ECONOMIC DEVELOPMENT CONVEYANCE

MEMORANDUM OF AGREEMENT

BETWEEN

THE UNITED STATES OF AMERICA

AND

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

FOR THE CONVEYANCE OF

THE NAVAL STATION TREASURE ISLAND
INDEX

ARTICLE 1 DEFINITIONS .............................................................................................. 3
ARTICLE 2 ECONOMIC DEVELOPMENT CONVEYANCE ........................................... 3
ARTICLE 3 CONVEYANCE SCHEDULE AND TRANSFERS ........................................ 4
ARTICLE 4 CONSIDERATION ..................................................................................... 14
ARTICLE 5 CONTROLS .............................................................................................. 22
ARTICLE 6 DEVELOPMENT AND DISPOSITION AGREEMENT .............................. 32
ARTICLE 7 EASEMENTS, CONTRACTS, PERMITS AND OTHER SIMILAR INSTRUMENTS ........................................................................................................... 32
ARTICLE 8 CLOSING AND SETTLEMENT ................................................................ 35
ARTICLE 9 UTILITY INFRASTRUCTURE AND UTILITIES AGREEMENT ................ 38
ARTICLE 10 TIME OF THE ESSENCE AND POSTPONEMENT ................................ 41
ARTICLE 11 ENVIRONMENTAL REPORTS ................................................................ 42
ARTICLE 12 DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS .............. 42
ARTICLE 13 NAVY OFFICE ....................................................................................... 43
ARTICLE 14 NAVY REPRESENTATIONS .................................................................... 44
ARTICLE 15 AUTHORITY REPRESENTATIONS ......................................................... 44
ARTICLE 16 TITLE AND NAVY COVENANTS ............................................................ 44
ARTICLE 17 ENVIRONMENTAL PROVISIONS ............................................................ 45
ARTICLE 18 PETROLEUM CORRECTIVE ACTION ..................................................... 46
ARTICLE 19 COVENANT AGAINST CONTINGENT FEES ......................................... 46
ARTICLE 20 NOTICES .............................................................................................. 47
ARTICLE 21 PRIOR LIABILITIES .............................................................................. 48
ARTICLE 22 AUTHORITY'S AVAILABILITY OF FUNDS ........................................... 48
ARTICLE 23 FINALITY OF CONVEYANCE .............................................................. 49
<table>
<thead>
<tr>
<th>Article</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>24</td>
<td>LIABILITY FOR ENVIRONMENTAL CONTAMINATION</td>
<td>49</td>
</tr>
<tr>
<td>25</td>
<td>SHORT FORM NOTICE</td>
<td>49</td>
</tr>
<tr>
<td>26</td>
<td>FURTHER ASSURANCES</td>
<td>50</td>
</tr>
<tr>
<td>27</td>
<td>DISPUTE RESOLUTION PROCEDURES</td>
<td>50</td>
</tr>
<tr>
<td>28</td>
<td>SURVIVAL AND BENEFIT</td>
<td>54</td>
</tr>
<tr>
<td>29</td>
<td>INTERPRETATION</td>
<td>55</td>
</tr>
<tr>
<td>30</td>
<td>NON-DISCRIMINATION</td>
<td>56</td>
</tr>
<tr>
<td>31</td>
<td>AVAILABILITY OF FUNDS</td>
<td>56</td>
</tr>
<tr>
<td>32</td>
<td>MODIFICATION; WAIVERS</td>
<td>56</td>
</tr>
<tr>
<td>33</td>
<td>REMEDIES FOR NONPERFORMANCE</td>
<td>56</td>
</tr>
<tr>
<td>34</td>
<td>FAILURE TO INSIST ON COMPLIANCE</td>
<td>57</td>
</tr>
<tr>
<td>35</td>
<td>RISK OF LOSS</td>
<td>57</td>
</tr>
<tr>
<td>36</td>
<td>COUNTERPARTS</td>
<td>57</td>
</tr>
</tbody>
</table>
EXHIBITS

DEFINITIONS.................................................................EXHIBIT A

DESCRIPTION OF PROPERTY:

RESERVED.................................................................EXHIBIT B-1
FOST PARCEL ..........................................................EXHIBIT B-2
REMAINDER PARCEL ...............................................EXHIBIT B-3
RESERVED ..............................................................EXHIBIT B-4
SITE 12 DEVELOPMENT PARCEL ...................................EXHIBIT B-5
BUILDING 233 DEVELOPMENT PARCEL .........................EXHIBIT B-6
DEVELOPABLE AREAS OF PARCELS 21, 24, 30, 30N, 30S, 31,
UTILITY CORRIDORS UC1 AND UC2, BUILDING 3, AND
BUILDING 233 ..........................................................EXHIBIT B-7

RESERVED.................................................................EXHIBIT C

FORM OF QUITCLAIM DEED ..........................................EXHIBIT D

FORM OF UTILITIES AGREEMENT .................................EXHIBIT E

MARINA PROPERTY ......................................................EXHIBIT F

NEPA RECORD OF DECISION .........................................EXHIBIT G

FORM OF BILLS OF SALE:

BILL OF SALE FOR PERSONAL PROPERTY .......................EXHIBIT H-1
BILL OF SALE FOR UTILITY INFRASTRUCTURE .................EXHIBIT H-2

EAUSEMENTS, CONTRACTS, LICENSES AND PERMITS:

ASSIGNABLE EASEMENTS, CONTRACTS, LICENSES
AND PERMITS ..........................................................EXHIBIT I-1
RESERVED ..................................................................EXHIBIT I-2
RESERVED ..................................................................EXHIBIT I-3
RESERVED ..................................................................EXHIBIT I-4
NON-ASSIGNABLE EASEMENTS AND UNPERFECTED
EAUSEMENTS, CONTRACTS, LICENSES AND PERMITS ..EXHIBIT I-5
RESERVED ..................................................................EXHIBIT I-6
NON-ASSIGNABLE AND UNPERFECTED EASEMENTS,
CONTRACTS, LICENSES AND PERMITS RELATED TO THE
PROVISION OF ELECTRICITY .........................................EXHIBIT I-7
RESERVED

NAVY CARETAKER SITE OFFICE:

NAVY CARETAKER SITE OFFICE
NAVY OFFICE PROVISIONS
GREAT WHITES LOCATION

RESERVED

SHORT FORM NOTICE OF CONVEYANCE

FORM OF REPRESENTATIONS:

NAVY
AUTHORITY

RESERVED

CERTIFICATION RESOLUTIONS

HISTORIC MOAs:

