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CONFIDENTIAL DOCUMENT
REAL PROPERTY NEGOTIATION
(CA GOVERNMENT CODE SECTION 54956.8)

Attorney-Client Privilege

The validity of this Agreement is expressly and wholly contingent upon the execution of this Agreement by all parties. In the event that any party hereto refuses or otherwise fails to execute this Agreement, all parties hereto acknowledge and agree that this Agreement shall be a nullity, and the rights and obligations of the respective parties shall remain as they are without this

Agreement.

(To be Removed Upon Execution)

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

1 **ECONOMIC DEVELOPMENT CONVEYANCE**
2 **MEMORANDUM OF AGREEMENT**
3 **BETWEEN**
4 **THE UNITED STATES OF AMERICA**
5 **AND**
6 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**
7 **FOR THE CONVEYANCE OF**
8 **THE NAVAL STATION TREASURE ISLAND**

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1 **ECONOMIC DEVELOPMENT CONVEYANCE**
2 **MEMORANDUM OF AGREEMENT**
3 **BETWEEN**
4 **THE UNITED STATES OF AMERICA**
5 **AND**
6 **THE TREASURE ISLAND DEVELOPMENT AUTHORITY**
7 **FOR THE CONVEYANCE OF**
8 **THE NAVAL STATION TREASURE ISLAND**
9

10 This Agreement (hereinafter referred to as the “**Agreement**”) is entered into this ____ day
11 of _____ 2011 (the “**Effective Date**”), between the **UNITED STATES OF AMERICA**,
12 acting by and through the Department of the Navy (the “**Navy**”), and the **TREASURE ISLAND**
13 **DEVELOPMENT AUTHORITY** (the “**Authority**”), recognized as the Local Redevelopment
14 Authority by the Office of Economic Adjustment on behalf of the Secretary of Defense with
15 regard to the disposition and conveyance of portions of Naval Station Treasure Island, San
16 Francisco, California. The Navy and the Authority are each sometimes referred to herein
17 individually as a “**Party**” and collectively as the “**Parties.**”
18

19 **RECITALS**

20
21 **WHEREAS:**

22
23 1. In 1993, the Defense Base Closure and Realignment Commission recommended
24 the closure of Naval Station Treasure Island (“**Treasure Island**”) located within the City and
25 County of San Francisco, California (the “**City**”) and consisting of approximately [one thousand
26 and forty-one (1,041) / one thousand and seventy-five (1,075)][**to be confirmed by Navy**
27 **mapping dept.**] acres of real property, together with the buildings, improvements and related
28 and other personal property located thereon and all rights, easements and appurtenances thereto.
29

30 2. In accordance with the Defense Base Closure and Realignment Act of 1990, as
31 amended, the authority of the Administrator of General Services under the Federal Property and
32 Administrative Services Act of 1949, as amended, 40 U.S.C. § 484, with respect to the disposal
33 of surplus real property at installations closing thereunder, was delegated to the Secretary of
34 Defense and further delegated to the Secretary of the Navy.
35

36 3. (a) Pursuant to the power and authority provided by §2905(b)(4) of the
37 Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the
38 implementing regulations of the Department of Defense (32 C.F.R. Part 175), the Secretary of
39 the Navy is authorized to convey surplus property at a closing installation to the Local
40 Redevelopment Authority for economic development purposes. By its “EDC Application and
41 Business Plan for Naval Station Treasure Island” dated June 19, 2000, as amended on July 1,
42 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its
43 application dated _____, 2010, the Authority applied for an Economic Development
44 Conveyance (“**EDC**”) of approximately [one thousand and thirty-three (1,033) / nine hundred
45 and ninety-six (996)]) [**to be confirmed by Navy mapping dept.**] acres of Treasure Island
46 together with existing Navy owned off-site utilities serving Treasure Island (the “**EDC**”

1 **Application**”), to be used and redeveloped in accordance with the “Draft Reuse Plan for Naval
2 Station Treasure Island” (“**Reuse Plan**”) as endorsed by the City Planning Commission and the
3 City’s Board of Supervisors in July 1996 and approved by the United States Department of
4 Housing and Urban Development on November 26, 1996, as shown on the “**Illustrative Land**
5 **Use Plan**” in the Authority’s EDC Application.
6

