transferred. Developer may effectuate a Transfer of real property through a ground lease transaction, subject to the Authority Director's Approval in his or her sole discretion. Nothing herein shall prohibit Developer from Transferring its rights and obligations for a Sub-Phase separately from Developer's rights to Vertical Development within such Sub-Phase, subject to compliance with the terms and conditions hereof.

21.10 Liability for Default/Step-in Meet and Confer.

21.10.1 Liability for Default. No Third Party Transferee shall be liable for the default by Developer or another Transferee in the performance of its respective obligations under this DDA, and Developer shall not be liable for the default by any Third Party Transferee in the performance of its respective obligations; provided, that the foregoing provision shall not (i) be applicable to either a Transferee or Developer to the extent either has assumed such obligation under the terms of the applicable Assignment and Assumption Agreement or retained such obligation in accordance with Section 21.4 of this DDA, or (ii) limit the Authority's right to proceed against Developer and Affiliates of Developer upon an Event of Default by Developer or any Affiliate of Developer. Except as provided in this Section 21.10 and in Sections 3.8 and 16.4, a failure to submit an Application or an Event of Default by Developer or a Transferee shall not entitle the Authority to terminate this DDA, or otherwise affect any rights under this DDA, for any portion of the Project Site that is not owned or Controlled by the Person that is in default.

21.10.2 Step-in Meet and Confer. If a Transferee of a Major Phase commits a Material Breach hereunder that results in the termination of the Major Phase, Developer may notify the Authority that Developer is willing to step-in and proceed with the applicable Major Phase and any Sub-Phases within that Major Phase that have not been previously conveyed. Upon such request, the Parties shall meet and confer on the terms of an Assumption Agreement whereby Developer would assume all obligations of Developer for that

Major Phase and any remaining Sub-Phases of the Major Phase, including proposed changes to the Schedule of Performance. Notwithstanding the foregoing, Authority shall not be obligated to negotiate exclusively with Developer, shall have no obligation to enter into an Assignment and Assumption Agreement for the applicable Major Phase with Developer and may Transfer the applicable Major Phase to a Third Party Transferee at any time.Restrictions on Speculation. No Sub-Phase or Lot may be Transferred by Developer until Developer (or the Transferee in accordance with Sections 21.1(e) or 21.4) has provided, and continues to maintain, Adequate Security for the performance of its obligations to Complete the Infrastructure and Stormwater Management Controls in that Sub-Phase until Completion of such Infrastructure and Stormwater Management Controls.

21.12 Restrictions on Transfer by the Authority. The Parties acknowledge that pursuant to the terms of the Conversion Act, the City and County of San Francisco and the San Francisco Port Commission (the "**Port**") may succeed to certain interests of the Authority in the event of the dissolution of the Authority. Developer agrees to be bound by all of the terms of this Agreement should the City and/or the Port succeed to the interest of Authority by operation of law or otherwise, and it is the intent of the Parties hereto that this Agreement shall continue to be of full force and effect and binding on both Developer and any successor to the Authority by operation of law or otherwise in accordance with all of its terms and conditions. Except as may be expressly permitted by the foregoing during the Term, the Authority shall not Transfer any portion of the Project Site to any Person where such Transfer would materially adversely impair Developer's performance under this DDA or the uses, densities, rights or intensity of development contemplated under this DDA. The foregoing shall not preclude the grant of easements, leases, subleases, licenses or permits to facilitate the development, operation and use of the Project Site as contemplated by this DDA or the Marina Term Sheet. The Authority may Transfer the Authority Housing Lots only to Qualified Housing Developers and only for the development of Authority Housing Projects as set forth in the Housing Plan. Prior to the issuance of the final Certificate of Completion for all Improvements contemplated hereunder, except as otherwise provided herein, the Authority shall retain all Public Property designated for parks or open space. The Authority shall have the right to Transfer all or any portion of NSTI that is not included in the Project Site, and any of the Authority's rights and obligations under this DDA by operation of law, without the Approval of Developer; provided, however, that Authority shall provide under the terms of any such Transfer that development of such area is performed consistent with the Development Requirements. In addition, so long as TICD remains the Master Developer, the Authority shall further provide under the terms of any such Transfer that development of the Transferred area comply with zoning and development standards equal to or more stringent than those applicable to the Project Site under the SUD and the Design for Development as of the Effective Date hereof.

21.13 Certain Recordkeeping. Developer and its Transferees are treated as one for purposes of the sharing of Net Cash Flow under Section 1.3 of the Financing Plan. Developer shall require each Transferee to create and maintain, with respect to its development at the Project Site (excluding any Vertical Improvements), the same reports, records and information that Developer is required to create and maintain with respect to its development at the Project Site. Developer shall gather and compile all such information and prepare an integrated Annual Report for purposes of all accounting and record keeping under the Financing Plan, including but not limited to maintaining records of the Project Accounts, Project Costs,

Distributions and Funding Sources in accordance with Section 1.6 of the Financing Plan. The Authority shall have the same audit rights against all Transferees as the Authority has against Developer, and all applicable reports, records and information of Transferees shall be made available to the Authority at its request in accordance with the Financing Plan.

22. General Developer and Vertical Developer Indemnification; Insurance.

22.1 General Developer Indemnification. Developer shall Indemnify the Authority and the City and their respective commissioners, supervisors, officers, employees, attorneys, contractors and agents (each, a "**City Party**") from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs, consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the Authority of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the Authority to take any action (collectively "**Losses**") arising from or as a result of, except to the extent such Losses are directly or indirectly caused by the act or omission of a City Party, (a) the non-compliance of the Infrastructure and Stormwater Management Controls constructed by or on behalf of Developer with any federal, State or local laws or regulations, including those relating to access, or any patent or latent defects therein, (b) during the period of time that Developer holds title to any portion of the Project Site, the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in such portion of the Project Site and (c) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in or around the Project Site to the extent caused by the act or omission of Developer or its agents, servants, employees or contractors.

In addition to the foregoing, Developer shall Indemnify the City Parties from and against all Losses (if a City Party has been named in any action or other legal proceeding) and all Authority Costs incurred by a City Party (if the City Party has not been named in the action or legal proceeding) arising directly or indirectly out of or connected with contracts or agreements (i) to which no City Party is a party and (ii) entered into by Developer in connection with its performance under this DDA, any Assignment and Assumption Agreement and any dispute between parties relating to who is responsible for performing certain obligations under this DDA (including any record keeping or allocation under the Financing Plan), except to the extent such Losses were caused by the act or omission of a City Party. For purposes of the foregoing sentence, no City Party shall be deemed to be a "party" to a contract solely by virtue of having Approved the contract under this DDA (e.g., an Assignment and Assumption Agreement).

22.2 General Vertical Developer Indemnification. The Vertical DDA and Vertical LDDA will require each Vertical Developer to Indemnify the City Parties from and against all Losses, except to the extent such Losses are caused by the act or omission of a City Party, arising from or resulting from (a) the non-compliance of the Vertical Improvements and any Infrastructure and Stormwater Management Controls constructed by Vertical Developer with any federal, State or local laws or regulations, including those relating to access, or any patent or latent defects therein, (b) during the period of time that Vertical Developer holds title to any

portion of the Project Site, the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person that shall occur in such portion of the Project Site and (c) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person in and around the Project Site to the extent caused by the act or omission of Vertical Developer or its agents, servants, employees or contractors.

22.3 Other Remedies. The agreements to Indemnify set forth in Sections 22.1 and 22.2 are in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that Developer may have to the Authority under this DDA, except as may be limited by the provisions of Article 16.

22.4 Defense of Claims. The Authority agrees to give prompt notice to Developer or Vertical Developer (as the case may be, the "**Indemnifying Party**") with respect to any suit filed or claim made against the Authority (or, upon the Authority's discovery thereof, against any City Party that the Authority believes in good faith is covered by any Indemnification given by Developer or Vertical Developer under this DDA) no later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the assertion of such claim, which the Authority has good reason to believe is likely to give rise to a claim for Indemnification hereunder by the Indemnifying Party. The failure of the Authority to give such notice within such timeframes shall not affect the rights of the Authority or obligations of the Indemnifying Party under this DDA except to the extent that the Indemnifying Party is prejudiced by such failure. The Indemnifying Party shall, at its option but subject to Approval by the Authority, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Indemnifying Party's choice; provided, that in all cases the Authority shall be entitled to participate in such defense, compromise or settlement at its own expense. If the Indemnifying Party shall fail, however, in the Authority's reasonable judgment, within a reasonable time following notice from the Authority alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Authority shall have the right promptly to hire counsel to carry out such defense, compromise or settlement, and the reasonable expense of the Authority in so doing shall be due and payable to the Authority within fifteen (15) days after receipt by the Indemnifying Party of a properly detailed invoice for such expense.

22.5 Limitations of Liability. It is understood and agreed that no commissioners, members, officers, agents, or employees of the Authority (or of its successors or assigns) shall be personally liable to Developer or any Vertical Developer, nor shall any direct or indirect partners, members or shareholders of Developer or Vertical Developer or its or their respective officers, directors, agents or employees (or of their successors or assigns) be personally liable to the Authority, in the event of any default or breach of this DDA by the Authority, Developer or any Vertical Developer or for any amount that may become due to Developer, any Vertical Developer or the Authority or any obligations under the terms of this DDA; provided, that the foregoing shall not release obligations of a Person that otherwise has liability for such obligations, such as (i) the general partner of a partnership that, itself, has liability for the obligation or (ii) the obligor under any Adequate Security covering such obligation. Further, notwithstanding anything to the contrary set forth in this Article 22, the Indemnifications by Developer in Article 22 shall exclude any Losses relating to Hazardous

Substances, which shall be instead governed by the Land Acquisition Agreements, Permits to Enter and Article 11.

22.6 Insurance Requirements. As a part of each Major Phase Application, Developer shall propose the form, amount, type, terms and conditions of insurance coverages required of Developer in connection with such Major Phase, including those required under Section 11.3, and the final insurance requirements shall be included in each Major Phase Approval (the "**Insurance Requirements**").

23. Authority Indemnification.

23.1 Indemnification. The Authority shall Indemnify Developer and its owners and the members, directors, officers, partners, employees, agents, successors and assigns of each of them from and against all Losses arising from or as a result of Authority's non-compliance with applicable Replacement Housing Obligations, except to the extent that such Losses are directly or indirectly caused by the negligent or willful act of Developer, including Developer's failure to comply with its obligations under the Housing Plan.

23.2 Other Remedies. The agreement to Indemnify set forth in Section 23.1 is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities that the Authority may have to Developer under this DDA, except as may be limited by the provisions of Article 16.