NATIONAL HISTORIC PRESERVATION ACT MOA OF
28 MAY 2003

NATIONAL HISTORIC PRESERVATION ACT MOA OF
19 MAY 2011

PROPERTY CONVEYANCE SCHEDULE

AUCTION BIDDER SELECTION GUIDELINES:
FOR RESIDENTIAL LOTS
FOR COMMERCIAL LOTS

PRELIMINARY TITLE REPORT

TITLE EXCEPTIONS TO BE REMOVED, RELEASED OR INSURED

RESERVED

RESERVED

APPRAISAL INSTRUCTIONS:
FOR RESIDENTIAL LOTS
RESERVED
FOR COMMERCIAL LOTS
<table>
<thead>
<tr>
<th>Section</th>
<th>Exhibit</th>
</tr>
</thead>
<tbody>
<tr>
<td>QUALIFIED APPRAISER POOL</td>
<td>Exhibit Y</td>
</tr>
<tr>
<td>LAND USE PLANS:</td>
<td></td>
</tr>
<tr>
<td>REUSE PLAN LAND USES</td>
<td>Exhibit Z-1</td>
</tr>
<tr>
<td>DDA LAND USE PLAN</td>
<td>Exhibit Z-2</td>
</tr>
<tr>
<td>ECONOMIC DEVELOPMENT CONVEYANCE APPLICATION</td>
<td>Exhibit AA</td>
</tr>
<tr>
<td>RESERVED</td>
<td>Exhibit BB</td>
</tr>
<tr>
<td>RESERVED</td>
<td>Exhibit CC</td>
</tr>
<tr>
<td>IRR CALCULATION METHODOLOGY</td>
<td>Exhibit DD</td>
</tr>
<tr>
<td>RESERVED</td>
<td>Exhibit EE</td>
</tr>
<tr>
<td>GUIDELINES FOR RESIDENTIAL AUCTION LOT SELECTION</td>
<td>Exhibit FF</td>
</tr>
<tr>
<td>PRE-APPROVED ARBITERS LIST</td>
<td>Exhibit GG</td>
</tr>
<tr>
<td>PROMISSORY NOTE FOR INITIAL CONSIDERATION</td>
<td>Exhibit HH</td>
</tr>
<tr>
<td>FORM OF ASSIGNMENT OF RENTS</td>
<td>Exhibit II</td>
</tr>
<tr>
<td>FORM OF SUBORDINATE PLEDGE AGREEMENT</td>
<td>Exhibit JJ</td>
</tr>
<tr>
<td>EXAMPLE OF PRE-DEVELOPMENT COSTS CALCULATION</td>
<td>Exhibit KK</td>
</tr>
<tr>
<td>LIST OF MASTER LEASES</td>
<td>Exhibit LL</td>
</tr>
<tr>
<td>UTILITIES EASEMENT AREAS:</td>
<td></td>
</tr>
<tr>
<td>EASEMENT AREA FOR WATER LINES</td>
<td>Exhibit MM-1</td>
</tr>
<tr>
<td>EASEMENT AREA FOR ELECTRIC LINES</td>
<td>Exhibit MM-2</td>
</tr>
<tr>
<td>EASEMENT AREA FOR NATURAL GAS LINES</td>
<td>Exhibit MM-3</td>
</tr>
<tr>
<td>EASEMENT AREA FOR WASTEWATER LINES</td>
<td>Exhibit MM-4</td>
</tr>
</tbody>
</table>
ECONOMIC DEVELOPMENT CONVEYANCE
MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE TREASURE ISLAND DEVELOPMENT AUTHORITY
FOR THE CONVEYANCE OF
THE NAVAL STATION TREASURE ISLAND

This Agreement (hereinafter referred to as the “Agreement”) is entered into this 2nd day of July, 2014 (the “Effective Date”), between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (the “Navy”), and the TREASURE ISLAND DEVELOPMENT AUTHORITY (the “Authority”), recognized as the Local Redevelopment Authority by the Office of Economic Adjustment on behalf of the Secretary of Defense with regard to the disposition and conveyance of portions of Naval Station Treasure Island, San Francisco, California. The Navy and the Authority are each sometimes referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

WHEREAS:

1. In 1993, the Defense Base Closure and Realignment Commission recommended the closure of Naval Station Treasure Island ("Treasure Island") located within the City and County of San Francisco, California (the "City") and consisting of approximately one thousand one hundred and eighty-seven (1,187) acres of real property, together with the buildings, improvements and related and other personal property located thereon and all rights, easements and appurtenances thereto.

2. (a) Pursuant to the power and authority provided by § 2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the implementing regulations of the Department of Defense (32 C.F.R. Part 174), the Secretary of the Navy is authorized to convey surplus property at a closing installation to the Local Redevelopment Authority for economic development purposes. By its “EDC Application and Business Plan for Naval Station Treasure Island” dated June 19, 2000, as amended on July 1, 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its application dated June 30, 2010, as further amended on August 16, 2011, the Authority applied for an Economic Development Conveyance ("EDC") of approximately one thousand one hundred and eight (1,108) acres of Treasure Island ("EDC Application Property") together with existing Navy owned off-site utilities serving Treasure Island (the “EDC Application”), to be used and redeveloped in accordance with the “Draft Reuse Plan for Naval Station Treasure Island” ("Reuse Plan") as endorsed by the City Planning Commission and the City’s Board of Supervisors in July 1996 and approved by the United States Department of Housing and Urban Development on November 26, 1996.
(b) Following refinements to the Reuse Plan land uses, attached hereto as Exhibit Z-1, and the execution of the Development Plan and Term Sheet for the Redevelopment of Former Naval Station Treasure Island endorsed by the Authority’s Board of Directors in October 2006 and the City’s Board of Supervisors in December 2006, as updated by the Update to Development Plan and Term Sheet for the Redevelopment of Former Naval Station Treasure Island endorsed by the Authority’s Board of Directors on April 7, 2010 and the City’s Board of Supervisors on May 18, 2010, the Authority entered into a Disposition and Development Agreement (“DDA”) with the Developer on June 28, 2011. Attached to the DDA is an updated land use plan which provides for a new development program consisting of up to 8,000 residential units, approximately 500 hotel rooms, and commercial space of approximately 511,000 square feet, among other things (“DDA Land Use Plan”), which is attached hereto as Exhibit Z-2 and is reflected in the Authority’s final EDC Application.

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

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

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

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

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

6. In accordance with the provisions of the California Environmental Quality Act (“CEQA”), as amended, the Authority and the City, as co-lead agencies, have prepared a project-level Environmental Impact Report (“EIR”) for the DDA Land Use Plan and related documents and actions. The Authority certified the EIR as complete and the Planning Commission certified the EIR as complete on April 21, 2011 (collectively, the “Certification”). The Certification resolutions are attached hereto as Exhibit P.
7. In accordance with the provisions of the National Historic Preservation Act, the
Navy determined that the disposal of Treasure Island, as hereinafter defined, will have an effect
upon those portions of Treasure Island that are listed in the National Register of Historic Places.
A Memorandum of Agreement between the Department of the Navy and the California State
Historic Preservation Officer ("SHPO") was executed on the 28th day of May, 2003 (attached
hereto as Exhibit Q-1), and, together with the Memorandum of Agreement between the
California Department of Transportation and SHPO, dated the 19th day of May, 2011 (attached
hereto as Exhibit Q-2), takes into account the effect of the undertaking on historic properties in
accordance with the National Historic Preservation Act and implementing regulations.