7 (b) The Illustrative Land Use Plan reflects refinements to the Reuse Plan
8 described in the Development Plan and Term Sheet for the Redevelopment of Former Naval
9 Station Treasure Island endorsed by the Authority’s Board of Directors in October 2006 and the
10 City’s Board of Supervisors in December 2006, as updated by the Update to Development Plan
11 and Term Sheet for the Redevelopment of Former Naval Station Treasure Island endorsed by the
12 Authority’s Board of Directors on April 7, 2010 and the City’s Board of Supervisors on May 18,
13 2010. The Illustrative Land Use Plan provides for a new development program consisting of up
14 to 8,000 residential units, approximately 500 hotel rooms, and commercial space of
15 approximately 511,000 square feet, among other things.
16

17 (c) The Navy has approved the Authority’s EDC Application on _____,
18 2010, attached hereto as Exhibit AA for approximately _____ acres of Treasure Island
19 and Yerba Buena Island.
20

21 (d) The consideration for conveyance of the Navy Property, as set forth
22 herein, has been structured to achieve an amount at least equal to the fair market value of the
23 Navy Property.
24

25 4. In accordance with the provisions of the Community Environmental Response
26 Facilitation Act, the Navy prepared Environmental Baseline Surveys (“**EBSs**”) for the Navy Real
27 Property, copies of which have been provided to the Authority. Subsequently, the Navy
28 prepared a Supplemental Environmental Baseline Survey (“**SEBS**”) for the Navy Real Property
29 dated _____, a copy of which has been provided to the Authority. In accordance with *DOD*
30 *Policy on the Environmental Review Process to Reach a Finding of Suitability to Transfer*
31 *(“FOST”)* for Property Where Release or Disposal Has Occurred, the Navy prepared FOSTs
32 dated February 15, 2006, March 22, 2006, and _____, 20__, attached hereto as Exhibit
33 J, and the “Environmental Summary Outline for SEBS Appendix, Naval Station Treasure Island”
34 dated _____, attached hereto as Exhibit L.
35

36 5. For purposes of this Agreement, the Parties shall treat the Navy Real Property as
37 two (2) separate parcels (that may be further subdivided into sub-parcels). Said parcels are
38 identified as the “**FOST Parcel**”, as described on Exhibit B-2, and the “**Remainder Parcel**” as
39 described on Exhibit B-3 (collectively, the “**Parcels**”, and each a “**Parcel**”, as shown on the map
40 of parcel designations attached hereto as Exhibit B-1).
41

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

1
2 7. In accordance with the provisions of the California Environmental Quality Act
3 (“CEQA”), as amended, the Authority and the City, as co-lead agencies, have prepared a
4 project-level Environmental Impact Report (“EIR”) for the Illustrative Land Use Plan and
5 related documents and actions. The Authority certified the EIR as complete and the Planning
6 Commission certified the EIR as complete on _____, 20__ (collectively, the
7 “Certification”). The Certification resolutions are attached hereto as Exhibit P.
8

9 8. In accordance with the provisions of the National Historic Preservation Act, the
10 Navy determined that the disposal of the Navy Real Property, as hereinafter defined, will have an
11 effect upon those portions of the Navy Real Property that are listed and eligible for listing in the
12 National Register of Historic Places. A Memorandum of Agreement between the Department of
13 the Navy and the California State Historic Preservation Officer (“SHPO”) was executed on the
14 28th day of May, 2003, and sets forth in full all obligations of the signatories under the National
15 Historic Preservation Act and implementing regulations, and is attached hereto as Exhibit Q.
16

17 9. In accordance with the provisions of that certain Base Caretaker Cooperative
18 Agreement first dated March 12, 1997 and as further modified (“Caretaker Agreement”) and
19 those certain Master Leases by and between the Authority and the Navy described on Exhibit
20 LL, the physical condition of the Navy Real Property has been maintained by the Authority. The
21 physical condition of the Navy Real Property is subject to reasonable wear and may have been
22 altered by the Authority under the terms of the Caretaker Agreement and the Master Leases,
23 and/or the Navy where remedial activities have been required.
24