24. Excusable Delay; Extension of Times of Performance.

24.1 Excusable Delay. In addition to the specific provisions of this DDA, a Party shall not be deemed to be in default under this DDA, including all Exhibits, on account in any delay in such Party's performance to the extent the delay results from any of the following (each, "**Excusable Delay**"):

24.1.1 "**Force Majeure**", which means: war; acts of terrorism; insurrection; strikes or lock-outs not caused by, or outside the reasonable control of, the Party claiming an extension; riots; floods; earthquakes; fires; casualties; acts of nature; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation not caused by, or outside the reasonable control of, the Party claiming an extension; failure or delay in delivery of utilities serving the Project Site not caused by, or outside the reasonable control of, the Party claiming an extension, existing environmental conditions affecting the Project Site that are not the responsibility of Developer under a Remediation Agreement, and previously unknown environmental conditions discovered on or affecting the Project Site or any portion thereof, in each case including any delay caused or resulting from the investigation or remediation of such conditions; existing unknown or newly discovered geotechnical conditions affecting the Project Site, including any delay caused or resulting from the investigation or remediation of such conditions, or litigation that enjoins construction or other work on the Project Site or any portion thereof, causes a lender to refuse to fund, disburse or accelerate payment on a loan, or prevents or suspends construction work on the Project Site except to the extent caused by the Party claiming an extension; unusually severe weather; inability to secure necessary labor, materials or tools (provided that the Party claiming Force Majeure has taken

reasonable action to obtain such materials or substitute materials on a timely basis); a development moratorium, as defined in Section 66452.6(f) of the California Government Code, extending the expiration date of a tentative subdivision map; the occurrence of a Conflicting Law; a breach of Authority's Title Covenant, including any delay caused or resulting from the ensuing time necessary for Authority or Developer to remove such title exception, including litigation arising therefrom; and any other causes beyond the reasonable control and without the fault of the Party claiming an extension of time to perform.

24.1.2 "**Economic Delay**", means either (1) any period of time in which Developable Lots that are Market Rate Lots ("**Developable Market Rate Lots**") containing thirty percent (30%) or more of the number of Market Rate Units as set forth in the Housing Data Table approved for any given Sub-Phase remain unsold at or above the Minimum Bid Price(s) set forth in the Proforma submitted by Developer at the commencement of the applicable Major Phase (as such Proforma may be updated at a subsequent Sub-Phase in accordance with this DDA), for a period of no less than four (4) months after the last Market Rate Developable Lot in the Sub-Phase has been completed, notwithstanding commercially reasonable and diligent efforts by Developer to market and sell such Developable Market Rate Lots (a "**Sub-Phase Event**"); or (2) any period of time in which Developable Market Rate Lots containing thirty percent (30%) or more of the number of Market Rate Units as set forth in the Housing Data Tables for all Sub-Phases approved to date remain unsold at or above the Minimum Bid Price(s) set forth in the Proforma submitted by Developer at the commencement of the most recent Major Phase (as such Proforma may be updated at a subsequent Sub-Phase in accordance with this DDA), for a period of no less than four (4) months after the last Developable Market Rate Lot in the applicable Sub-Phase has been completed, notwithstanding commercially reasonable and diligent efforts by Developer to market and sell such Developable Market Rate Lots (a "**Cumulative Sub-Phase Event**"). The foregoing notwithstanding, Developable Market Rate Lots designated in the Housing Data Table approved at the commencement of any given Sub-Phase to accommodate buildings over 240 feet in height (each, a "**High Rise Lot**") and realized land sales attributable to those Developable Market Rate Lots shall be excluded from calculations of both a Sub-Phase Event and a Cumulative Sub-Phase Event for a period of time equal to the first six (6) years after the date of approval of the first Sub-Phase Application in the Initial Major Phase. From and after the sixth anniversary of the date of approval of the first Sub-Phase Application in the Initial Major Phase, all Developable Market Rate Lots in any given Sub-Phase, including High Rise Lots, shall be included in any calculations determining a Cumulative Sub-Phase Event, but shall not be included in any calculations for determining a Sub-Phase Event. Notwithstanding the foregoing, if the sole reason for Economic Delay is due to the inclusion of unsold High Rise Lots in a Cumulative Sub-Phase Event and such condition remains for more than four (4) years, the Developer, at its option, shall either waive the Economic Delay or, if it elects not to waive the Economic Delay, Developer may deliver a Requested Change Notice regarding a redesign of the High Rise Lots as necessary to reposition the Project for market acceptance.

24.1.3 "**Administrative Delay**", which means: (i) any Governmental Entity's failure to act within a reasonable time, in keeping with standard practices for such Governmental Entity, or within the time contemplated in the Interagency Cooperation Agreement, the Development Agreement, any of the Land Acquisition Agreements, any Acquisition and Reimbursement Agreement or this DDA (after a timely request to act or when a duty to act arises); (ii) the taking of any action, or the failure to act, by any Governmental Entity

where such action or failure to act is challenged by Developer or a Vertical Developer and the Governmental Entity's act or failure to act is determined to be wrong or improper; provided, that delays caused by an applicant's failure to submit Complete Applications or provide required information shall not, by itself, be an Administrative Delay; and (iii) any delay that by the express terms of this DDA is an Administrative Delay. Without limiting the foregoing, Administrative Delay shall include the period of delay, if any, between the anticipated date for Initial Closing as set forth in the Conveyance Agreement approved by the Authority and the City as of the Reference Date and the actual date for the Initial Closing as set forth in the fully executed final Conveyance Agreement.

24.1.4 "**CEQA Delay**", which means: (i) such period as may be required to complete any additional environmental review required under CEQA after the certification of the Project EIR by the Planning Commission and the Authority Board and the filing of a notice of determination following approval of the Project by the Board of Supervisors; (ii) any time during which there are litigation or other legal proceedings pending involving the certification or sufficiency of the Project EIR or any other additional environmental review, regardless of whether development activities are subject to a stay, injunction or other prohibition on development action; (iii) any time required to comply with any Mitigation Measures imposed on the Project relating to previously unknown conditions or conditions that could not have been reasonably anticipated and that, by their nature require a delay or stoppage in work, including investigation and remediation activities required thereby, provided that the Party claiming delay is taking such required actions and resolving the issues causing delay in a timely and diligent manner; and (iv) any time required by the Authority or City to prepare additional environmental documents in response to a pending Application or other request for an Approval by the City or the Authority that requires additional environmental review; provided that the Party claiming delay has timely taken reasonable actions to obtain any such Approval or action.

Notwithstanding anything to the contrary in this Section 24.1, the following shall not be Excusable Delay: (1) the lack of credit or financing, unless such lack is the result of Economic Delay; or (2) the appointment of a receiver to take possession of the assets of Developer, an assignment by Developer for the benefit of creditors, or any other action taken or suffered by Developer**,** under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute.

24.2 Period of Excusable Delay. The period of an Excusable Delay shall commence to run from the time of the commencement of the cause. Except for CEQA Delay, the Party claiming Excusable Delay shall provide notice to the other applicable Parties of such Excusable Delay within a reasonable time following the commencement of the cause. If, however, notice by the Party claiming such extension is sent to the other Parties more than sixty (60) days after the commencement of the cause, the period shall commence to run only sixty (60) days before the giving of such notice, provided that the Party claiming the extension gives notice within a reasonable time following the commencement of the cause.

24.2.1 Each extension for Excusable Delay shall cause all future dates in the Schedule of Performance, or other date for performance occurring after the date of the notice, to be extended (in each case as they may otherwise be extended), although Developer shall not be entitled (A) to abandon any portion of the Project Site that it owns or where it has

Commenced Infrastructure and Stormwater Management Controls without first taking appropriate measures to leave the property in good and safe condition, (B) to extend the Outside Dates for the Completion of Infrastructure and Stormwater Management Controls or other Improvements that have Commenced to the extent that Excusable Delay is not related to such activities, (C) to cease paying taxes or assessments on any real property it owns within the Project Site, (D) to avoid the obligation to maintain in effect Adequate Security or other financial assurances, (E) to avoid or delay its obligations to construct the Required Improvements, except to the extent an Excusable Delay relates to Developer's obligations for such construction, or (F) to avoid or delay its Financial Obligations (except to the extent such payments are tied to the dates for the Completion of Improvements). In addition, Developer shall not be entitled to an Economic Delay extension to extend the date for Completion of the Infrastructure and Stormwater Management Controls for the Authority Housing Lot designated for satisfaction of the Replacement Housing Obligation related to demolition of the existing Yerba Buena Island units.

24.2.2 Times of performance under this DDA may also be extended in writing by the Authority and Developer for the Infrastructure and Stormwater Management Controls and the other obligations of Developer or the Authority hereunder, each acting in its respective sole and absolute discretion.

24.3 Developer Extension.

24.3.1 Upon receipt of each of the first three Major Phase Approvals, Developer shall obtain a "**Developer Extension**" equal to two (2) years. Upon receipt of the fourth Major Phase Approval, Developer shall obtain a Developer Extension equal to three (3) years. On any occasion in its sole discretion, Developer shall have the right to apply the Developer Extension subject to the following limitations and procedures: (i) Developer may apply the Developer Extension only by notifying the Authority to such effect, specifying the duration of such extension; (ii) by notice to the Authority Developer may extend the duration of the extension, so long as it remains within the then unused Developer Extension, and may reduce the duration of the extension upon notification that there is an applicable Excusable Delay and Developer intends to rely on the Excusable Delay instead of the Developer Extension; (iii) subject to the limitations in Section 24.3.2 below, each extension notice shall have the effect of extending (or reducing, as the case may be) all of the Outside Dates in the Schedule of Performance or other date for performance occurring after the date of the notice (in each case as they may otherwise be extended) by the duration of such extension (or reduction); (v) no such extension may be for a period longer than the unused portion of the then current Developer Extension; and (vi) any unused portion of a Developer Extension obtained upon a Major Phase Approval shall expire upon Completion of the Infrastructure and Stormwater Management Controls for that Major Phase. Extensions pursuant to this Section 24.3 are independent of Excusable Delay and any other ground for extension permitted in this DDA.

24.3.2 A Developer Extension shall cause all future dates in the Schedule of Performance, or other date for performance occurring after the date of the notice, to be extended (in each case as they may otherwise be extended), although Developer shall not be entitled (A) to abandon any portion of the Project Site that it owns or where it has Commenced Infrastructure and Stormwater Management Controls without first taking appropriate measures to

leave the property in good and safe condition, (B) to cease paying taxes or assessments on any real property it owns within the Project Site, (C) to avoid the obligation to maintain in effect Adequate Security or other financial assurances, (D) to extend the dates for performance for the Required Improvements, (E) to extend the date for Completion of the Infrastructure and Stormwater Management Controls for the Authority Housing Lot designated for satisfaction of the Replacement Housing Obligation related to demolition of the existing YBI units, or (F) to avoid or delay its Financial Obligations (except to the extent such payments are tied to the dates for the Completion of Improvements).