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

AGREEMENTS

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

ARTICLE 1
DEFINITIONS

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

ARTICLE 2
ECONOMIC DEVELOPMENT CONVEYANCE

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

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

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

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

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

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

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

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

3.1.3 The Navy Personal Property consisting of the Navy’s right, title, and interest in all personal property located on or used in connection with the ownership, use, or operation of the specific portion of the Navy Real Property to be transferred to the Authority at each Closing, substantially in the form of and pursuant to the terms and conditions of the Bill of Sale as more particularly described in Exhibit H-1, attached hereto, except for items identified in Article 13 relating to the Navy Office. The Navy shall retain responsibility for all excluded personal property under the cognizance of the Navy Office.
3.2 **Sequence of Conveyances.** The Navy shall convey the Navy Real Property by Quitclaim Deed to the Authority, and the Authority shall accept, in Multiple Conveyances in accordance with the Conveyance Schedule attached hereto as Exhibit R, such portion of the Navy Real Property for which the Closing Conditions set forth in Section 3.7 have been satisfied or waived, subject to the following requirements:

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

3.2.2 RESERVED

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

3.3 **Conveyance Process.**

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

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

3.3.3 RESERVED
3.4 FOST Conveyances.

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

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

3.5 Title to Property.

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

3.5.2 Condition of Title.

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

3.5.2.2 From the Effective Date of this Agreement through the Initial Closing and any subsequent Closings, the Navy shall not permit, agree to
sell, encumber or grant any interest in the Navy Real Property or any part thereof in
any form or manner whatsoever, or otherwise perform or permit any act that will
diminish or otherwise affect the Authority’s interest under this Agreement or to the
Navy Real Property, or which will prevent the Navy’s full performance of its
obligations hereunder, without the written consent of the Authority, except
environmental restrictions or land use covenants consistent with Section 3.4 as may
be designated in any CERCLA Record of Decision, an approved Corrective Action
Plan or a FOST.

3.6 Non-Assignable and Unperfected Easements, Contracts and Permits. Attached
hereto as Exhibit 1-5 is a list of the easements, leases, licenses, encroachment permits, contracts,
permits and other agreements that are necessary for the operation, maintenance or improvement
of the Navy Real Property and are either not assignable (the “Non-Assignable Easements,
Contracts and Permits”) or not validly held by the Navy (the “Unperfected Easements,
Contracts and Permits”). The Navy shall cooperate with the Authority or its authorized agent
and shall permit examination and inspection of any documents relating to the Non-Assignable
Easements, Contracts and Permits and Unperfected Easements, Contracts and Permits as it may
have available. Navy agrees to assist the Authority, as appropriate, to obtain the consents or
replacement agreements necessary to transfer the Navy’s rights under the Non-Assignable
Easements, Contracts and Permits and to assist the Authority as appropriate to obtain the
easements, leases, licenses or encroachment permits necessary for perfecting and assigning the
Unperfected Easements, Contracts and Permits.

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

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

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

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

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

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

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

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

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

3.7.1.8 All third party consents for the assignment or the replacement of any Non-Assignable Easements, Contracts and Permits related to the provision of electricity to Treasure Island and all easements, leases, licenses and/or encroachment permits necessary to perfect and assign the Unperfected Easements, Contracts and Permits related to the provision of electricity to Treasure Island have been obtained. The Non-Assignible and Unperfected Easements, Contracts and Permits related to the provision of electricity to Treasure Island are shown in Exhibit I-7.
3.7.1.9 At the Initial Closing: (i) the physical condition of
the FOST Parcel shall be substantially the same as on the Effective Date of this
Agreement, excepting reasonable wear and tear, activities under the Caretaker
Agreement, master leases, and Navy's remedial activities, (ii) there shall be no
litigation or administrative agency or other governmental proceeding pending, that
materially and adversely affects the proposed redevelopment of the FOST Parcel, (iii)
the environmental condition (including without limitation the presence, nature, extent
and concentration of Hazardous Substances thereon) of any portions of the FOST
Parcel covered by a FOST issued by the Navy shall not be materially worse than the
known environmental condition on the Effective Date of this Agreement, (iv) if any
portion of the FOST Parcel was identified by the Navy and the State of California as
impacted by radiological contamination, the Navy shall have obtained written
assurance from the State of California that the environmental condition of such sites
complies with all applicable laws and will not be subject to regulation after transfer
under the California Radiation Control Law (i.e., such site shall have a license
exemption or release for unrestricted use with respect to radiological issues) or such
portion shall be removed from the FOST Parcel and included in the Remainder
Parcel, (v) no Regulatory Authority shall have required additional screening,
investigation, remediation or restrictions related to radiological contamination (other
than employee health and safety plan screening to be conducted by a contractor prior
to or during construction) beyond those set forth in the FOST issued for any portions
of the FOST Parcel; and (vi) to the extent that a Record of Decision or FOST exists
for a particular portion of the FOST Parcel on the Effective Date of this Agreement,
such Record of Decision or FOST shall not have been modified or changed (or
required to be modified or changed) unless mutually agreed upon (including changing
through an Explanation of Significant Differences, except for the final Explanation of
Significant Differences for IR Site 31 dated May 2011), and no additional conditions
or restrictions not identified in the existing Record of Decision or FOST shall have
been added after the Effective Date of this Agreement and prior to the Initial Closing.

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

3.7.1.11 All Regulatory Authority approvals have been
obtained for the FOST Parcel relating to the investigation and environmental response
for underground and above-ground petroleum storage tanks, and any releases of
petroleum, petroleum derivatives, petroleum fractions, or any chemicals, compounds
or products that result from their degradation in accordance with Article 18.
3.7.2 With respect to any subsequent Closing for a portion of the Remainder Parcel:

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

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

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

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

3.7.2.5 At the applicable Closing: (i) the physical condition of such portion of the Remainder Parcel shall be substantially the same on the applicable Closing date as on the Effective Date of this Agreement, reasonable wear and tear, activities under the Caretaker Agreement, master leases and Navy’s remedial activities excepted, (ii) there shall be no litigation or administrative agency or other governmental proceeding pending, that materially and adversely affects the proposed redevelopment of such portion of the Remainder Parcel, (iii) no Regulatory Authority shall have required the need for additional screening, investigation, remediation or restrictions beyond those set forth in the FOST issued for such portion of the Remainder Parcel, (iv) if any portion of the Remainder Parcel was identified by the Navy and the State of California as impacted by radiological contamination, the Navy shall have obtained written assurance from the State of California that the environmental condition of such sites complies with all applicable laws and will not be subject to regulation after transfer under the California Radiation Control Law (i.e., such site shall have a license exemption or release for unrestricted use with respect to radiological issues), and (v) no Regulatory Authority shall have required additional screening, investigation, remediation or restrictions related to radiological contamination (other than employee health and safety plan screening to be conducted by a contractor prior to or during construction) beyond those set forth in the FOST issued for such portion of the Remainder Parcel.
3.7.2.6 The Navy has not permitted, agreed to sell, sold, encumbered, or granted any interest in such portion of the Remainder Parcel in violation of Section 3.5.2.2.

