

FORM OF PROMISSORY NOTE
(Initial Consideration)

\$55,000,000.00

_____, 20__

FOR VALUE RECEIVED, the undersigned, the TREASURE ISLAND DEVELOPMENT AUTHORITY (“*Maker*”), promises to pay to the order of the UNITED STATES OF AMERICA, acting by and through the Department of the Navy (“*Payee*”), the principal sum of FIFTY-FIVE MILLION AND 00/100 DOLLARS (\$55,000,000.00), or so much thereof as may from time to time be owing hereunder by Maker to or for the account of Payee in lawful money of the United States of America, which shall at the time of payment be legal tender in payment of all debts and dues, public and private.

This Promissory Note (“*Note*”) is given in furtherance and in consideration of payment of the Initial Consideration, as defined in and provided pursuant to that certain Economic Development Conveyance Memorandum of Agreement between Maker and Payee, dated as of _____, 201__ (the “*EDC MOA*”). All initially capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the EDC MOA.

1. Payment of Principal and Interest.

(a) Subject to the provisions contained in clause (b) below, Maker shall pay the principal balance of this Note and accrued interest thereon as follows:

(i) Commencing on the Initial Closing Date, Maker shall pay to Payee Five Million Five Hundred Thousand and 00/100ths Dollars (\$5,500,000.00) (the “*Installment Payment*”) of the principal balance of this Note; and

(ii) On each Anniversary Date of the Initial Closing Date until the Maturity Date (as defined below), Maker shall pay an amount equal to the Installment Payment as a principal payment, together with all interest that has accrued hereunder as of such date.

As used herein, “*Initial Closing Date*” means the date when the Initial Closing occurs under the EDC MOA.

(b) Payments by Maker of each Installment Payment on any due date shall be subject to adjustment as follows:

(i) Subject to Section 4.2.1 of the EDC MOA, if at any time or from time to time, Payee conveys any Parcel to a third party pursuant to Section 3.8.4 of the EDC MOA, then the outstanding principal balance of this Note shall be reduced by an amount equal to the amount of consideration received by Payee from the sale or transfer of such Parcel (the “*Parcel Sale Consideration Amount*”) up to the remaining outstanding principal balance of this Note. After such reduction, any interest payable hereunder shall be on the outstanding principal balance of this Note less the Parcel Sale Consideration Amount.

(ii) In accordance with Section 4.2.1 of the EDC MOA, if at any time or from time to time, Payee conveys any Parcel to a third party pursuant to Section 3.8.4 of the EDC MOA, then Payee shall receive a credit equal to the interest paid by Authority to Navy from the Initial Closing through the date of the third-party sale calculated on the Parcel Sale Consideration Amount (the “*Parcel Sale Interest Credit*”).

The Parcel Sale Interest Credit shall be applied as a credit to the next Installment Payments becoming due under this Note until the credit for the Parcel Sale Interest Credit has been applied in full. If insufficient Installment Payments remain to fully use the credit for the Parcel Sale Interest Credit, then such balance shall be carried forward and applied against any Additional Consideration payable by Maker to Payee under the EDC MOA.

(iii) Pursuant to Sections 4.2.4 and 4.2.5 of the EDC MOA (and subject to other applicable provisions of the EDC MOA related to tolling, including Sections 4.2.6 and 4.2.7 of the EDC MOA), if Payee fails to meet a Site 12 Performance Benchmark or Parcels 21, 24, 30, 31, 33 and Building 233 Performance Benchmarks within the time provided in the EDC MOA, including by reason of an Excusable Delay, which Performance Benchmarks shall apply individually and separately to each such parcel, then Maker’s obligation to pay any future Installment Payment and accrued interest when provided in clause (a)(ii) above 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. If such tolling occurs, then the due date for all future Installment Payments and accrued interest under clause (a)(ii) above and the Maturity Date shall be adjusted for the period of tolling. For example, if the Site 12 Performance Benchmark in Section 4.2.2 of the EDC MOA relating to the Site 12 ROD must be satisfied by August 1, 2013, the next subsequent Installment Payment was due on January 1, 2014, and such Performance Benchmark was satisfied on April 1, 2014 (a delay of 243 days), then the next Installment Payment would be due on September 1, 2014 (i.e. 243 days from the original Anniversary Date of January 1, 2014), and all future Installment Payments would be due on September 1 of subsequent years in the Initial Consideration Term unless further tolled.

(iv) Pursuant to Section 4.2.10 of the EDC MOA (and subject to determination in accordance with Section 4.3.7.2 of the EDC MOA and the audit provisions set forth in Section 4.3.8 of the EDC MOA), the principal balance of this Note shall be reduced by an amount up to the total amount of either (A) the Redesign Costs set forth in the Redesign Budget, or (B) the Redesign Costs actually incurred by Developer and Maker if such amount exceeds the Redesign Costs set forth in the Redesign Budget (the “*Redesign Costs Credit*”). Any Redesign Costs Credit amount shall be applied to reduce the next Installment Payment becoming due under this Note, and interest shall not thereafter accrue on any such Redesign Costs Credit amount.

(v) Pursuant to Section 27.3.5 of the EDC MOA, the principal balance of this Note shall be reduced by an amount up to fifty percent (50%) of the full amount of an Arbiter's fees and costs, including such Arbiter's consultant costs (an “*Arbiter's Costs Credit*”). Any Arbiter’s Costs Credit amount shall be applied to reduce the next Installment Payment becoming due under this Note, and interest shall not thereafter accrue on any such Arbiter’s Costs Credit amount.