24.4 Park Extension. Developer and the Authority wish to avoid damaging the Improvements to the parks and open space during construction of adjacent Improvements, and to avoid the Completion of such parks and open space Improvements before the Completion of the Infrastructure and Stormwater Management Controls serving the parks and open space. Accordingly, subject to compliance with the Mitigation Measures, Developer shall have the right to apply for an extension of the applicable Outside Date for a specified parks and open space by one (1) year (the "**Park Extension**") by submitting request for such extension to the Authority on or before the applicable Outside Date. Approval for such extension shall not be unreasonably withheld if Developer satisfactorily demonstrates that such extension is necessary to avoid damaging the Improvements to the parks and open space during construction of adjacent Improvements, and to avoid the Completion of such parks and open space Improvements before the Completion of the Infrastructure and Stormwater Management Controls serving the parks and open space.

24.5 Limitations. In the event that an Excusable Delay exceeds twelve (12) months (except as set forth in the last sentence of this Section 24.5), the Parties shall meet and confer in good faith on mutually acceptable changes to the Project that will allow development of the Project to proceed to the extent possible notwithstanding the event or events causing such Excusable Delay. Notwithstanding anything to the contrary in this DDA, in no event shall an Excusable Delay extend for a period greater than (i) for litigation, three (3) months after a final, non-appealable judgment is issued or affirmed and (ii) for all other events other than Administrative Delay, CEQA Delay, Economic Delay or Force Majeure triggered by earthquake or flood, forty-eight (48) months after the start of the Excusable Delay. There shall be no cutoff date for an Administrative Delay, new environmental conditions, CEQA Delay (except as provided in clause (i) above), Economic Delay (except as provided in Section 24.1.2) or Force Majeure triggered by earthquake or flood.

24.6 Extensions for Delay under Land Acquisition Agreements. The Parties acknowledge and agree that the Navy's schedule for the phased conveyances of the Project Site to the Authority is revised from time to time by the Navy to reflect the Navy's progress in remediating such property. Upon Developer's request, the Authority Director will consider, in his or her reasonable discretion, changes to the Schedule of Performance to extend the applicable Outside Dates so as to avoid having Applications submitted significantly in advance of when necessary based upon the anticipated date of conveyances by the Navy (or other parties under other Land Acquisition Agreements), but still far enough in advance to permit Developer to Commence Infrastructure and Stormwater Management Controls when the applicable real property will be available; provided, this potential extension of the Schedule of Performance

shall not be used or applied for delays under the Land Acquisition Agreements caused by Developer.

25. Cooperation and Assistance.

25.1 Interagency Cooperation Agreement. The Authority shall perform its obligations under the Interagency Cooperation Agreement and shall use commercially reasonable efforts to cause the City Agencies to perform their respective obligations under the Interagency Cooperation Agreement**.**

25.2 Authority and Developer Rights and Obligations Under Land Acquisition Agreements. As a part of the land acquisition required or contemplated for the Project, the Authority plans to enter into the Conveyance Agreement and the Public Trust Exchange Agreement (collectively, the "**Land Acquisition Agreements**"). In furtherance of the foregoing, the Authority shall, to the extent Developer continues to have rights under this DDA with respect to the affected real property: (a) use good faith efforts to include Developer in any meetings between the Authority and any of the parties to the Land Acquisition Agreements with respect to the subject matter thereof, and deliver to Developer a copy of any material written notice sent or received by the Authority under any of the Land Acquisition Agreements; (b) consult with Developer regarding any material written notice that the Authority desires to deliver under any Land Acquisition Agreement; (c) not send any material written notice that the Authority desires to deliver under any Land Acquisition Agreement without the Approval of Developer; (d) coordinate with Developer regarding any closing or other material actions under any of the Land Acquisition Agreements; (e) closely coordinate with Developer in connection with any dispute resolution process under the Conveyance Agreement; and (e) not take any actions under any of the Land Acquisition Agreements that would materially adversely impact Developer without the Approval by Developer (unless the failure to take such action would result in an Authority breach of the Land Acquisition Agreement), including any termination or material amendment of a Land Acquisition Agreement. The Authority shall make available to Developer upon written request any written notices or third-party communications, and any non-privileged materials, in the Authority's possession regarding the Land Acquisition Agreements. Developer agrees to reasonably cooperate with the Authority and to perform all acts required of Developer in order to effectuate the closings contemplated by the Land Acquisitions Agreements.

25.3 Cooperation Regarding Land Acquisition Agreements. The Authority will use commercially reasonable efforts to enforce its rights under the Land Acquisition Agreements; provided, that the Authority shall not be required to spend funds for such efforts unless Approved by the Authority Board and, if applicable, the Board of Supervisors. Developer will reasonably cooperate with the Authority in such efforts, including by providing access to the Authority, the Navy and their designated representatives and promptly delivering to the Authority any non-privileged materials in Developer's possession that may be required under the Land Acquisition Agreements.

26. Adequate Security

26.1 Certain Definitions. As used herein:

"**Adequate Security**" means any security provided by Developer in accordance with this DDA that (i) secures the faithful performance or payment of the obligation secured thereby, (ii) is issued by a Person Approved by the Authority Director (and that meets the Guarantor Net Worth Requirement, if applicable), (iii) provides that the maximum liability of the obligor thereunder shall be equal to the Secured Amount plus the costs of enforcing such Adequate Security, and (iv) is in a form determined by Developer and Approved by the Authority Director, including, but not limited to a Guaranty, bonds, letters of credit, certificates of deposit or any other form that provides reasonable assurances regarding the obligations secured thereby. Any Adequate Security required by the TI/YBI Subdivision Code in connection with a final subdivision map shall conform to the requirements of the TI/YBI Subdivision Code.

"**Guaranty**" means a guaranty in the form attached hereto as Exhibit Y-1 or Y-2, as applicable, with only such changes as may be Approved by Developer and the Authority Director in their respective sole and absolute discretion that is executed by a Person(s) (i) with a Net Worth greater than the Secured Amount, and in no event less than Fifty Million Dollars ($50,000,000) (such $50,000,000 amount to be increased, automatically, by ten percent (10%) on each five (5) year anniversary of the Effective Date) (the "**Guarantor Net Worth Requirement**") and (ii) that is otherwise Approved by the Authority Director (each, a "**Guarantor**").

"**Secured Amount**" means, unless otherwise specifically provided in this DDA, including Section 16.5.4, (i) if securing an obligation to pay money, one hundred percent (100%) of the amount of such secured payment and (ii) if securing an obligation to construct, one hundred percent (100%) of the estimated cost of Completion of such construction as such cost is Approved by the Authority Director and Developer with reference to the applicable construction contracts entered into by Developer.

26.2 Base Security.

26.2.1 Base Security. Developer shall provide one or more Guaranties or other Adequate Security for (i) the payment of Financial Obligations, (ii) the payment and performance of Indemnifications under this DDA, including Indemnification obligations set forth in Section 22.1 hereof relating to the construction of Infrastructure, Stormwater Management Controls, Associated Public Benefits and Required Improvements and in Section 11.2 relating to Hazardous Substances, and (iii) all obligations secured under the Original Project Guaranty (the "**Base Security**"). The Base Security shall include a cap on the obligors' liability covered by all Base Security in the aggregate amount of Ten Million Dollars ($10,000,000), provided such amount shall be increased automatically by ten percent (10%) on each five (5) year anniversary of the Reference Date (the "**Base Security Cap**").

26.2.2 Effect of Transfer. Unless otherwise Approved by the Authority Board in its sole discretion in connection with its Approval of a Transfer, a Transfer by Developer to a Transferee under this DDA (and the provision of Base Security from more than one Person) shall not decrease the Base Security Cap under Base Security previously provided to the Authority.

26.2.3 Delivery by Developer. Within sixty (60) days after the Reference Date, (i) Developer shall provide up to two separate Guaranties, substantially in the form attached hereto as Exhibit Y-1 (or other form of Adequate Security), each from a Guarantor that meets the Guarantor Net Worth Requirement, in the aggregate amount of the Base Security Cap, with only such changes as may be mutually Approved by the Authority Director and Developer, and such Adequate Security shall be, collectively, Developer's Base Security. Promptly following the full execution and delivery of such Base Security, the Authority shall release and return the Original Project Guaranty to Developer. If requested by Developer or the applicable obligor, the Authority shall provide a written confirmation of such release and return. If more than one (1) form of Base Security is provided, the Adequate Security shall not be cross-defaulted and liability thereunder shall be several and not joint, but such Guaranties shall be subject to the replenishment requirement under Section 26.2.5. In the event that a claim or demand may be made against more than one instrument of Base Security, the Authority shall have the right to proceed against all such Base Security instruments simultaneously or in such order as may be determined by the Authority in its sole discretion. Notwithstanding the foregoing, if a CEQA Delay has occurred within sixty (60) days after the Reference Date, then the Guaranties provided shall add up to a collective total of Five Million Dollars ($5,000,000), and shall be replaced by Guaranties meeting the requirements of this Section 26.2.2 adding up to a collective total of the Base Security Cap upon the earlier of (i) sixty days after the expiration of the CEQA Delay; or (ii) the Initial Closing of the FOST Parcel under the Conveyance Agreement. Concurrently with the execution and delivery of such replacement Guaranties, the Authority shall release and return the prior Guaranty Agreement(s) to the applicable Guarantor.

26.2.4 Delivery by Transferees. No later than the effective date of a Transfer by Developer under Article 21, either (i) Developer and the obligor(s) under Developer's Base Security shall confirm in a manner acceptable to the Authority Director that Developer's Base Security secures all obligations of the Transferee described in Section 26.2.1, or (ii) the Transferee shall provide to the Authority new Base Security that secures all obligations of the Transferee as described in Section 26.2.1 and is Approved by the Authority Director. The effectiveness of the Authority Board's Approval of any Transfer under Article 21 shall be conditioned upon the Authority's receipt of such Base Security or such confirmation.

26.2.5 Replenishment. No payment or performance made by the obligor under any Base Security shall reduce or eliminate the requirement that Developer provide and maintain Base Security at all times during this DDA until the applicable Base Security Termination Date. Accordingly, upon any payment or performance by an obligor under Base Security, Developer shall provide, within thirty (30) days following such payment or performance, either replacement Base Security or an amendment to the applicable existing Base Security (in each case meeting all of the requirements for the Base Security as set forth in this DDA) to confirm that the Base Security Cap under all Base Security remains, collectively, Ten Million Dollars ($10,000,000), as increased by ten percent (10%) on each five (5) year anniversary of the Reference Date (plus the costs of enforcing the Base Security).