25 10. The Authority shall cause the DDA to incorporate all applicable terms of this
26 Agreement substantially in the same form as they appear herein.
27

28 AGREEMENTS

29
30 **NOW, THEREFORE**, in consideration of the foregoing and the respective
31 representations, agreements, covenants and conditions herein contained, and other good and
32 valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Navy
33 and the Authority agree as follows:
34

35 **ARTICLE 1** 36 **DEFINITIONS**

37
38 1.1 The definitions are attached hereto as Exhibit A and are hereby incorporated by
39 reference as if fully set forth herein.
40

1 **ARTICLE 2**
2 **ECONOMIC DEVELOPMENT CONVEYANCE**
3

4 2.1 Pursuant to §2905(b)(4) of the Defense Base Closure and Realignment Act of
5 1990 (10 U.S.C. § 2687 note), as amended, and 32 C.F.R. 174, the Navy agrees to transfer and
6 convey all of the Navy's right, title, and interest in the Navy Property to the Authority under a
7 fair market value economic development conveyance, and the Authority agrees to acquire such
8 Navy Property in consideration of the covenants, conditions and restrictions contained herein and
9 other good and valuable consideration, subject to the terms, conditions and general provisions set
10 forth in this Agreement.
11

12 **ARTICLE 3**
13 **CONVEYANCE SCHEDULE AND TRANSFERS**
14

15 3.1 Property to be Conveyed. The Navy shall convey to the Authority, and the
16 Authority shall accept from the Navy, subject to the terms, covenants and conditions hereinafter
17 set forth, all of the Navy's right, title, and interest in the following property:
18

19 3.1.1 The real property consisting of approximately [996] acres of uplands,
20 tidelands and submerged lands located within the bounds of the former Naval Station Treasure
21 Island, as more particularly described and delineated in Exhibit B-2 and Exhibit B-3, attached
22 hereto, which shall include, but not be limited to, any right, title or interest the Navy may have
23 in the following (collectively referred to herein as the "Navy Real Property"):
24

25 3.1.1.1 All buildings, facilities, roadways and other infrastructure
26 including the storm drainage systems and the utility system infrastructure, and any other
27 improvements thereon (including all replacements and additions thereto between the date of this
28 Agreement and the date of conveyance of all the Navy Real Property to the Authority).
29

30 3.1.1.2 The Easements, licenses, rights of way, or other similar
31 instruments as described in Article 7.
32

33 3.1.1.3 The hereditaments and tenements in and/or to the Navy Real
34 Property and reversions, remainders, issues, profits, privileges and other rights belonging or
35 related thereto.
36

37 3.1.1.4 All rights to minerals, gas, oil, water and similar rights.
38

39 3.1.2 The Utility Infrastructure consisting of all utilities and related support
40 infrastructure located on and off the Navy Real Property that serve the Navy Real Property
41 such as electrical, water, sewer, gas, storm drainage and telecommunications lines (including
42 all replacements and additions thereto between the date of this Agreement and the date of
43 conveyance of all the Navy Real Property to the Authority), as more particularly described on
44 Exhibit H-2 attached hereto.
45

1 3.1.3 The Navy Personal Property consisting of the Navy’s right, title, and
2 interest in all personal property, except for (i) items identified in Article 13 relating to the Navy
3 Caretaker Office, and (ii) property under the cognizance of the Navy Historical Center that is
4 identified on Exhibit E, attached hereto (collectively, the “**Excluded Personal Property**”),
5 located on or used in connection with the ownership, use, or operation of the specific portion of
6 the Navy Real Property to be transferred to the Authority at each Closing, substantially in the
7 form of and pursuant to the terms and conditions of the Bill of Sale as more particularly
8 described in Exhibit H-1, attached hereto. The Navy shall retain responsibility for all Excluded
9 Personal Property under the cognizance of the Navy Historical Center and/or the Navy
10 Caretaker Office. Unless the Navy and the Authority enter into a separate agreement regarding
11 the Excluded Personal Property under the cognizance of the Navy Historical Center, Navy
12 shall remove all such Excluded Personal Property from the Navy Real Property within 24
13 months after notice from the Authority requesting removal. The Authority shall have the right
14 to relocate the Excluded Personal Property related to the Navy Historical Center prior to its
15 removal so long as such artifacts are moved with appropriate care and with Navy approval.
16