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

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

3.8 Failure to Satisfy Closing Conditions.

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

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

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

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

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

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

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

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

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

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

3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into
negotiations for a LIFOC for any portion of the Navy Real Property on terms mutually
acceptable to the Parties, subject to approval by (1) the Authority’s Board of Directors and, if
required, the City’s Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her
designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority
will enter into a LIFOC, easement or other instrument acceptable to the Authority that allows for
the construction of roads, utilities and other infrastructure on the properties.
3.13 Marina Property. The Marina Property depicted in Exhibit F will be conveyed to the Authority pursuant to this Agreement, but will not be conveyed by the Authority to the Developer or be subject to the terms and conditions of the DDA. Accordingly, the revenues received by the Authority from the Marina Property shall not be subject to Article 4 ("Consideration") and Article 5 ("Controls"), other than Section 5.13. Revenues received by the Authority from the Marina Property shall be used by the Authority to fund the Authority’s costs of administering the closure and reuse of Treasure Island and implementing the DDA Land Use Plan, and shall directly reduce the Authority Costs Payment. An annual accounting of Marina Property revenues shall be provided to the Navy in accordance with Section 4.3.6.2 hereof.

ARTICLE 4
CONSIDERATION

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

4.2 Initial Consideration.

4.2.1 Initial Closing. Commencing on the Initial Closing, the Authority shall pay the Initial Consideration in U.S. Dollars in ten equal annual installments of Five Million Five Hundred Thousand Dollars ($5,500,000) (each, an "Installment Payment") plus interest if and when due. The first payment of Five Million Five Hundred Thousand Dollars ($5,500,000) shall be paid at the Initial Closing. Each subsequent Installment Payment shall be made on the Anniversary Date of the Initial Closing and shall consist of (i) the amount of the Installment Payment then due, plus (ii) the Interest Rate multiplied by the amount of the Initial Consideration that had not yet been paid as of the beginning of the prior year (i.e., the Initial Consideration minus the total of Installment Payments that were actually paid through the prior year). The Parties also intend that so long as all of the Navy Real Property has been conveyed, all of the Initial Consideration and applicable interest will have become due and payable by the expiration of the Initial Consideration Term, subject to the credit against Initial Consideration pursuant to Section 4.2.10 hereof. Notwithstanding the foregoing, if at any time Navy conveys any Parcel to a third party to the extent permitted under Section 3.8.4 hereof, the total amount of the Initial Consideration shall be reduced by the amount of consideration received by the Navy from the sale or transfer of such Parcel up to the amount of the Initial Consideration, and any interest payable thereon shall be on the reduced amount of Initial Consideration. Authority shall also be entitled to a credit against any future Installment Payment (and if insufficient Installment Payments remain to fully use the credit, against future payments of Additional Consideration) equal to the
interest paid by Authority to Navy from the Initial Closing through the date of the third-party sale calculated on the amount of consideration received by the Navy from the sale or transfer of the applicable Parcel. If at the time of the third party sale, one or more Installment Payments remain due, the Installment Payments shall continue until the Navy has been paid an amount equal to the Initial Consideration less the amount of the third party sale. If the conveyance to a third party occurs after Authority has already paid the Navy Installment Payments in an amount that equals more than the Initial Consideration less amounts received by the Navy from the third party sale, then no further Installment Payments shall be due, and Authority shall be entitled to credit the amount of the Authority’s overpayment against future payments of Additional Consideration that may become due under Section 4.3 hereof. Without limiting the foregoing, if this Agreement terminates as to any Parcel in accordance with Section 3.8.4 hereof, then such termination shall also be treated as a Redesign Trigger Event under Section 4.2.8 hereof.

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

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

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

4.2.3 Other Performance Benchmarks. The provisions of this Section 4.2.3 apply only to Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel, the Building 233 Parcel, and the UC1 and UC2 utility corridors, as those parcels are shown on Exhibit B-7 attached hereto. The Navy shall comply with the following Performance Benchmark for each parcel, individually and separately. If (i) the Navy and the State of California determine that Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel, or the UC1 or UC2 utility corridors, as applicable, is impacted by radiological contamination prior to transfer of such parcel to the Authority, and (ii) such determination results in the Navy having to take additional actions to address radiological contamination, the Navy shall satisfy all Closing Conditions for the transfer of Parcel 21, Parcel 30, Parcel 30N, Parcel 30S, Parcel 31, Parcel 24A, the Building 3 Parcel, the Building 233 Parcel, or the UC1 or UC2 utility corridors, as applicable, to the Authority in accordance with the Conveyance Schedule and deliver all Navy Closing Documents in accordance with Section 8.2 (the “Parcel 21 Performance Benchmark”, the “Parcel 30 Performance Benchmark”, the “Parcel 30N Performance Benchmark”, the “Parcel 30S Performance Benchmark”, the “Parcel 31 Performance Benchmark”, the “Parcel 24A Performance Benchmark”, the “Building 3 Performance Benchmark”, the “Building 233 Performance Benchmark”, the “UC1 Utility Corridor Performance Benchmark”, the “UC2 Utility Corridor Performance Benchmark”, as applicable).
4.2.4 Tolling for Failure to Meet Site 12 Performance Benchmarks. If the Navy fails to meet a Site 12 Performance Benchmark within the time provided, including by reason of an Excusable Delay, then the Authority’s obligation to pay any future Installment Payment on the Anniversary Date of the Initial Closing will be tolled for the same number of days occurring between the applicable Site 12 Performance Benchmark date and the date on which the applicable Site 12 Performance Benchmark is satisfied. If such tolling occurs, the due date for all future Installment Payments shall become the Anniversary Date of the Initial Closing adjusted for the period of tolling. For example, if the Site 12 Performance Benchmark in Section 4.2.2 relating to the Site 12 ROD must be satisfied by October 31, 2016, the next subsequent Installment Payment was due on January 1, 2017, and such Performance Benchmark was satisfied on April 1, 2017 (a delay of 152 days), then the next Installment Payment would be due on June 2, 2017 (i.e. 152 days from the original Anniversary Date of January 1, 2017), and all future Installment Payments would be due on June 2 of subsequent years in the Initial Consideration Term unless further tolled.