26.2.6 Release. The Authority shall promptly release and return any unused portion of any Base Security five (5) years following the earliest to occur of the following events: (i) the issuance of the last Certificate of Completion for all Infrastructure and Stormwater Management Controls to be Completed by all of the Parties whose obligations are

secured thereby and the payment of all Financial Obligations and accrued Indemnification obligations that are to be paid by all of the Parties whose obligations are secured thereby; or (ii) the expiration or termination of both this DDA and the ENA with respect to such Parties (the "**Base Security Termination Date**") and, if requested by Developer or the applicable obligor, provide a written confirmation of such release and return.

26.3 Net Worth Requirement/Significant Change/Substitute SecurityNet Worth Requirement. Each Guaranty shall provide that the Guarantor thereunder shall, at the Authority's request to such Guarantor and Developer from time to time, provide reasonably satisfactory evidence to the Authority that such Guarantor satisfies the Guarantor Net Worth Requirement as of the date of such request; provided that the Authority shall not make such request more than once in any calendar year unless the Authority reasonably believes that the Guarantor Net Worth Requirement is not then being satisfied. Any such evidence shall include a copy of the most recent audit of such Person, which audit must be dated no more than thirteen (13) months before the date of the Authority's request and must have been performed by an independent third-party auditor and must include the opinion of the auditor indicating that the financial statements are fairly stated in all material respects. If such Guarantor or Developer does not or is unable to provide such evidence within twenty (20) days following such request, Developer shall within another twenty (20) days deliver to the Authority a new Guaranty (or other Adequate Security) that satisfies the requirements of this Article 26 from a Person who satisfies the Guarantor Net Worth Requirement.

26.3.2 Significant Change to Guarantor. Any of the following shall be considered a "**Significant Change to Guarantor**" under the Guaranty: (i) Guarantor files a petition for bankruptcy, or makes a general assignment for the benefit of its creditors, (ii) a receiver is appointed on account of Guarantor's insolvency, (iii) a writ of execution or attachment or any similar process is issued or levied against any bank accounts of Guarantor, or against any property or assets of Guarantor being used or required for use in the development of the Infrastructure, Stormwater Management Controls, Associated Public Benefits and Required Improvements or against any substantial portion of any other property or assets of Guarantor, (iv) a final non-appealable judgment is entered against Guarantor in an amount in excess of ten percent of the Guarantor's Net Worth and Guarantor does not satisfy or bond the judgment or (v) without the consent of Guarantor, an application for relief is filed against Guarantor under any federal or state bankruptcy law, unless the application is dismissed within ninety (90) days. If a Significant Change to Guarantor occurs, Developer shall notify the Authority as soon as reasonably practicable and within twenty (20) days after the occurrence of the Significant Change to Guarantor, deliver to the Authority a new Guaranty (or other Adequate Security) that satisfies the requirements of this Article 26 from a Person who satisfies the Guarantor Net Worth Requirement and would not be within the definition of a Significant Change to Guarantor.

26.4 Requirement for Adequate Security Prior to Sub-Phases.

26.4.1 Delivery; Secured Amount. As set forth in the DRDAP, Developer shall provide with each Sub-Phase Application one or more forms of Guaranty or other forms of Adequate Security that, collectively, secure all of Developer's obligations with respect to that Sub-Phase (the "**Sub-Phase Security**"), including Developer's obligation to Complete all of the Infrastructure, Stormwater Management Controls, Required Improvements

and Associated Public Benefits associated with that Sub-Phase, which obligations include but are not limited to all hard and soft costs relating to construction of such Infrastructure, Stormwater Management Controls, Required Improvements and Associated Public Benefits, and all work required to be performed by Developer to Complete such Infrastructure, Stormwater Management Controls, Required Improvements and Associated Public Benefits such as land assembly, mapping, and performance under the Land Acquisition Agreements (collectively, the "**Sub-Phase Construction Obligations**"), but excluding the payment of the Financial Obligations and all Indemnification obligations, each of which are secured by the applicable Base Security. The Sub-Phase Security shall provide that the maximum liability of the obligor(s) for the Sub-Phase Construction Obligations shall be, collectively, one hundred percent (100%), or to the extent Developer has provided Increased Adequate Security under Section 16.5.4, one hundred twenty-five percent (125%), of the estimated cost of Completion of the applicable Sub-Phase Construction Obligations as such cost is Approved by the Authority Director, with reference to any construction contracts entered into by Developer on or before the date of issuance of the Sub-Phase Security (the "**Sub-Phase Construction Secured Amount**") plus the costs of enforcing such Sub-Phase Security. Developer shall provide fully effective Sub-Phase Security in the form(s) as set forth in its Sub-Phase Application and the applicable Sub-Phase Approval no later than thirty (30) days after the Authority Director grants the applicable Sub-Phase Approval. The effectiveness of any Sub-Phase Approval shall be conditioned upon the Authority's receipt of such fully effective Sub-Phase Security.

26.4.2 Relationship Between Multiple Sub-Phase Security Instruments. If more than one instrument of Sub-Phase Security is provided for a Sub-Phase, then such Sub-Phase Security shall not be cross-defaulted and liability thereunder shall be several and not joint. In the event that a claim or demand may be made against more than one instrument of Sub-Phase Security, the Authority shall have the right to proceed against any or all of such Sub-Phase Security instruments simultaneously or in such order as may be determined by the Authority in its sole discretion.

26.4.3 Relationship with Base Security. The Parties acknowledge and agree that Developer's Indemnification obligations and obligations for payment of Financial Obligations under this DDA that arise out of a Sub-Phase are secured by Developer's Base Security and not by the applicable Sub-Phase Security. If the Authority pursues a claim or demand against any Adequate Security for payment and performance of Developer's Indemnification obligations or obligations for payment of Financial Obligations under this DDA that arise out of a Sub-Phase, it shall only pursue such claim or demand under the applicable Base Security.

26.5 Reduction, Return and Release of Sub-Phase Security. Any Sub-Phase Security provided by Developer in accordance with this DDA shall be proportionately reduced upon partial satisfaction of the Sub-Phase Construction Obligations secured thereby, to the extent Approved by the Authority or provided in such Sub-Phase Security, or upon notice by Developer in accordance with Section 16.5.4, be retained by the Authority to the extent necessary to satisfy the requirements for recordation of the Reverter Release. Except as may otherwise be required to support the Reverter Release under Section 16.5.4, any Sub-Phase Security shall be released upon the complete satisfaction of the obligation secured thereby, as evidenced by the issuance of Developer's last Certificate of Completion with respect to such Sub-Phase; provided that if the

Authority terminates this DDA with respect to such Sub-Phase before the issuance of Developer's last Certificate of Completion for that Sub-Phase, the Sub-Phase Security shall be released when the Sub-Phase Construction Obligations that relate to the period before such termination have been Completed (or, if applicable, upon and in accordance with a final, unappealable judicial determination). Notwithstanding anything to the contrary set forth in this DDA, to the extent that any Sub-Phase Security provided herein is given in accordance with the TI/YBI Subdivision Code for the purpose of securing Sub-Phase Construction Obligations required under an approved Subdivision Map, such Sub-Phase Security shall be reduced and released by the City in accordance with the TI/YBI Subdivision Code. Upon any release of any Sub-Phase Security under this DDA, the Authority shall promptly (and in any event within thirty (30) days following such release) return such released Sub-Phase Security and, if requested by Developer or the applicable obligor, provide a written confirmation of such release and return.

26.6 Substitution of Adequate SecurityDeveloper shall have the right to substitute any Adequate Security (including any Base Security) provided to the Authority hereunder, or any portion thereof, for another form of Adequate Security that meets all of the requirements or Approvals needed for it to be Adequate Security as defined in this DDA. Without limiting the generality of the foregoing, upon providing any security in the form required pursuant to the TI/YBI Subdivision Code for Infrastructure and Stormwater Management Controls as and when required thereby, any prior Sub-Phase Security provided by Developer for that Infrastructure and Stormwater Management Controls obligation shall be released or reduced to the extent of such required security.

27. Special Provisions. The following Ordinances of the City and County of San Francisco, as the same are in effect as of the Effective Date of the DDA and as amended or updated to the extent permitted under the Development Agreement, apply to the Project and the Work.

27.1 Non-Discrimination in City Contracts and Benefits Ordinance.

(a) Covenant Not to Discriminate. In the performance of this Agreement, Developer covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status), weight, height, association with members of classes protected under this chapter or in retaliation for opposition to any practices forbidden under Chapter 12 of the San Francisco Administrative Code against any employee of Developer or any City and County employee working with Developer, any applicant for employment with Developer, or any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Developer in the City and County of San Francisco.

(b) Subleases and Other Contracts. Developer shall include in all subleases and other contracts relating to the Project Site to which Developer is a signing party a non-discrimination clause applicable to such subtenant or other contractor in substantially the form of Section 27.1(a) above. In addition, Developer shall incorporate by reference in all Subleases and other contracts the provisions of Sections 12B.2 (a), 12B.2 (c)-(k) and 12C.3 of

the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Developer's failure to comply with the obligations in this Section 27.1(b) shall constitute a material breach of this Agreement.

(c) Non-Discrimination in Benefits. Developer does not as of the Reference Date and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively "**Core Benefits**") as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local Law authorizing such registration, subject to the conditions set forth in Section 12B.2 of the San Francisco Administrative Code.

(d) HRC Form. On or prior to the Effective Date, Developer shall execute and deliver to the Authority the "Nondiscrimination in Contracts and Benefits" form approved by the San Francisco Human Rights Commission.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Developer shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Developer understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of $50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Developer and/or deducted from any payments due Developer.

27.2 Jobs and Equal Opportunity Program. Developer shall comply with the Jobs EOP, including the requirements relating to Developer's compliance with the City's First Source Hiring Program (San Francisco Administrative Code Section 83.1 et. seq.).

27.3 Labor Representation (Card Check). San Francisco Administrative Code Chapter 23, Article VI shall apply to (i) hotel and restaurant operators that employ more than fifty (50) employees on the Project Site, and (ii) grocery operators that employ more than fifty (50) employees on the Project Site. Hotel operators shall also be required to utilize the TIHDI Job Broker for job referrals as described in and consistent with the Jobs EOP.

27.4 Wages and Working Conditions. Developer agrees that any person performing Construction Work (as defined in the Jobs EOP) shall be paid not less than the highest prevailing rate of wages as required by Section 6.22(E) of the San Francisco Administrative Code, shall be subject to the same hours and working conditions, and shall receive the same benefits as in each case are provided for similar work performed in San Francisco, California. Developer shall include in any contract for Construction Work a

requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Developer shall require any Construction Contractor to provide, and shall deliver to the Authority and City upon request, certified payroll reports with respect to all persons performing labor in connection with the construction.