17 3.2 Sequence of Conveyances. The Navy shall convey the Navy Real Property by
18 Quitclaim Deed to the Authority, and the Authority shall accept, in Multiple Conveyances in
19 accordance with the Conveyance Schedule attached hereto as Exhibit R, such portion of the
20 Navy Real Property for which the Closing Conditions set forth in Section 3.7 have been satisfied
21 or waived, subject to the following requirements:
22

23 3.2.1 The Navy Real Property shall be conveyed and accepted within sixty
24 (60) days after the Closing Conditions have been satisfied for the portion of the Navy Real
25 Property subject to the applicable conveyance.
26

27 3.2.2 The Parties agree to meet at such times as requested by a Party, but no
28 less than annually, to discuss the status of the Conveyance Schedule. Prior to each such
29 meeting, the Authority shall deliver to the Navy a general phasing schedule that describes the
30 anticipated schedule of development on the Navy Real Property for the next twenty-four (24)
31 months. During such meeting, the Parties may mutually agree, in each Party’s sole and
32 absolute discretion, to amend the Conveyance Schedule.
33

34 3.3 Conveyance Process.
35

36 3.3.1 FOST Parcel. On the Initial Closing, the Navy shall convey to the
37 Authority, and the Authority shall accept, the portion of the Navy Real Property that is more
38 particularly described and delineated as the FOST Parcel on Exhibit B-2, attached hereto, in
39 accordance with the process provided herein, so long as the Closing Conditions for the transfer
40 of the FOST Parcel have been satisfied.
41

42 3.3.2 Remainder Parcel. Upon satisfaction of the Closing Conditions for the
43 transfer of the Remainder Parcel or applicable portions thereof, the Navy shall convey to the
44 Authority, and the Authority shall accept, the portions of the Navy Real Property that are more
45 particularly described and delineated as the Remainder Parcel on Exhibit B-3, attached hereto,

1 or portions of such Remainder Parcel, in accordance with the process otherwise provided
2 herein.

3
4 3.4 FOST Conveyances.

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

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

23 3.5 Title to Property.

24
25 3.5.1 Conveyance by Quitclaim Deed. At the Initial Closing, the Navy shall
26 convey to the Authority all of its right, title and interest in and to the FOST Parcel by duly
27 executed and acknowledged Quitclaim Deed substantially in the form attached hereto as
28 Exhibit D-1. At each subsequent Closing, the Navy shall convey to the Authority all of its
29 right, title and interest in and to the applicable portion of the Remainder Parcel by duly
30 executed and acknowledged Quitclaim Deed substantially in the form attached hereto as
31 Exhibit D-2.

32
33 3.5.2 Condition of Title.

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

1 3.5.2.2 From the Effective Date of this Agreement through the Initial
2 Closing and any subsequent Closings, the Navy shall not permit, agree to sell, encumber or grant
3 any interest in the Navy Real Property or any part thereof in any form or manner whatsoever, or
4 otherwise perform or permit any act that will diminish or otherwise affect the Authority’s interest
5 under this Agreement or to the Navy Real Property, or which will prevent the Navy’s full
6 performance of its obligations hereunder, without the written consent of the Authority, except
7 environmental restrictions or land use covenants consistent with Section 3.4.2 as may be
8 designated in the CERCLA Record of Decision, an approved Corrective Action Plan or the
9 FOST.

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

22
23 3.7 Closing Conditions. The Authority shall be obligated to accept title to any portion
24 of the Navy Real Property tendered to the Authority within sixty (60) days after such portion of
25 the Navy Real Property is tendered if, at the time of the tender, all of the following conditions are
26 satisfied, or waived by the Authority in its sole discretion (together the “**Closing Conditions**”):

27
28 3.7.1 With respect to the Initial Closing for the FOST Parcel:

29
30 3.7.1.1 One or more FOST(s) have been executed covering the entirety
31 of the FOST Parcel depicted on Exhibit B-2, attached hereto and the substance of any
32 environmental restrictions or land use covenants whether contained in such FOST(s) or executed
33 or recorded separately affecting all or any portion of the FOST Parcel does not prohibit the
34 timely implementation of the Reuse Plan.