(c) Interest shall accrue on the outstanding principal balance of this Note at a per annum rate equal to 4.13% (the “**Interest Rate**”) [INSERT “**INTEREST RATE**” AS DETERMINED IN ACCORDANCE WITH EDC MOA] beginning on the Initial Closing Date and continuing thereafter until the entire balance of this Note is paid in full, on the basis of a 360-day year and the number of days elapsed.

(d) Each payment hereunder shall be payable to the U.S. Treasury and delivered to BRAC Program Management Office West, 1455 Frazee Road, Suite 900, San Diego, California 92108, or such other address as Payee may designate from time to time.

2. Maturity. All unpaid principal, interest thereon, and all other unpaid amounts owing under this Note shall be due and payable on the date that is ten (10) calendar years after the Initial Closing Date (the “**Maturity Date**”), as such Maturity Date may be adjusted in accordance with Section 1(b)(iii) above.

3. Default and Acceleration. Failure to make any required payment under this Note within thirty (30) calendar days after the date on which such amount is due shall constitute an “**Event of Default**” under this Note. If an Event of Default occurs, at the option of Payee, except at maturity of this Note when acceleration of amounts due under this Note shall be automatic, (a) the whole of the principal sum of this Note, (b) accrued interest including any Default Interest and Late Charges, (c) all other sums, as provided in this Note, and (d) all sums advanced and costs and expenses incurred by Payee in connection with this Note or any part thereof, or the acquisition or perfection of the security therefor, whether made or incurred at the request of Maker or Payee (all the sums referred to in clauses (a) through (d) above shall collectively be referred to as the “**Debt**”) shall without notice become immediately due and payable.

4. Security. This Note is secured by (i) that certain Assignment of Rents of even date herewith, executed by Maker in favor of Payee, granting to Payee a security interest in the rents and revenues generated from the real property described therein (the “**Assignment of Rents**”), and (ii) to the extent the rents and revenues assigned under the Assignment of Rents are not sufficient to cover the unpaid principal and interest due under this Note, a Subordinate Pledge of Net Available Tax Increment Revenues generated from the Navy Real Property in accordance with Section 4.2.11.2 of the EDC MOA.

5. Late Charges. Any failure to pay any Installment Payment and accrued interest within ten (10) days after the payment due date determined in accordance with Section 1 above shall be considered late (“**Late Payment**”). Any Late Payment will incur a late payment penalty equal to two and one-half percent (2 ½ %) of the payment due. 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. As used herein, “**Default Interest Rate**” means an interest rate of three hundred (300) basis points above the Interest Rate. MAKER ACKNOWLEDGES AND AGREES THAT (a) PAYEE’S ACTUAL DAMAGES RESULTING FROM ANY SUCH DELINQUENCY AND THAT RELATE TO LOST USE OF FUNDS OR COST OF INTERNAL ADMINISTRATION OF DELINQUENT PAYMENTS HEREUNDER WOULD BE EXTREMELY DIFFICULT TO ASCERTAIN, AND (b) UNDER THE CIRCUMSTANCES IN EXISTENCE AS OF THE DATE HEREOF, SUCH

LATE CHARGE CONSTITUTES A REASONABLE LIQUIDATION OF SUCH DAMAGES. Acceptance of any late payment shall not constitute a waiver of the late charge with respect to the overdue amount, and shall not prevent Payee from exercising any of the other rights and remedies available to Payee. This provision for imposition of a late charge is not intended to provide Maker with a grace period for making payments and shall not be construed as extending or rendering inessential the time for payment or performance set forth herein.

6. Waivers. Maker and all others who may become liable for the payment of all or any part of the Debt do hereby severally waive presentment and demand for payment, notice of dishonor, protest and notice of protest and non-payment and all other notices of any kind, except for notices expressly provided for in the EDC MOA. No release of any security for the Debt or extension of time for payment of this Note or any installment hereof, and no alteration, amendment or waiver of any provision of this Note made by agreement between Payee or any other person or party shall release, modify, amend, waive, extend, change, discharge, terminate or affect the liability of Maker, and any other person or entity who may become liable for the payment of all or any part of the Debt, under this Note or the EDC MOA.

7. Governing Law. This Note shall be governed by all applicable Federal, State and local laws, rules and regulations which may arise by reason of this Note.

8. Notices. All notices required or permitted hereunder shall be given as provided in the EDC MOA.

9. Incorporation by Reference. All of the terms, covenants and conditions contained in the EDC MOA are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of any inconsistency between the terms of the EDC MOA and this Note, the terms of the EDC MOA shall control.

10. Availability of Funds. Notwithstanding anything to the contrary contained in this Note, but subject to Payee's security described in Section 4 above, there shall be no obligation for the payment or expenditure of money by Maker unless there is a valid appropriation from which the expenditure may be made and that unencumbered funds are available from the appropriation to pay the expenditure.

11. Miscellaneous. This Note may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Maker or Payee, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought. Whenever used, the singular number shall include the plural, the plural number shall include the singular, and the words "Payee" and "Maker" shall include their respective successors, assigns, heirs, executors and administrators.

[SIGNATURE PAGE FOLLOWS]

Maker has duly executed this Note as of the day and year first above written.

MAKER:

TREASURE ISLAND DEVELOPMENT AUTHORITY

By: _____

Name: _____

Its: _____

APPROVED AS TO FORM:

DENNIS J. HERRERA,

City Attorney

By: _____

Name: _____

Deputy City Attorney