27.5 Requiring Health Benefits for Covered Employees. Unless exempt, Developer agrees to comply fully with and be bound by all of the provisions of the Health Care Accountability Ordinance ("**HCAO**"), as set forth in San Francisco Administrative Code Chapter 12Q (Chapter 12Q), including the implementing regulations as the same may be amended or updated from time to time. The provisions of Chapter 12Q are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. The text of the HCAO is currently available on the web at www.sfgov.org. Capitalized terms used in this Section 27.5 and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12Q.

(a) For each Covered Employee Developer shall provide the appropriate health benefit set forth in Section 12Q.3 of the HCAO.

(b) Notwithstanding the above, if Developer meets the requirements of a "small business" by the City pursuant to Section 12Q.3(d) of the HCAO, it shall have no obligation to comply with Section 27.8(a) above.

(c) Developer understands and agrees that the failure to comply with the requirements of the HCAO shall constitute a material breach by Developer of this Agreement.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the HCAO, Developer fails to cure such breach or, if such breach cannot reasonably be cured within such 30-day period, Developer fails to commence efforts to cure within such period, or thereafter fails to diligently pursue such cure to completion, the City shall have the remedies set forth in Section 12Q.5(f)(1-5). Each of these remedies shall be exercisable individually or in combination with any other rights or remedies available to the City and the Authority.

(e) Any sublease or contract regarding services to be performed on the Project Site entered into by Developer shall require the subtenant or contractor and subcontractors, as applicable, to comply with the requirements of the HCAO and shall contain contractual obligations substantially the same as those set forth in Chapter 12Q of the Administrative Code. Developer shall notify the City's Purchasing Department when it enters into such a sublease or contract and shall certify to the Purchasing Department that it has notified the subtenant or contractor of the obligations under the HCAO and has imposed the requirements of the HCAO on the subtenant or contractor through written agreement with such subtenant or contractor. Developer shall be responsible for ensuring compliance with the HCAO for each subtenant, contractor and subcontractor performing services on the Project Site. If any subtenant, contractor or subcontractor fails to comply, the City or the Authority may pursue the remedies set forth in Section 12Q.5 of the Administrative Code against Developer based on the

subtenant's, contractor's, or subcontractor's failure to comply, provided that the Authority has first provided Developer with notice and an opportunity to cure the violation.

(f) Developer shall not discharge, reprimand, penalize, reduce the compensation of, or otherwise discriminate against, any employee for notifying the City of any issue relating to the HCAO, for opposing any practice proscribed by the HCAO, for participating in any proceedings related to the HCAO, or for seeking to assert or enforce any rights under the HCAO by any lawful means.

(g) Developer represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the requirements of the HCAO.

(h) Developer shall keep itself informed of the requirements of the HCAO, as they may change from time to time.

(i) Upon request, Developer shall provide reports to the City and the Authority in accordance with any reporting standards promulgated by the City under the HCAO, including reports on subtenants, contractors, and subcontractors.

(j) Within five (5) business days of any request, Developer shall provide the City and the Authority with access to pertinent records relating to any Developer's compliance with the HCAO. In addition, the City and its agents may conduct random audits of Developer at any time during the Term. Developer agrees to cooperate with City and the Authority in connection with any such audit.

(k) If a contractor or subcontractor is exempt from the HCAO because the amount payable to such contractor or subcontractor under all of its contracts with the City or relating to City-owned property is less than $25,000.00 (or $50,000.00 for nonprofits) in that fiscal year, but such contractor or subcontractor later enters into one or more agreements with the City or relating to City-owned property that cause the payments to such contractor or subcontractor to equal or exceed $75,000.00 in that fiscal year, then all of the contractor's or subcontractor's contracts with the City and relating to City-owned property shall be thereafter subject to the HCAO. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements to equal or exceed $75,000.00 in the fiscal year.

27.6 Developer Conflicts of Interest. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City's Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, certifies that it knows of no facts which would constitute a violation of such provisions and agrees that if Developer becomes aware of any such fact during the Term Developer shall immediately notify the Authority. Developer further certifies that it has made a complete disclosure to the Authority of all facts bearing on any possible interests, direct or indirect, which Developer believes any officer or employee of the City or the Authority presently has or will have in this Agreement or in the performance thereof or in any portion of the profits thereof. Willful failure by Developer to make such disclosure, if any, shall constitute grounds for the Authority's termination and cancellation of this Agreement.

27.7 Prohibition of Political Activity with City Funds. In accordance with San Francisco Administrative Code Chapter 12.G, no funds appropriated by the Authority for this Agreement may be expended for organizing, creating, funding, participating in, supporting, or attempting to influence any political campaign for a candidate or for a ballot measure (collectively, "**Political Activity**"). The terms of San Francisco Administrative Code Chapter 12.G are incorporated herein by this reference. Accordingly, an employee working in any position funded under this Agreement shall not engage in any Political Activity during the work hours funded hereunder, nor shall any equipment or resource funded by this Agreement be used for any Political Activity. In the event Developer, or any staff member in association with Developer, engages in any Political Activity, then (i) Developer shall keep and maintain appropriate records to evidence compliance with this section, and (ii) Developer shall have the burden to prove that no funding from this Agreement has been used for such Political Activity. Developer agrees to cooperate with any audit by the Authority, the City or its designee in order to ensure compliance with this section. In the event Developer violates the provisions of this section, the City or the Authority may, in addition to any other rights or remedies available hereunder, (i) terminate this Agreement and any other agreements between Developer and the Authority, (ii) prohibit Developer from bidding on or receiving any new City or Authority contract for a period of two (2) years, and (iii) obtain reimbursement of all funds previously disbursed to Developer under this Agreement.

27.8 Notification of Limitations on Contributions. Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct Code (the "**Conduct Code**") which prohibits or a state agency on whose board an appointee of a City elective officer serves, for the selling or leasing of any land or building to or from the City or a state agency on whose board an appointee of a City elective officer serves, from making any campaign contribution to (1) an individual holding a City elective office if the contract must be approved by the individual, a board on which that individual serves, or a board on which an appointee of that individual serves, (2) a candidate for the office held by such individual, or (3) a committee controlled by such individual, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six (6) months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in Section 1.126. Developer further agrees to provide the Authority the name of each person, entity or committee described above.

27.9 Sunshine Ordinance. In accordance with Section 67.24(e) of the San Francisco Administrative Code, contracts, contractors' bids, leases, agreements, responses to Requests for Proposals, and all other records of communications between the Authority and persons or firms seeking contracts will be open to inspection immediately after a contract has

been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract, lease, agreement or other benefit until and unless that person or organization is awarded the contract, lease, agreement or benefit. Information provided which is covered by this Section will be made available to the public upon request.

27.10 MacBride Principles - Northern Ireland. The City and the Authority urge companies doing business in Northern Ireland to move towards resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and the Authority also urge San Francisco companies to do business with corporations that abide by the MacBride Principles. Developer acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

27.11 Tropical Hardwood and Virgin Redwood Ban. The City and the Authority urge companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product, or any virgin redwood or virgin redwood wood product. Developer agrees that, except as permitted by the application of Sections 802(b) and 803(b) of the San Francisco Environment Code, Developer shall not use or incorporate any tropical hardwood or virgin redwood in the construction of the Improvements. Developer shall not provide any items to the construction of the Project, or otherwise in the performance of this Agreement which are tropical hardwoods, tropical hardwood wood products, virgin redwood, or virgin redwood wood products. In the event Developer fails to comply in good faith with any of the provisions of Chapter 8 of the San Francisco Environment Code, Developer shall be liable for liquidated damages for each violation in any amount equal to the contractor's net profit on the contract, or five percent (5%) of the total amount of the contract dollars, whichever is greater.

27.12 Resource-Efficient Facilities and Green Building Requirements. Developer acknowledges that the City and County of San Francisco has enacted San Francisco Environment Code Sections 700 to 710 relating to resource-efficient buildings and green building design requirements. Developer hereby agrees it shall comply with the applicable provisions of such code sections.

27.13 Tobacco Product Advertising Prohibition. Developer acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City or the Authority, including the Project Site. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product, or on any sign. The foregoing prohibition shall not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

27.14 Drug-Free Workplace. Developer acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. Sections 701 et. seq.), the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City or Authority premises. Developer and its agents or assigns shall comply with all terms

and provisions of such Act and the rules and regulations promulgated thereunder. Developer agrees that any violation of this prohibition by Developer, its agents or assigns shall be deemed a material breach of this Agreement.

27.15 Pesticide Ordinance. Developer shall comply with the provisions of Section 308 of Chapter 3 of the San Francisco Environment Code (the "**Pesticide Ordinance**") which (i) prohibit the use of certain pesticides on City or Authority property, (ii) require the posting of certain notices and the maintenance of certain records regarding pesticide usage and (iii) require Developer to submit to the Authority an integrated pest management ("**IPM**") plan that (a) lists, to the extent reasonably possible, the types and estimated quantities of pesticides that Developer may need to apply to the Project Site during the Term, (b) describes the steps Developer will take to meet the City's IPM Policy described in Section 300 of the Pesticide Ordinance, and (c) identifies, by name, title, address and telephone number, an individual to act as Developer's primary IPM contact person with the City or the Authority. In addition, Developer shall comply with the requirements of Sections 303(a) and 303(b) of the Pesticide Ordinance. Through the Authority, Developer may seek a determination from the City's Commission on the Environment that Developer is exempt from complying with certain portions of the Pesticide Ordinance with respect to this Agreement, as provided in Section 307 of the Pesticide Ordinance. The Authority shall reasonably cooperate with Developer, at Developer's sole cost and expense, if Developer seeks in good faith an exemption under the Pesticide Ordinance.

27.16 Preservative Treated Wood Containing Arsenic. Developer may not purchase preservative-treated wood products containing arsenic in the performance of this Agreement unless an exemption from the requirements of Chapter 13 of the San Francisco Environment Code is obtained from the Department of the Environment under Section 1304 of the Code. The term "preservative-treated wood containing arsenic" shall mean wood treated with a preservative that contains arsenic, elemental arsenic, or an arsenic copper combination, including, but not limited to, chromated copper arsenate preservative, ammoniacal copper zinc arsenate preservative, or ammoniacal copper arsenate preservative. Developer may purchase preservative-treated wood products on the list of environmentally preferable alternatives prepared and adopted by the Department of the Environment. This provision does not preclude Developer from purchasing preservative-treated wood containing arsenic for saltwater immersion. The term "saltwater immersion" shall mean a pressure-treated wood that is used for construction purposes or facilities that are partially or totally immersed in saltwater.

27.17 Compliance with Disabled Access Laws. Developer acknowledges that, pursuant to the Disabled Access Laws, programs, services and other activities provided by a public entity to the public, whether directly or through Developer or contractor, must be accessible to the disabled public. Developer shall not discriminate against any person protected under the Disabled Access Laws in connection with the use of all or any portion of the Property and shall comply at all times with the provisions of the Disabled Access Laws.