35
36 3.7.1.2 Building 233 located on the Building 233 Development Parcel
37 described on Exhibit B-6 has been demolished and (i) the CDPH and DTSC have approved a
38 Final Status Survey Work Plan for Building 233 sufficient to enable CDPH to issue a Free
39 Release Letter, and (ii) the CDPH and DTSC have approved the completed Final Status Survey
40 Report (“**FSSR**”) submitted by the Navy and written assurance has been received from the
41 appropriate Regulatory Authority or Authorities that no land use restrictions or covenants will be
42 imposed on the Building 233 Development Parcel that would prohibit timely development
43 consistent with the Illustrative Land Use Plan.

1 3.7.1.3 A Record of Decision has been issued for Site 21 described on
2 Exhibit B-1 and any land use restriction or covenants would allow for residential use on all
3 habitable floors of a building to be constructed on Site 21.
4

5 3.7.1.4 An Explanation of Significant Differences has been issued by
6 the Navy and approved by DTSC for Site 33. The remedial action for Site 33 and any resulting
7 land use restrictions or covenants would allow residential use on all habitable floors of a building
8 to be constructed on Site 33, and a Remedial Action Completion Report (“**RACR**”) has been
9 approved by DTSC for Site 33.
10

11 3.7.1.5 The Navy and the Authority are not in material default of any
12 of their material obligations hereunder related to the transfer of the FOST Parcel pursuant to this
13 Agreement, unless waived by the Party not in material default.
14

15 3.7.1.6 The form and content of the Quitclaim Deed transferring the
16 FOST Parcel is consistent with Section 3.5 and the applicable FOST.
17

18 3.7.1.7 The Navy has delivered into escrow the Navy Closing
19 Documents described in Section 8.2 below.
20

21 3.7.1.8 All third party consents for the assignment or the replacement
22 of any Non-Assignable Easements related to the provision of electricity to Treasure Island and
23 all easements, leases, licenses and/or encroachment permits necessary to perfect and assign the
24 Unperfected Easements related to the provision of electricity to Treasure Island have been
25 obtained. The Non-Assignable and Unperfected Easements related to the provision of electricity
26 to Treasure Island are shown in Exhibit I-7.
27

28 3.7.1.9 At the Initial Closing: (i) the physical condition of the FOST
29 Parcel shall be substantially the same as on the Effective Date of this Agreement, reasonable
30 wear and tear, activities under the Caretaker Agreement, master leases, and Navy’s remedial
31 activities excepted, (ii) there shall be no litigation or administrative agency or other
32 governmental proceeding pending, that materially and adversely affects the proposed
33 redevelopment of the FOST Parcel, (iii) the environmental condition (including without
34 limitation the presence, nature, extent and concentration of Hazardous Substances thereon) of
35 any portions of the FOST Parcel covered by a FOST issued by the Navy has not materially
36 worsened after the Effective Date of this Agreement, (iv) no Regulatory Authority has asserted
37 the need for additional screening, investigation, remediation or restrictions related to
38 radiological contamination (other than employee health and safety plan screening to be
39 conducted by a contractor prior to or during construction) beyond those set forth in the FOST
40 issued for any portions of the FOST Parcel; and (v) to the extent that a Record of Decision or
41 FOST exists for a particular portion of the FOST Parcel on the Effective Date of this Agreement,
42 such Record of Decision or FOST has not been modified or changed unless mutually agreed
43 upon (including changing through an Explanation of Significant Differences, except for Site 31),
44 and no additional conditions or restrictions not identified in the existing Record of Decision or
45 FOST have been added after the Effective Date of this Agreement and prior to the Initial
46 Closing.