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

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

4.2.7 Extension of Tolling Period. If the Parties determine that the reasons for the delay can be overcome through the good faith and diligent efforts of the Navy, and will likely result in the satisfaction of the applicable Performance Benchmark, then the Parties may by mutual agreement extend the applicable two (2) year tolling period to account for the delay. If the Parties do not reach agreement within sixty (60) days after the first meet and confer (subject to extension by mutual agreement of the Parties), then the procedures of Section 4.2.8 and 4.2.9 shall apply.
4.2.8 Redesign Trigger Events. If (i) the Navy fails to meet the applicable Performance Benchmark within the applicable two year period and the Parties do not mutually agree to extend such period pursuant to Section 4.2.7, or (ii) this Agreement terminates as to any Parcel in accordance with Section 3.8.4 hereof (for any reason other than failure to satisfy the Closing Conditions in Section 3.7.1.8 or Section 3.7.1.10 (other than by reason of Navy's breach of its covenants in Section 3.5.2.2), which Parcel or portion thereof is located within the development footprint (as that area is shown on the DDA Land Use Plan) (each of the foregoing events, a "Redesign Trigger Event"), the Authority shall have the right to re-entity, redesign and rebuild portions of the Project (the "Redesign Plan"). The scope of the Redesign Plan shall be to the extent reasonably necessary, as determined by the Authority, 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. The Redesign Plan shall address the rebuilding of already constructed Horizontal Improvements to the extent necessary to accommodate the redesign, and shall identify the incremental level of additional Horizontal Improvements, if any, required as a result of the redesign.

4.2.9 Work Program and Budget. No later than one hundred eighty (180) days after a Redesign Trigger Event (as such date may be extended in the reasonable discretion of the Navy), the Authority shall submit to the Navy a work program and budget (the "Work Program" and the "Redesign Budget") for the Redesign Plan. 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 Horizontal Infrastructure as necessary to accommodate the Redesign Plan. The Navy shall have ninety (90) days to review the Work Program and Redesign Budget and shall be deemed to have approved the Work Program and Redesign Budget unless it delivers a written objection notice within such ninety (90) day period including reasonably detailed grounds for any material objections thereto. The sole grounds for the Navy's objection rights shall be that the proposed Redesign Costs exceed the scope for such costs permitted under Section 4.2.8 hereof. Failure of the Navy to deliver a written objection notice within such ninety (90) day period shall be deemed approval of the Redesign Costs.

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

4.2.11 Security for Initial Consideration.

4.2.11.1 RESERVED

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

4.3 Additional Consideration.

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

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

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

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

4.3.5 RESERVED

4.3.6 Accounting.

4.3.6.1 Accounting. The Authority shall cause the Developer to maintain accurate books and records specific to the Project setting forth all components used for determining the Additional Consideration, including, without limitation, each component of Net Cash Flow, and to determine the amount of Redesign Costs and credits against Initial and Additional Consideration. The Authority shall ensure that each IRR Statement submitted by Developer as required by Sections 4.3.2 and 4.3.3 is accompanied by a complete accounting and computations setting forth the basis of each Additional Consideration to be paid, including the Gross Revenues and Development Costs for the relevant determination period, together with a narrative description of the methodology employed to calculate each Additional Consideration Payment to be due for the relevant period (the “Accounting”). The Accounting shall be in conformance with generally accepted accounting principles consistently applied ("GAAP") where applicable, or with respect to the IRR Statement, in conformance with appropriate industry standards. An annual Accounting shall be provided to the Navy in accordance with Section 5.9.1 hereof. After receipt of the initial Accounting, the Navy shall either approve the Accounting in writing or provide written notice providing reasonable detail of its objections to or queries of the Accounting within ninety (90) days of receipt thereof, provided that the Navy’s failure to respond within such ninety (90) day period shall be deemed consent. The Navy shall either approve each subsequent Accounting in writing or provide written notice providing reasonable detail of its objections to or queries of the Accounting within forty-five (45) days of receipt thereof, provided that the Navy’s failure to respond within such forty-five (45) day period shall be deemed consent. If the Navy objects to the Accounting, it may determine to exercise its audit rights pursuant to Section 4.3.8.
4.3.6.2 Marina Property Accounting. The Authority shall determine on a quarterly basis all gross revenues and related expenses associated with the Marina Property, and shall prepare a reasonably detailed statement showing all net revenues received by Authority from the Marina Property. The Authority shall provide a copy of such Marina Property statement to the Navy along with each Accounting in a timely manner.

4.3.7 Reconciliation.

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

4.3.7.2 Reconciliation of Redesign Costs. Within one hundred eighty (180) days after completion of all planning, entitlement, design and rebuilding work required under the Redesign Plan, as evidenced by City acceptance of all public improvements and final building inspection sign-off for all improvements as identified in the Work Program, Authority shall provide Navy with a statement that includes an accounting of all Redesign Costs actually incurred by Developer and Authority, and a statement of the amount of credit against Initial Consideration actually taken by Authority. The accounting shall be performed and certified by an independent Certified Public Accountant in accordance with GAAP. To the extent that the amount of the credits taken against Initial Consideration exceeds the actual Redesign Costs shown on the statement, Authority shall promptly cause the Navy to be paid the difference. If the amount of the credit against Initial Consideration is less than the actual Redesign Costs as shown on the Statement, then Authority shall be permitted to continue to credit Initial Consideration and Additional Consideration until the entire actual Plan Redesign Costs are recovered. The Navy is not responsible for Redesign Costs that exceed the Initial and Additional Consideration.
4.3.8 Audit Rights. The Navy shall be entitled from time to time to audit the Developer’s books, records, and accounts pertaining to the Net Cash Flow and all components thereof, the payment of Additional Consideration and the calculations, payments and credits relating to the Redesign Costs. Such audit shall be conducted during normal business hours upon ten (10) business days notice at the principal place of business of the Developer and other places where records are kept. The Navy shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Additional Consideration or an over-credit against Initial Consideration, the Authority shall immediately pay any such deficiency with interest at the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an Accounting has understated the Net Cash Flow for the applicable period by more than five percent (5%), the Authority or the Developer on behalf of the Authority, shall be required to pay, in addition to interest as aforesaid, all of the Navy’s costs and expenses connected with the audit or review of Developer’s accounts and records for the Project. All such payments shall be paid within thirty (30) days of receipt of written notice to the Authority of such underpayment and such audit costs shall not be allowed as a Development Cost.