27.18 Protection of Private Information. Developer agrees to comply fully with and be bound by all of the provisions of Chapter 12M of the San Francisco Administrative Code (the "**Protection of Information Ordinance**"), including the remedies provided therein. The provisions of the Protection of Private Information Ordinance are incorporated herein by

reference and made a part of this Agreement as though fully set forth. Capitalized terms used in this Section 27.18 and not defined in this Agreement shall have the meanings assigned to such terms in the Protection of Private Information Ordinance. Consistent with the requirements of the Protection of Private Information Ordinance, Developer agrees to all of the following:

(a) Neither Developer nor any of its contractors or subcontractors who receive Private Information from the City or the Authority in the performance of a contract may disclose that information to a subcontractor or any other person or entity, unless one of the following is true:

(i) The disclosure is authorized by this Agreement;

(ii) Developer received advance written approval from the Authority to disclose the information; or

(iii) The disclosure is required by judicial order.

(b) Any disclosure or use of Private Information authorized by this Agreement shall be in accordance with any conditions or restrictions stated in this Agreement or the Authority's approval and shall not be used except as necessary in the performance of the obligations under the contract. Any disclosure or use of Private Information authorized by the Authority shall be in accordance with any conditions or restrictions stated in the approval.

(c) "**Private Information**" shall mean any information that (1) could be used to identify an individual, including without limitation name, address, social security number, medical information, financial information, date and location of birth, and names of relative; or (2) the law forbids any person from disclosing.

(d) Any failure of Developer to comply with the Protection of Private Information Ordinance shall be a material breach of this Agreement. In such an event, in addition to any other remedies available to it under equity or law, the Authority may terminate this Agreement, debar Developer, or bring a false claim action against Developer.

27.19 Graffiti Removal. Graffiti is detrimental to the health, safety and welfare of the community in that it promotes a perception in the community that the laws protecting public and private property can be disregarded with impunity. This perception fosters a sense of disrespect of the law that results in an increase in crime; degrades the community and leads to urban blight; is detrimental to property values, business opportunities and the enjoyment of life; is inconsistent with the Authority's property maintenance goals and aesthetic standards; and results in additional graffiti and in other properties becoming the target of graffiti unless it is quickly removed from public and private property. Graffiti results in visual pollution and is a public nuisance. Graffiti must be abated as quickly as possible to avoid detrimental impacts on the City and County and its residents, and to prevent the further spread of graffiti.

Developer shall remove all graffiti from any real property owned or leased by Developer in the City and County of San Francisco within forty-eight (48) hours of the earlier of Developer's (a) discovery or notification of the graffiti or (b) receipt of notification of the graffiti

from the Department of Public Works or the Authority. This Section 27.19 is not intended to require Developer to breach any lease or other agreement that it may have concerning its use of the real property. The term "graffiti" means any inscription, word, figure, marking or design that is affixed, marked, etched, scratched, drawn or painted on any building, structure, fixture or other improvement, whether permanent or temporary, including by way of example only and without limitation, signs, banners, billboards and fencing surrounding construction sites, whether public or private, without the consent of the owner of the property or the owner's authorized agent, and which is visible from the public right-of-way. "Graffiti" shall not include: (1) any sign or banner that is authorized by, and in compliance with, the applicable requirements of the San Francisco Public Works Code, the San Francisco Planning Code, or the San Building Code; or (2) any mural or other painting or marking on the property that is protected as a work of fine art under the California Art Preservation Act (California Civil Code Sections 987 et seq.) or as a work of visual art under the Federal Visual Artists Rights Act of 1990 (17 U.S.C. §§ 101 et seq.).

Any failure of Developer to comply with this Section 27.19 shall constitute a Developer Event of Default.

27.20 Food Service Waste Reduction Ordinance. Developer agrees to comply fully with and be bound by all of the provisions of the Food Service Waste Reduction Ordinance, as set forth in San Francisco Environment Code Chapter 16, including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 16 are incorporated herein by reference and made a part of this Agreement as though fully set forth herein. This provision is a material term of this Agreement. By entering into this Agreement, Developer agrees that if it breaches this provision, the Authority and City will suffer actual damages that will be impractical or extremely difficult to determine; further, Developer agrees that the sum of one hundred dollars ($100.00) liquidated damages for the first breach, two hundred dollars ($200.00) liquidated damages for the second breach in the same year, and five hundred dollars ($500.00) liquidated damages for-subsequent breaches in the same year is a reasonable estimate of the damage that the Authority and City will incur based on the violation, established in light of the circumstances existing at the time this Agreement was made. Such amounts shall not be considered a penalty, but rather agreed monetary damages sustained by the Authority and City because of Developer's failure to comply with this provision.

27.21 Charter Provisions. This Agreement is governed by and subject to the provisions of the Charter of the City and County of San Francisco, including the budgetary and fiscal provisions of the City's Charter. Notwithstanding anything to the contrary contained in this Agreement, there shall be no obligation for the payment or expenditure of money by the Authority or City under this Agreement unless the Controller of the City and County of San Francisco first certifies, pursuant to Section 3.105 of the City's Charter, that there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure. Developer acknowledges that in no event shall the City’s General Fund have any liability for any of the Authority’s obligations under this Agreement.

27.22 Incorporation. Each and every provision of the San Francisco Administrative Code or any other San Francisco Code specifically described or referenced in this

Agreement is hereby incorporated by reference, as it exists on the Effective Date as though fully set forth herein.

28. Miscellaneous Provisions.

28.1 Incorporation of Exhibits and Attachments. Each Exhibit is hereby incorporated into and made a part of this DDA. Each Attachment is attached for reference and the convenience of the Parties.

28.2 Notices. Any notice or other communication given under this DDA by a Party must be given or delivered (i) by hand, (ii) by registered or certified mail, postage prepaid and return receipt requested, or (iii) by a recognized overnight carrier, such as Federal Express, in any case addressed as follows:

28.2.1 in the case of a notice or communication to the Authority,

Treasure Island Development Authority
c/o Office of Economic and Workforce Development
City Hall, Rm. 448
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Treasure Island Project Director

and

Office of the City Attorney
City Hall, Rm. 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102
Attn: Real Estate/Finance

28.2.2 in the case of a notice or communication to Developer,

Treasure Island Community Development, LLC
c/o UST Lennar HW Scala SF Joint Venture
One California Street, Suite 2700
San Francisco, CA 94111
Attn: Kofi Bonner

and

Gibson Dunn & Crutcher LLP
555 Mission Street, Suite 3000
San Francisco, CA 94105
Attn: Mary G. Murphy

To be effective, every notice given to a Party under the terms of this DDA must be in writing and must state (or must be accompanied by a cover letter that states) substantially the following:

(a) the Section of this DDA under which the notice is given;

(b) if applicable, the action or response required;

(c) if applicable, the period of time within which the recipient of the notice must respond thereto;

(d) if applicable, the period of time within which the recipient of the notice must cure an alleged breach;

(e) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of the subject matter of the notice;

(f) if approval is being requested, shall be clearly marked "Request for Approval"; and

(g) if a notice of a disapproval or an objection that requires reasonableness, shall specify with particularity the reasons for the disapproval or objection.

Any mailing address may be changed by a Party at any time by giving notice of such change in the manner provided above, and any such change shall be effective ten (10) days thereafter (or such later date as is set forth in such notice). All notices under this DDA shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

28.3 Time of Performance.

28.3.1 All performance (including cure) dates expire at 5:00 p.m. on a Business Day (San Francisco, California time) on the applicable date for performance (including cure), as such date may be extended pursuant to the effect of Article 24 or any other extension of time permitted in this DDA.

28.3.2 Where the Outside Date (or other date set forth in this DDA) set forth in the Schedule of Performance is a calendar month without reference to a specific day in such month, or a year without reference to a specific month in such year, then the Outside Date shall be the last day in such month or year, as applicable.

28.3.3 Time is of the essence in the performance of all the terms and conditions of this DDA.

28.4 Extensions of Time.

28.4.1 The Authority or Developer may extend the time for the performance of any term, covenant or condition of this DDA by a Party owing performance to the extending party, or permit the curing of any related default, upon such terms and conditions as it determines appropriate; provided, however, any such extension or permissive curing of any particular default shall not operate to release any of the obligations of the Party receiving the extension or cure rights or constitute a waiver of the granting Party's rights with respect to any other term, covenant or condition of this DDA or any other default in, or breach of, this DDA.

28.4.2 In addition to matters set forth in Section 28.4.1, the Parties may extend the time for performance by any of them of any term, covenant or condition of this DDA by a written instrument signed by authorized representatives of such Parties without the execution of a formal recorded amendment to this DDA, and any such written instrument shall have the same force and effect and impart the same notice to third parties as a formal recorded amendment to this DDA.

28.5 Attorneys' Fees.

28.5.1 Should any Party institute any action or proceeding in court or other dispute resolution mechanism permitted or required under this DDA, the prevailing party shall be entitled to receive from the losing party the prevailing party's reasonable costs and expenses incurred including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as may be awarded to be reasonable attorneys' fees and costs for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 28.5.1 shall include attorneys' fees on any appeal.

28.5.2 For purposes of this DDA, reasonable fees of attorneys and any in-house counsel shall be based on the average fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City.

28.6 Eminent Domain. The exercise by the Authority of its eminent domain power, if applicable, with regard to any portion of the Project Site owned by Developer or any Vertical Developer in a manner that precludes or substantially impairs performance by Developer or any Vertical Developer of any of its material obligations (or would otherwise give rise to a default by Developer) hereunder shall constitute a Material Breach by the Authority.

28.7 Successors and Assigns; No Third-Party Beneficiary. Subject to the provisions of Article 21, this DDA shall be binding upon and inure to the benefit of the Mortgagees and transferees of Developer and any transferee of the Authority, including, without limitation, the San Francisco Port Commission and the City and County of San Francisco, if applicable. This DDA is made and entered into only for the protection and benefit of the Parties and their successors and assigns. No other Person shall have or acquire any right or action of

any kind based upon the provisions of this DDA except as explicitly provided to the contrary in this DDA.

28.8 Estoppel Certificates. Any Party, within twenty (20) days after notice from any other Party, shall execute and deliver to the requesting Party and, if requested, any Mortgagee or prospective Mortgagee, an estoppel certificate stating:

28.8.1 whether or not this DDA is unmodified and in full force and effect. If there has been a modification of this DDA, the certificate shall state that this DDA is in full force and effect as modified, and shall set forth the modification, and if this DDA is not in full force and effect, the certificate shall so state; and

28.8.2 whether or not the responding Party is aware of any Event of Default (or event which, with notice or the passage of time or both, could be an Event of Default) by any other Party under this DDA in any respect and, if so, describing the same in detail.