1
2 3.7.1.10 The FOST Parcel is not subject to any liens, exceptions and
3 encumbrances other than the following: (i) the lien of real property taxes not yet due and
4 payable, (ii) the exceptions to title described in the preliminary title report attached hereto as
5 Exhibit T, (iii) exceptions to title approved by the Authority in accordance with Section 3.5.2 of
6 this Agreement, (iv) environmental restrictions or land use covenants consistent with Section 3.4
7 that the Navy may record against the Navy Real Property in accordance with Section 3.5.2, and
8 (v) non-material liens, exceptions or encumbrances that do not impair the value of the Navy Real
9 Property or the ability to develop the Project.

10
11 3.7.1.11 All Regulatory Authority approvals have been obtained for the
12 FOST Parcel relating to the investigation and environmental response for underground and
13 above-ground petroleum storage tanks, and any releases of petroleum, petroleum derivatives,
14 petroleum fractions, or any chemicals, compounds or products that result from their degradation
15 in accordance with Article 18.

16
17 3.7.2 With respect to any subsequent Closing for a portion of the Remainder
18 Parcel:

19
20 3.7.2.1 A FOST has been executed for such portion of the Remainder
21 Parcel and the substance of any environmental restrictions or land use covenants whether
22 contained in such FOST(s) or recorded separately against the applicable portion of the
23 Remainder Parcel does not prohibit the timely implementation of the Reuse Plan.

24
25 3.7.2.2 The Navy and the Authority are not in material default of any
26 of their material obligations hereunder related to the transfer of such portion of the Remainder
27 Parcel pursuant to this Agreement, unless waived by the Party not in material default.

28
29 3.7.2.3 The form and content of the Quitclaim Deed transferring such
30 portion of the Remainder Parcel is consistent with Section 3.5 and the applicable FOST.

31
32 3.7.2.4 The Navy has delivered into escrow the Navy Documents
33 described in Section 8.2 below.

34
35 3.7.2.5 The physical condition of such portion of the Remainder Parcel
36 shall be substantially the same on the applicable Closing date as on the Effective Date of this
37 Agreement, reasonable wear and tear, activities under the Caretaker Agreement, master leases
38 and Navy's remedial activities excepted, and, as of the applicable Closing date, there shall be no
39 litigation or administrative agency or other governmental proceeding pending, that materially
40 and adversely affects the proposed redevelopment of such portion of the Remainder Parcel, and
41 no Regulatory Authority has asserted the need for additional screening, investigation,
42 remediation or restrictions beyond those set forth in the FOST issued for such portion of the
43 Remainder Parcel.

44
45 3.7.2.6 The Navy has not permitted, agreed to sell, sold, encumbered,
46 or granted any interest in such portion of the Remainder Parcel in violation of Section 3.5.2.2.

1
2 3.7.2.7 All Regulatory Authority approvals have been obtained for the
3 Remainder Parcel relating to the investigation and environmental response for underground and
4 above-ground petroleum storage tanks, and any releases of petroleum, petroleum derivatives,
5 petroleum fractions, or any chemicals, compounds or products that result from their degradation
6 in accordance with Article 18.
7

8 3.8 Failure to Satisfy Closing Conditions.
9

10 3.8.1 If any Closing Conditions described in Section 3.7.1 relating to the
11 Initial Closing are not satisfied prior to or on the date that the Navy is required to convey the
12 FOST Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended
13 by the Parties, then the Authority shall have the right in its sole and absolute discretion to (i)
14 waive in writing the Closing Condition in question as to all or any portion of the FOST Parcel
15 and proceed with Closing, or (ii) extend the Closing for the FOST Parcel for a reasonable period
16 of time up to four (4) years as specified by the Authority to allow all of the Closing Conditions
17 applicable to the FOST Parcel to be satisfied and, if applicable, to complete early transfer or
18 Lease in Furtherance of Conveyance (“**LIFOC**”) negotiations with the Navy in accordance with
19 Section 3.11 or Section 3.12 below.
20