ARTICLE 5
CONTROLS

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

5.2 Sale or Ground Lease of Commercial Lots.

5.2.1 Development by Developer of Critical Commercial Lots. Those Lots designated for commercial use or development in the DDA Land Use Plan (collectively, the “Commercial Lots”) will be divided into two groups. The first group (the “Critical Commercial Lots”), consists of Block M-1A and M-1B and Buildings 1, 2 and 3, as shown on the DDA Land Use Plan, which will be developed by Developer pursuant to the terms of the DDA. Developer may ground lease or purchase (as the case may be) up to one hundred percent (100%) of the Critical Commercial Lots in accordance with this Section 5.2.1. The second group (“Non-Critical Commercial Lots”) consists of Blocks C-2H, 2Y, and the Senior Officers Quarters Historic District identified on the DDA Land Use Plan, and any of the Critical Commercial Lots that Developer elects not to develop, to the extent permitted under the DDA. If Developer by itself or in joint ventures with other development partners 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 joint venture entity (the “Critical Commercial Lots Payment”) shall be derived from a pro-forma (including the financial model of any vertical development that requires a subsidy) prepared by Developer and approved by the Authority in connection with the approval of the Sub-Phase.
application as described in the DDA 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, the Critical Commercial Lots Payment may be $0.00. Developer will provide this information to an independent appraiser and shall request a letter report confirming the appropriateness of Developer’s assumptions and conclusions 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.

5.2.2 Transfer by Developer of Developed Critical Commercial Lots. Developer or the Developer joint venture entity developing the Critical Commercial Lots may, in its sole discretion, subsequently transfer (as that term is defined in the DDA) 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 the Developer joint venture entity arising from or associated with the transfer of the Developed Critical Commercial Lots shall be treated as Gross Revenues hereunder. Transfer of the Developed Critical Commercial Lots shall be by sale, or by sub-ground lease or assignment of ground lease, provided, however, with respect to the first transfer of a ground lease by Developer, the transferee shall be required to pay a transfer payment 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. A joint venture entity in which Developer holds an ownership interest may purchase the Developed Critical Commercial Lot and in such case, the transfer price shall be determined in accordance with the Appraisal Process described in Section 5.4 hereof. If Developer or a Developer joint venture entity elects to transfer the Developed Critical Commercial Lot to a 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 5.2.4 below.

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

5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the Developer at the approval of each applicable Sub-Phase application (as confirmed by an appraiser letter described in Section 5.2.1). The minimum bid price shall be set for the Auction for a Non-Developer Critical Commercial Lot no sooner than three months prior to the applicable Auction. 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 S-2). 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 Non-Developer Critical Commercial Lots shall be provided
to the Navy at least 10 days prior to the applicable Auction. If no qualified bids are received for
the Non-Critical Commercial Lots, Developer and/or its affiliates will have the option to purchase
such Commercial Lot(s) based upon an appraisal in accordance with Section 5.4 hereof. If
Developer does not exercise the option to purchase unsold Non-Critical Commercial Lot(s), the
Authority and Developer shall mutually agree upon a new minimum bid price to be used in a new
Auction, which may take the form of adjustment to the pro forma minimum bid price or an
appraisal. In such case, the Authority shall cause Developer to re-bid the Non-Critical
Commercial Lot at such time deemed appropriate by the Authority and Developer pursuant to the
terms of the DDA. If no minimum bids from qualified bidders 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 deemed appropriate in accordance with
the terms of the DDA.

5.3 Sale of Market Rate Lots. Lots identified on the DDA Land Use Plan as
appropriate for the development of residential units that are sold or leased at predominantly
market rates (the “Market Rate Units”) shall be referred to in this Agreement as the “Market
Rate Lots.” Developer may 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 5.4. 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 set forth in Section 5.4) 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 5.5. 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 residual product type developed by parties other than Developer.

5.3.1 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 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 each Sub-Phase within each Major Phase, the Developer will provide to the Authority and Navy a list of equity investors for that Sub-Phase. During the implementation of any Sub-Phase, Developer will provide to the Authority and 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, the Authority shall cause Developer to provide to 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 the Developer and has no equity investment in the Developer in such Sub-Phase, finding that acquisition and development of the Market Rate Lot by the 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 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 5.3.1 shall be referred to the arbitration process for other disputes set forth in Section 27.3.3 hereof.

5.4 Appraisal Process. The process described in this Section 5.4 (the “Appraisal Process”) shall apply to the Developer Lots, the JV Lots and those Developed Critical Commercial Lots and Non-Critical Commercial Lots for which an appraisal is required under Sections 4.3.5.1, 5.2.2 or 5.2.4. The Authority and Developer shall confer and select an appraiser from the Qualified Appraiser Pool for each such Developed Critical Commercial Lot, Developer Lot, Non-Critical Commercial 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.

5.4.1 Qualified Appraiser Pool. Appraisals of any Developed Critical Commercial Lots required to be appraised by Section 5.2.2, the Developer Lots, Non-Critical Commercial Lots required to be appraised under Section 5.2.4 and JV Lots shall be conducted by a qualified appraiser, which for purposes of this Agreement and the 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 24 months, unless a conflict waiver is obtained from the Navy. The Parties have agreed upon a list of pre-qualified appraisers, which list is attached hereto as Exhibit Y (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 set forth in Section 27.3.3.2.

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

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appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the extent subject to
apraisal by Section 5.2.2) utilizing either the Residential Lots Appraisal Instructions attached
hereto as Exhibit X-1 or the Commercial Lots Appraisal Instructions attached hereto as Exhibit
X-3, as applicable, 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 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, in accordance with Section 5.6 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 set forth in
Section 27.3.2.

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

5.5 Auction Process for Residential Auction Lots. The Authority and Developer in
connection with the approval of each Major Phase application, as described below in Section 5.6,
shall jointly determine the pool of qualified bidders for each Auction of an Auction Lot based on
the Auction Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit
S-1), as agreed upon by the Parties. In the event no qualified third party bids are received at or
above the minimum bid price (as described in Section 5.6.3) for the Residential Auction Lots,
Developer and/or its affiliates will have the option to purchase such Auction Lot(s) 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 exercise the option to purchase unsold Auction Lot(s), the
Authority and Developer shall mutually agree upon a new minimum bid price to be used in a
new Auction (the “Re-Setting of the Minimum Bid Price”). The Re-Setting of the Minimum
Bid Price may take the form of adjustment to the pro forma minimum bid price or an appraisal.
All costs associated with the Auction shall be treated as Development Costs.

5.5.1 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.

5.5.2 Residential Auction Lots as Benchmarks. The 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 Agreement and the 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).

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

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

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

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

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

5.6.4 Prior to approval of each Major Phase (and each Sub-Phase if updated by Developer at such time), the Excess Land Appreciation Structure for that Phase for each Product Type in such Phase. For purposes of this Agreement and the DDA the "Excess Land 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 pad sale (if any) for horizontal development land sellers.
5.7 Navy Objection Rights to Major Phase Decisions.

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

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

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

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

5.9.1 Following the Initial Major Phase Approval, the Authority shall cause the Developer to provide to the Navy, no later than four (4) months following the end of each
Developer Fiscal Year, an annual Accounting for the preceding Developer Fiscal Year consistent with the requirements of Section 4.3.6.1, including reports of Gross Revenues and Development Costs, including Net Cash Flow, specified by Major Phases and including a cumulative project level summary of IRR, executed by the Developer’s Chief Financial Officer, certified by the Developer and reviewed by an independent accounting firm. As set forth in Section 1.6(a)(i) of the Financing Plan attached to the DDA, if the Developer obtains a Major Phase Approval less than six (6) months before the end of the Developer Fiscal Year, the reporting may commence for that Major Phase following the close of the following Developer Fiscal Year.