28.9 Counterparts. This DDA may be executed in multiple counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same instrument. Such counterparts may be delivered by facsimile, electronic mail or other similar means of transmission.

28.10 Authority and Enforceability. Developer and the Authority each represents and warrants that the execution and delivery of this DDA, and the performance of its obligations hereunder, have been duly authorized by all necessary action, and will not conflict with, result in any violation of, or constitute a default under, any provision of any agreement or other instrument binding upon or applicable to it, or any present law or governmental regulation or court decree.

28.11 References. Wherever in this DDA the context requires, references to the masculine shall be deemed to include the feminine and the neuter and vice-versa, and references to the singular shall be deemed to include the plural and vice versa.

28.12 Correction of Technical Errors. If by reason of inadvertence, and contrary to the intention of Developer and the Authority, errors are made in this DDA in the identification or characterization of any title exception, in a legal description or the reference to or within any Exhibit with respect to a legal description, in the boundaries of any parcel (provided such boundary adjustments are relatively minor and do not result in a material change as determined by the Authority's counsel), in any map or drawing which is an Exhibit, or in the typing of this DDA or any of its Exhibits, Developer and the Authority by mutual agreement may correct such error by memorandum executed by both of them and replacing the appropriate pages of this DDA, and no such memorandum or page replacement shall be deemed an amendment of this DDA.

28.13 Brokers. Developer and the Authority each represents to the other that it has not employed a broker or a finder in connection with the execution and delivery of this DDA, and agrees to Indemnify the other from the claims of any broker or finder asserted through such Party.

28.14 Governing Law. This DDA shall be governed by and construed in accordance with the laws of the State of California. All references in this DDA to California or federal laws and statutes shall mean such laws, regulations and statues as they may be amended from time to time, except to the extent a contrary intent is stated.

28.15 Effect on Other Party's Obligation. If Developer's or the Authority's performance is excused or the time for its performance is extended under Article 24, the performance of the other Party that is conditioned on such excused or extended performance is excused or extended to the same extent.

28.16 Table of Contents; Headings. The Table of Contents is for the purpose of convenience of reference only and is not to be deemed as a part of this DDA or as supplemental hereto. Section and other headings are for the purpose of convenience of reference only and are not intended to, nor shall they, modify or be used to interpret the provisions of this DDA.

28.17 Numbers.

(a) Generally. For purposes of calculating a number under this DDA, any fraction equal to or greater than one half (1/2) shall be rounded up to the nearest whole number and any fraction less than one half (1/2) shall be rounded down to the nearest whole number.

(b) Number of Days. References in this DDA to days shall be to calendar days, unless otherwise specified; provided, that if the last day of any period to give notice, reply to a notice, meet a deadline or to undertake any other action occurs on a day that is not a Business Day, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding Business Day.

28.18 No Gift or Dedication. Except as otherwise specified in this DDA, this DDA shall not be deemed to be a gift or dedication of any portion of the Project Site to the general public, for the general public, or for any public use or purpose whatsoever. Developer shall have the right to prevent or prohibit the use of any portion of the property owned by it, including common areas and buildings and improvements, by any Persons for any purpose inimical to the operation of a private, integrated mixed-use project as contemplated by this DDA. Any dedication must be evidenced by an express written offer of dedication to and written acceptance by the Authority, the City, the SFPUC, CFD or other Governmental Entity, as applicable, for such purposes by a recorded instrument executed by the owner of the property dedicated.

28.19 Severability. Except as is otherwise specifically provided for in this DDA for Conflicting Laws, invalidation of any provision of this DDA, or of its application to any Person, by judgment or court order shall not affect any other provision of this DDA or its application to any other Person or circumstance, and the remaining portions of this DDA shall continue in full force and effect, except to the extent that enforcement of this DDA as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate a fundamental purpose of this DDA.

28.20 Entire Agreement. This DDA contains all of the representations and warranties and the entire agreement between the Parties with respect to the subject matter of this DDA. Any prior correspondence, memoranda, agreements, warranties or representations between the parties relating to such subject matter are incorporated into and superseded in total by this DDA. Notwithstanding the foregoing, this DDA shall not supersede the ENA, which shall remain in full force and effect according to its terms; provided, however, that so long as the DDA is in full force and effect, the terms of the DDA shall control in the event of any inconsistency. No prior drafts of this DDA or changes from those drafts to the executed version of this DDA shall be introduced as evidence in any litigation or other dispute resolution proceeding by Developer, the Authority or any other Person, and no court or other body shall consider those drafts in interpreting this DDA.

28.21 No Party Drafter; Captions. Although certain provisions of this DDA were drawn by the Authority and certain provisions were drawn by Developer, (i) the provisions of this DDA shall be construed as a whole according to their common meaning and not strictly for or against any Party in order to achieve the objectives and purposes of the Parties, and (ii) no Party nor its counsel shall be deemed to be the drafter of any provision of this DDA.

28.22 Conduct; Covenant of Good Faith and Fair Dealing. In all situations arising out of this DDA, subject to the provisions of Article 16, Developer and the Authority shall each attempt to avoid and minimize the damages resulting from the conduct of the other and shall take all reasonably necessary measures to achieve the provisions of this DDA. This DDA is subject to the covenant of good faith and fair dealing applicable under California law.

28.23 Further Assurances. Each of Developer and the Authority covenants, on behalf of itself and its successors, heirs and assigns, to take all actions and to do all things, and to execute, with acknowledgment or affidavit if required, any and all documents and writings that may be necessary or proper to achieve the purposes and objectives of this DDA. The Authority Director is authorized to execute and deliver on behalf of the Authority any closing or similar documents and any contracts, agreements, memoranda or similar documents with State, regional and local entities or enter into any tolling agreement with any Person if the Authority Director determines that such execution and delivery are necessary or proper to achieve the purposes and objectives of this DDA and in the Authority's best interests.

28.24 Approvals.

(a) As used herein, "**Approval**" and any variation thereof (such as "**Approved**" or "**Approve**") refers to the prior written consent of the applicable Party or other Person. When used with reference to a Governmental Entity such terms are intended to refer to the particular form of consent or approval required from such Governmental Entity in order to obtain the Authorization being sought.

(b) Whenever Approval is required of Developer, the Authority, the Authority Board or the Authority Director under this DDA, it shall not be unreasonably withheld, conditioned or delayed unless the Approval is explicitly stated in this DDA to be within the "sole discretion" (or words of similar import) of the Party whose Approval is sought. The reasons for failing to grant Approval, or for giving a conditional Approval, shall be stated in reasonable

detail in writing, except by the Authority Board, which as a public body will grant or deny Approval in open session at a duly held and noticed public meeting in accordance with applicable public meeting laws. Approval by Developer or the Authority to or of any act or request by the other shall not be deemed to waive or render unnecessary Approval to or of any similar or subsequent acts or requests. The requirements for Approvals under this DDA shall extend to and bind the partners, officers, directors, shareholders, trustees, beneficiaries, agents, elective or appointive boards, commissions, employees and other authorized representatives of Developer and the Authority, and each such Person shall make or enter into, or take any action in connection with, any Approval in accordance with these requirements. In determining whether to give an Approval, no Party shall require changes from or impose conditions inconsistent with (i) the Development Requirements or (ii) matters it has previously Approved with respect to the matter at issue.

(c) Unless otherwise provided in this DDA, whenever Approval or any other action is required by the Authority Board, the Authority Director shall upon the request of Developer submit such matter to the Authority Board at the next regularly-scheduled meeting of the Authority Board for which an agenda has not yet been finalized and for which the Authority can prepare and submit a staff report in keeping with Authority standard practices.

(d) Unless otherwise provided in this DDA, Approvals or other actions of the Authority (as opposed to the Authority Director or the Authority Board) will be given or undertaken, as applicable, by the Authority Director.

(e) Developer shall from time to time by notice to the Authority designate the Persons who may act as its "**Developer Representative**". Approvals or other actions of Developer shall be given or undertaken, as applicable, by Developer's Representative or such other Person that provides evidence reasonably acceptable to the Authority Director that such Person is duly authorized to act on behalf of Developer.

28.25 Cooperation and Non-Interference. Developer and the Authority shall each refrain from doing anything that would render its performance under this DDA impossible, and subject to Article 16 each shall do everything which this DDA contemplates that the Party shall do to accomplish the objectives and purposes of this DDA.

28.26 Interpretation. Unless otherwise specified, whenever in this DDA, including its Exhibits, reference is made to the Table of Contents, any Article, Section, Exhibit, Attachment or any defined term, the reference shall be deemed to refer to the Table of Contents, Article, Section, Exhibit, Attachment or defined term of this DDA. Any reference to an Article or a Section includes all subsections and subparagraphs of that Article or Section. The use in this DDA of the words "including", "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such statement, term or matter to the specific statements, terms or matters, whether or not language of non-limitation, such as "without limitation" or "but not limited to", or words of similar import, is used with reference thereto. In the event of a conflict between the Recitals and the remaining provisions of this DDA, the remaining provisions shall prevail.

28.27 Legal Representation. Developer and the Authority each acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of its choice in connection with the rights and remedies of and waivers by it contained in this DDA and after such advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this DDA, and to rely solely on the remedies provided for in this DDA with respect to any breach of this DDA by the other, or any other right that either Developer or the Authority seeks to exercise.

28.28 Recordation; Run with the Land. It is understood and agreed by Developer and the Authority that after execution by Developer and the Authority, this DDA will be recorded by the Authority; provided that the recordation shall affect only Developer's and the Authority's interest in the Project Site (including any real property acquired by either of them after the Effective Date). If this DDA is terminated in accordance with its terms, Developer or the Authority may record a Notice of Termination as provided in Section 28.36. Before any such termination of this DDA by the terms hereof, and subject to release of the lien of this Agreement in accordance with Section 2 hereof, the covenants and agreements of Developer and the Authority contained herein shall be covenants running with any land conveyed from the Authority to Developer shall bind every Person having any interest in such real property, and shall be binding upon and inure to the benefit and burden of Developer and the Authority and their respective heirs, successors and assigns. This DDA shall not burden or bind any other property in the Project Site that is not acquired by the Authority or Developer under this DDA.

28.29 Survival. Termination of this DDA shall not affect (i) the right of any Party to enforce any and all Indemnifications or Adequate Security (including any Guaranty) to the extent they relate to the period before termination, (ii) any provision of this DDA that, by its express term, is intended to survive the expiration or termination of this DDA, or (iii) the rights and obligations under the Financing Plan or under any Acquisition and Reimbursement Agreement, including Developer's right to receive reimbursements, to the extent they relate to the period before termination or are intended to survive the expiration or termination of the Financing Plan or Acquisition and Reimbursement Agreement, as applicable. Notwithstanding the foregoing, all Indemnification obligations under this DDA shall expire five (5) years after the earlier to occur of (a) the Authority's issuance of a Certificate of Completion with respect to the Improvements for which the Certificate of Completion was issued or (b) the termination of this DDA with respect to the portion of the Project Site to such termination relates; provided, that the foregoing expiration shall not apply as to (i) any Indemnification obligation under Section 11.2, which shall expire as set forth in Section 11.2, (ii) any Indemnification obligation as to which the Authority has given notice in accordance with the first sentence of Section 22.4 on or before the date of such expiration, and (iii) any Indemnification Obligation under Sections 22.1(b), 22.1(c), 22.2(b) and 22.2(c), which shall expire five (5) years after Developer Transfers the applicable portion of the Project Site. No termination under Section 3.8.1 shall (1) affect Developer's rights under this DDA for any then-existing Sub-Phase Approval or (2) prevent the Authority, in its sole discretion, from later accepting and/or Approving any Major Phase Application or Sub-Phase Application from Developer.

28.30 Nondiscrimination.

28.30.1 There shall be no discrimination against or segregation of any person or group of persons on any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, or on the basis of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Project Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Project Site, or any portion thereof. Neither Developer itself (nor any person or entity claiming under or through it), nor any occupant or user of the Project Site or any Transferee, successor, assign or holder of any interest in the Project Site or any person or entity claiming under or through such Transferee, successor, assign or holder, shall establish or permit any such practice or practices of discrimination or segregation in connection with the Project Site, including without limitation, with reference to the selection, location, number, use or occupancy of buyers, tenants, vendees or others. But Developer shall not be in default of its obligations under this Section 28.30 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer.

28.30.2 Any Transferee, successor, assign, or holder of any interest in the Project Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, deed of trust, Mortgage or otherwise, and whether or not any written instrument or oral agreement contains the above prohibitions against discrimination, shall be bound by, and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above. The covenants in this Section 28.30 shall be covenants running with the land and they shall be: (i) binding for the benefit and in favor of the Authority, as beneficiary, and the City and the owner of any other land or of any interest in any land in the Project Site (as long as such land remains subject to the land use requirements and restrictions of the SUD and the Design for Development), as beneficiary, and their respective successors and assigns; and (ii) binding against Developer, its successors and assigns to or of the Project Site and any improvements thereon or any portion thereof or any interest therein, and any party in possession or occupancy of the Project Site or the improvements thereon or any portion thereof.

28.30.3 In amplification, and not in restriction, of the provisions of Sections 28.30.1 and 28.30.2, the Authority, the City and their respective successors and assigns, as to the covenants provided in this Section 28.30 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of NSTI and other parties, public or private, and without regard to whether the Authority or the City has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. The Authority, the City and their respective successors and assigns shall have the right, as to any and all of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain, any actions at law or suits in equity or other proper proceedings, to enforce such covenants to which it or any other beneficiaries of such covenants may be entitled including without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative.

28.31 Lead-Based Paint Prohibition. Developer shall comply with the regulations issued by the Secretary of HUD set forth in 37 C.F.R. 22732-3 and all applicable rules and orders prohibiting the use of lead-based paint in residential structures undergoing federally-assisted construction or rehabilitation and requiring the elimination of lead-based paint hazards.

28.32 Modifications; Waiver. Any modification or waiver of any provision of this DDA must be in writing and signed by a Person having authority to do so, on behalf of both the Authority and Developer. Material Modifications to this DDA shall require the approval of the Board of Supervisors, which the Board of Supervisors may give or withhold in its sole and absolute discretion.

28.33 Relationship of the Parties. The Authority is not, and none of the provisions in this DDA shall be deemed to render the Authority, a partner in Developer's or any Vertical Developer's business, or a joint venturer or member in any joint enterprise with Developer or any Vertical Developer. No Party shall have the right to act as the agent of any other Party in any respect hereunder.

28.34 ENA. After the Reference Date and before the expiration or termination of the ENA in accordance with its terms, in the event of a conflict between the ENA and this DDA, the provisions of this DDA shall prevail. Notwithstanding the foregoing, with respect to conflicts between the DDA and the ENA relating to Authority's Transaction Costs as defined in the ENA as further described in Section 3.2(b) thereof, the terms of Section 3.2(b) of the ENA shall control.

28.35 Plans on Record with Authority. The most recent versions of the Exhibits to this DDA, as such Exhibits may be amended or supplemented from time to time in accordance with this DDA or the terms of such Exhibits, shall not be required to be recorded but shall be kept on file with the Authority. In addition, as of the Reference Date the Proforma is on file with the Authority and upon each submittal of a Major Phase Application and Sub-Phase Application in accordance with the DRDAP, the updated Proforma as Approved by Developer and the Authority shall be similarly kept on file with the Authority. The Authority Director and Developer shall update or supplement the Schedule of Performance from time to time to reflect changes to the same as permitted in this DDA. Full color copies of all recorded documents are also on file with the Authority. All documents on file with the Authority shall be made available to members of the public at reasonable times in keeping with the Authority's standard practices.

28.36 Notice of Termination. In the event of any termination of this DDA in whole or in part in accordance with the terms of this DDA, the terminating Party shall provide the other Parties and any applicable Mortgagee with a copy of any proposed Notice of Termination at least fifteen (15) days before recording the same. After the expiration of such fifteen (15) days, the terminating Party may cause the Title Company to record such Notice of Termination in the Official Records. Any "**Notice of Termination**" shall be in recordable form and describe the portion of the Project Site to which such termination pertains. Following the recordation of any Notice of Termination, the terminating Party shall promptly provide a conformed copy of such recorded Notice of Termination to the Authority, Developer, and any applicable Mortgagee, and any applicable Vertical Developer. The recordation of a Notice of

Termination shall not affect in any manner the rights of the Authority, Developer, or any applicable Mortgagee, or Vertical Developer to contest the terminating Party's right to cause such recordation.

28.37 Developer Termination Rights. Developer shall have the right to terminate this DDA, together with the ENA, if a lawsuit is initiated to challenge the Authority's approval of this DDA or the Project, and Developer elects to not continue to reimburse the Authority for all of Authority's Costs and City Costs relating to such lawsuit; provided that any such termination shall not release Developer for the Authority's Costs and City Costs (including any attorney's fees that may be awarded to the initiator of the lawsuit) for the period before such termination.

28.38 Execution of Certain Attachments and Exhibits. The Parties acknowledge and agree that as of the Reference Date Attachment 1 (Public Trust Exchange Agreement), Attachment 2 (Conveyance Agreement) and Exhibit Q (Pre-Approved Arbiters List), Exhibit T (Auction Bidder Selection Guidelines for Commercial Lots), Exhibit U (Qualified Appraisal Pool), Exhibit V (Appraisal Instructions by Appropriate Product Type), Exhibit W (Auction Bidder Selection Guidelines for Residential Auction Lots) and Exhibit X (Guidelines for Residential Auction Lots), have not been completed and, in certain cases, Approved by the applicable Governmental Entities or executed and delivered by the Parties thereto. Accordingly, the Parties have attached drafts of such Attachments and Exhibits. Upon completion or Approval of such Attachments and Exhibits, Developer and the Authority shall substitute the final Attachments and Exhibits for such drafts and confirm such substitution in writing. Upon completion, Exhibit H (Approved Vertical DDA Form), Exhibit I (Approved Vertical LDDA Form) and Exhibit M (Ground Lease) shall be appended to this Agreement in accordance with Section 4.1 hereof and Developer and the Authority shall confirm such addition in writing.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Authority and Developer have each caused this DDA to be duly executed on its behalf as of the Reference Date.

"AUTHORITY"

TREASURE ISLAND DEVELOPMENT AUTHORITY,
a California non-profit public benefit corporation

By: _____
Name: Rich Hillis
Its: Treasure Island Project Director

Approved as to form:

DENNIS J. HERRERA,
City Attorney

By: _____
Name: Eileen M. Malley
Deputy City Attorney

Authorized by Authority Resolution No. 11-18-04/21
adopted April 21, 2011

Authorized by Board of Supervisors Resolution No. 241-11
Adopted June 7, 2011

"DEVELOPER" AND "MASTER DEVELOPER"

TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,
a California limited liability company

By: UST Lennar HW Scala SF Joint Venture,
a Delaware general partnership
its co-Managing Member

By: _____
Name: Kofi Bonner
Its: Authorized Representative

IN WITNESS WHEREOF, the Authority and Developer have each caused this DDA to be duly executed on its behalf as of the Reference Date.

"AUTHORITY"

TREASURE ISLAND DEVELOPMENT AUTHORITY,
a California non-profit public benefit corporation

By:_____
Name: Rich Hillis
Its: Treasure Island Project Director

Approved as to form:

DENNIS J. HERRERA,
City Attorney

By: _____
Name: _____
Deputy City Attorney

Authorized by Authority Resolution No. 11-18-04/21
adopted April 21, 2011

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"DEVELOPER" AND "MASTER DEVELOPER"

TREASURE ISLAND COMMUNITY DEVELOPMENT, LLC,
a California limited liability company

By: UST Lennar HW Scala SF Joint Venture,
a Delaware general partnership
its co-Managing Member

By: _____
Name: Kofi Bonner
Its: Authorized Representative

By: KSWM Treasure Island, LLC,
a California limited liability company
its co-Managing Member

By: WMS Treasure Island Development I, LLC,
a Delaware limited liability company
its Member

By: Wilson Meany Sullivan LLC,
a California limited liability company
its Sole Member and Manager

By: _____
Name: Christopher Meany
Title: Managing Member

STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On June 29, 2011, before me, Christine M. Silva, Notary Public, personally appeared Rich Hillis, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Christine M Silva
Notary Public

(Seal)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

State of California

County of San Francisco

On June 28, 2011 (Date) before me, Michael J. P. Mercado (Here Insert Name and Title of the Officer),

personally appeared Kofi Sampaney Bonner (Name(s) of Signer(s)),

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

MICHAEL J.P. MERCADO
Commission # 1914059
Notary Public - California
San Francisco County
My Comm. Expires Nov 21, 2014

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____ (Signature of Notary Public)

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document

Title or Type of Document: _____

Document Date: _____ Number of Pages: _____

Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer's Name: _____

☐ Corporate Officer — Title(s): _____

☐ Individual

☐ Partner — ☐ Limited ☐ General

☐ Attorney in Fact

☐ Trustee

☐ Guardian or Conservator

☐ Other: _____

Signer Is Representing: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

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STATE OF CALIFORNIA)
) ss
COUNTY OF SAN FRANCISCO)

On June 28, 2011, before me, Jane Robertson, Notary Public, personally appeared Christopher Meany, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Jane Robertson
Notary Public

JANE LEE ROBERTSON
COMM. # 1794200
NOTARY PUBLIC - CALIFORNIA
SAN MATEO COUNTY
MY COMM. EXP. MAR. 23, 2012

(Seal)