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

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

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

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

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

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

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

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

5.13.1.1 Land acquisition;
5.13.1.2 Road construction;
5.13.1.3 Transportation management facilities;
5.13.1.4 Storm and sanitary sewer construction;
5.13.1.5 Police and fire protection facilities and other public facilities;
5.13.1.6 Utility construction;
5.13.1.7 Building rehabilitation;
5.13.1.8 Historic property preservation;
5.13.1.9 Pollution prevention equipment or facilities;
5.13.1.10 Demolition;
5.13.1.11 Disposal of hazardous materials generated by demolition;
5.13.1.12 Landscaping, grading, and other site or public improvements; and
5.13.1.13 Planning for or the marketing of the redevelopment and reuse of the Navy Real Property.

Other activities on the Navy Real Property that are related to those listed above (including, for example, new construction related to job creation and economic redevelopment, construction of affordable housing, environmental remediation of the Navy Real Property, environmental insurance, any other capital improvements required to support the economic redevelopment of the Navy Real Property, management and leasing of the Navy Real Property needed to market its redevelopment and reuse and implementation, oversight and regulation of redevelopment of the Navy Real Property via any contracts with public or private entities) would also be considered an appropriate, allowable use of such proceeds.
5.13.2 Records. Consistent with standard accounting practices for tax purposes, the Authority shall maintain adequate records and books of account for income and expenses related to the redevelopment of the Navy Real Property detailing transactions described in Section 5.13 and Section 5.13.1. The Authority shall provide the Navy with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.

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

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

ARTICLE 6
DEVELOPMENT AND DISPOSITION AGREEMENT

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

ARTICLE 7
EASEMENTS, CONTRACTS, PERMITS AND OTHER SIMILAR INSTRUMENTS

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

7.2 The Navy agrees to assist the Authority, as deemed appropriate by mutual agreement of the Parties, to enable the assignment and amendments required for any assignable contracts, licenses, permits, or other agreements that were in existence on the Effective Date of this Agreement and that are identified by either of the Parties after Closing as necessary for the Authority to develop the Navy Real Property.
7.3 Access and Utility Easements or Other Similar Instruments. At each Closing, the Navy shall grant to the Authority or reserve to itself easements, licenses, rights of way, or other similar instruments, as applicable, and at locations mutually and reasonably agreeable to the Parties and adjusted from time to time.

7.3.1 Access Easements.

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

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

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

7.3.1.3.1 Each Party shall have the right, but not the obligation, to access, repair and maintain such roads, at its own expense, and to the extent that such access, repair or maintenance does not interfere with the development or the environmental remediation of any of its own property.
7.3.1.3.2 Use of existing roadways by the Parties to the Authority Access Easements or Navy Access Easements, or their successors or assigns, shall be at the sole cost and expense of said Parties, their successors and assigns, without any representation or warranty on the part of the Parties regarding the condition or state of repair of said roadways or any obligation to make, or liability for, any alterations, improvements, repairs or additions thereto.

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

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

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

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

ARTICLE 8
CLOSING AND SETTLEMENT

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

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

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

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

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

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

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

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

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

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

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

8.2.10 Any LIFOC, easements, or other instruments that may be required under
Section 3.12.

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

8.2.12 The Land Use Covenant, as applicable.

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

8.2.14 Representation to the Authority, in substantially the form set forth in
Exhibit N-1, stating that as of the date of Closing, the Navy has the full capacity, right, power,
and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing
unless subsequently prohibited by law.
8.3 The Authority Deliveries. The Authority shall deliver to escrow at least five (5) days prior to the Initial Closing and, to the extent applicable, any other Closings, the first Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the following documents in a form previously reviewed and approved by the Navy, and duly executed and authorized (and acknowledged if necessary for recordation) (the "Authority Closing Documents"): 

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

8.3.2 Any LIFOC, easements, or other instruments that may be required under Section 3.12.

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

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

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

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

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

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

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

8.3.10 Representation to the Navy, in substantially the form set forth in Exhibit N-2, stating that as of the date of Closing, the Authority has the full capacity, right, power, and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing unless subsequently prohibited by law.
ARTICLE 9
UTILITY INFRASTRUCTURE AND UTILITIES AGREEMENT

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

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

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

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

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

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

9.4 Utilities During Development.

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

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

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

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

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

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

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

ARTICLE 10
TIME OF THE ESSENCE AND POSTPONEMENT

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

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

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

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

ARTICLE 11
ENVIRONMENTAL REPORTS

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

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

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

ARTICLE 12
DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS

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

ARTICLE 13
NAVY OFFICE

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

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

ARTICLE 14
NAVY REPRESENTATIONS

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

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

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

ARTICLE 15
AUTHORITY REPRESENTATIONS

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

ARTICLE 16
TITLE AND NAVY COVENANTS

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

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

ARTICLE 17
ENVIRONMENTAL PROVISIONS

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

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

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

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

17.5 Radiological Contamination. If additional screening, investigation or remediation related to radiological contamination (other than employee health and safety plan screening to be conducted by a contractor prior to or during construction) is required by applicable law or
regulation for any portion of the real property previously conveyed by the Navy to the Authority, the Navy will undertake such additional screening, investigation, and/or remediation pursuant to such applicable laws and regulations. If any portion of Navy owned property not yet conveyed to the Authority is identified as impacted by radiological contamination, and as a consequence the Navy fails to convey such portion of the Navy Real Property by the applicable date set forth in the Conveyance Schedule ("Delayed Parcel"), within ten (10) days of a written request from the Authority, the Navy shall deliver to the Authority information describing (i) the current status of the remediation of the Delayed Parcel, (ii) the estimated cost to complete the remediation of the Delayed Parcel, and (iii) the estimated date when the Delayed Parcel can be conveyed to the Authority in the condition required by this Agreement. Nothing in this Agreement transfers responsibility for the screening, investigation, management, or remediation of any potential radiological contamination caused by the Navy or its agents to the Authority, or any third party claims relating thereto, and the Navy retains such responsibility in accordance with applicable laws and regulations. If requested by the Authority, the Parties shall meet and explore the potential for utilizing an agreement pursuant to 10 U.S.C. 2701(d) under which the Navy shall have the option, but not the obligation, of allowing the amount of the Initial or Additional Consideration then remaining payable to the Navy to fund the performance of environmental remediation on the Delayed Parcel in accordance with the scope and cost agreed to by the Parties in the agreement in lieu of direct payment of such consideration to the Navy.

ARTICLE 18
PETROLEUM CORRECTIVE ACTION

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

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

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

ARTICLE 19
COVENANT AGAINST CONTINGENT FEES

19.1 The Authority warrants that no person or agency has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by the Authority for the purpose of securing the successful
purchase of the Navy Property by the Authority. "Bona fide established commercial agencies" has been construed to include licensed real estate brokers engaged in the business generally. For breach or violation of the warranty, Navy has the right to annul this Agreement without liability or in its discretion to require the Authority to pay, in addition to the consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 20
NOTICES

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

If to the Authority: Treasure Island Development Authority
One Avenue of the Palms, Suite 241
Treasure Island
San Francisco, CA 94130
Attn: Treasure Island Project Director
Telephone: (415) 274-0662
Facsimile: (415) 274-0299
Email: bob.beck@sfgov.org

With a copy to: Office of the City Attorney
City and County of San Francisco
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Attn: Real Estate Team Leader
Telephone: (415) 554-4735
Facsimile: (415) 554-4755
Email: charles.sullivan@sfgov.org

With a copy to: George R. Schlossberg, Esq.
Kutak Rock LLP
1101 Connecticut Avenue, N.W.
Suite 1000
Washington, DC 20036
Telephone: (202) 828-2418
Facsimile: (202) 828-2488
Email: george.schlossberg@kutakrock.com
20.2 Either Party may direct in writing that any notices be sent to additional parties. The provision of notice to additional parties shall not make such additional parties third party beneficiaries of this Agreement.

ARTICLE 21
PRIOR LIABILITIES

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

ARTICLE 22
AUTHORITY'S AVAILABILITY OF FUNDS

22.1 Except for the Authority’s recoupment obligations as set forth in Section 5.13.3 and the Authority’s obligation to provide security for the payment of the Initial Consideration as set forth in Section 4.2.11 of this Agreement, there shall be no obligation for the payment or expenditure of money by the Authority under this Agreement unless there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation for the expenditure.
22.2 The Navy understands and agrees that this Agreement does not create a debt of the City and County of San Francisco, and the City’s General Fund shall not have liability for the Authority’s obligations under this Agreement.

**ARTICLE 23**

**FINALITY OF CONVEYANCE**

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

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

**ARTICLE 24**

**LIABILITY FOR ENVIRONMENTAL CONTAMINATION**

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

**ARTICLE 25**

**SHORT FORM NOTICE**

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

ARTICLE 26
FURTHER ASSURANCES

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

ARTICLE 27
DISPUTE RESOLUTION PROCEDURES

27.1 Resolution of Certain Disputes. Any other provision of this Agreement notwithstanding, (i) disputes identified in Section 27.3.2 shall be resolved by non-binding arbitration in accordance with the expedited dispute resolution procedure set forth in Section 27.3.2, and (ii) 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 27.3.3 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.

27.2 Good Faith Meet and Confer Requirement.

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

27.2.2 With respect to any other dispute arising hereunder, 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 27.3.3, or barring such agreement, either Party may proceed unilaterally as permitted by this Agreement or by law.
27.3 Dispute Resolution Procedures.

27.3.1 Arbiters. The non-binding arbitrator ("Arbiter") will be selected by mutual agreement of the parties to be determined no later than thirty (30) days prior to the Initial Closing from a list of at least six (6) and up to ten (10) pre-approved Arbiters from the list attached hereto as Exhibit GG (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 “Arbiters’ 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 Arbiters 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. If the other Party objects, the Parties shall confer pursuant to Section 27.2.2 and thereafter such disputes (if still unresolved after conferring) shall be referred to arbitration pursuant to Section 27.3.2. 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.

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

27.3.2.1 The Party(ies) disputing any matter subject to this expedited dispute resolution procedure shall, within five (5) business days after submittal of the dispute to non-binding 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 three (3) 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 ten (10) business
days after the initiation of the non-binding 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 five (5) 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 two (2) business days after submission of such additional
briefs, and no later than seventeen (17) business days after the initiation of the non-
binding arbitration. 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.

27.3.3 Non-Binding Arbitration Process for Other Disputes.

27.3.3.1 Election to Participate in Non-Binding Arbitration.
If the dispute is arising under this Agreement and is not otherwise subject to Section
27.3.2, and the Parties so agree in accordance with Section 27.2.2, the Parties shall
submit the dispute to non-binding arbitration by notifying the Arbiter (selected as
described in Section 27.3.1) of the dispute within ten (10) business days after
expiration of the good faith meet and confer provisions of Section 27.2. 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.

27.3.3.2 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.

27.3.3.3 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,
Authority, or Developer on behalf of Authority, shall contract with, if necessary, and
pay the costs of the consultant, subject to the provisions regarding fees and costs set
forth in Section 27.3.5 below. The consultant’s cost shall not exceed $10,000 without
the prior written consent of the Parties to the dispute. All consultant costs paid by
Authority that are not credited against Initial or Additional Consideration in
accordance with Section 27.3.5 below shall be included as Development Costs in
calculating the Additional Consideration.
27.3.3.4 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.

27.3.3.5 Additional Procedural Requirements. The procedural rules of the non-binding arbitration under Section 27.3.3 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.

27.3.3.6 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.

27.3.3.7 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.

27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

27.3.4.1 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 27.3.2. 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.

27.3.4.2 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.

27.3.4.3 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.
27.3.4.4 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).

27.3.4.5 Governing Law. The Arbiter shall apply Federal laws and the laws of the State of California, provided that in the event of a conflict between Federal law and the laws of the State of California, the Federal law shall govern.

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

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

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

ARTICLE 28
SURVIVAL AND BENEFIT

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

ARTICLE 29
INTERPRETATION

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

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

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

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

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

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

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

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

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

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

ARTICLE 31
AVAILABILITY OF FUNDS

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

ARTICLE 32
MODIFICATION; WAIVERS

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

ARTICLE 33
REMEDIES FOR NONPERFORMANCE

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

ARTICLE 34
FAILURE TO INSIST ON COMPLIANCE

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

ARTICLE 35
RISK OF LOSS

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

ARTICLE 36
COUNTERPARTS

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

[SIGNATURE PAGE FOLLOWS]
IN WITNESS WHEREOF, the Parties, intending to be legally bound hereby, have caused their duly appointed representatives to execute this Agreement as of the Effective Date set forth above.

WITNESS/ATTEST:

By: 
Name: Elizabeth Lassen
Title: Realty Specialist

THE UNITED STATES OF AMERICA

By: Esther P. Ewell
Real Estate Contracting Officer

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

By: Robert P. Beck
Treasure Island Director

Approved as to form:
DENNIS J. HERRERA,
City Attorney

By: Charles Sullivan
Deputy City Attorney

Authorized by Authority
Resolution No. 14-18-05/14
Adopted May 14, 2014

Authorized by Board of Supervisors
Resolution No. 212-14
Adopted June 24, 2014