21 3.8.2 If any Closing Conditions described in Section 3.7.2 relating to a
22 subsequent Closing for any portion of the Remainder Parcel are not satisfied prior to or on the
23 date that the Navy is required to convey such portion of the Remainder Parcel to the Authority in
24 accordance with the Conveyance Schedule, as may be amended by the Parties, then the Authority
25 shall have the right in its sole and absolute discretion to (i) waive in writing the Closing
26 Condition in question and proceed with Closing, or (ii) extend the Closing for such portion of the
27 Remainder Parcel for a reasonable period of time up to four (4) years (except as otherwise
28 provided for Site 12 in Section 4.2.2) as specified by the Authority to allow all of the Closing
29 Conditions applicable to such portion of the Remainder Parcel to be satisfied and, if applicable,
30 to complete early transfer or LIFOC negotiations with the Navy in accordance with Section 3.11
31 or Section 3.12 below.
32

33 3.8.3 If a dispute arises between the Parties regarding whether a Closing
34 Condition has been satisfied, either Party may invoke the dispute resolution procedure described
35 in Article 27.
36

37 3.8.4 If any Closing Conditions described in Section 3.7.1 and/or 3.7.2 are not
38 satisfied within four (4) years after the date the Navy was required to convey the applicable
39 Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the
40 Parties (except as otherwise provided for Site 12 in Section 4.2.2), and such failure to satisfy a
41 Closing Condition is not caused by a Navy breach of an obligation under this Agreement, then
42 the Authority shall have sixty (60) days from receipt of a written notice from the Navy to elect to
43 waive in writing the Closing Condition in question and proceed with Closing. If after 60 days
44 the Authority has not chosen to waive in writing the Closing Condition then, this Agreement
45 shall terminate as to the affected Parcel(s). If this Agreement terminates as to the affected
46 Parcel(s), the Navy shall have the right to transfer or convey such Parcel(s) according to

1 applicable law and in accordance with Section 3.8.6 and 3.8.7, provided, however if this
2 Agreement terminates as to all of the Navy Real Property prior to the Initial Closing, then the
3 Navy shall have the right to transfer or convey such Parcel(s) according to applicable law and
4 without complying with Section 3.8.6 or Section 3.8.7.
5

6 3.8.5 If the Authority does not accept a Parcel for which the Closing
7 Conditions have been satisfied or waived within sixty (60) days after the Navy's tender of the
8 Parcel, subject to Excusable Delay, then the Authority shall be in default and the Navy shall have
9 the right, in its sole discretion, and as its sole and exclusive remedy, to transfer or convey the
10 Parcel in accordance with applicable law.
11

12 3.8.6 The Navy agrees that concurrent with the transfer or conveyance of the
13 FOST Parcel, or any portion thereof, to a third party in accordance with Section 3.8.4 the Navy
14 shall notify the third party of the restrictions under the Reuse Plan as such Reuse Plan may be
15 modified by the Authority to address the failure to satisfy the Closing Condition that gave rise to
16 the Navy transfer or conveyance of such FOST Parcel, or portion thereof, if any, and concurrent
17 with any transfer or conveyance of the Remainder Parcel, or a portion thereof, to a third party in
18 accordance with Section 3.8.4 the Navy shall notify the third party of the restrictions under the
19 Illustrative Land Use Plan as such version of the Illustrative Land Use Plan may be modified by
20 the Authority to address the failure to satisfy the Closing Condition that gave rise to the Navy
21 transfer or conveyance of such Remainder Parcel, or portion thereof, if any.
22

23 3.8.7 The Navy shall not transfer or convey all or any portion of the Navy
24 Real Property in accordance with Section 3.8.4 to a state or federal agency, or any other entity
25 that would be exempt from complying with land use restrictions, including restrictions arising
26 under the Reuse Plan, the Illustrative Land Use Plan, the Treasure Island/Yerba Buena Island
27 Redevelopment Plan, the City's General Plan or the City's Zoning Map (an "Exempt
28 Transferee"), without first granting the Authority the option (the "Authority Option") to lease
29 the portion of the Navy Real Property that the Navy proposes to transfer or convey to the
30 Exempt Transferee (the "Option Property"). At least sixty (60) days prior to initiating the
31 process for transfer or conveyance of all or any portion of the Option Property to an Exempt
32 Transferee, the Navy shall notify the Authority in writing (the "Option Notice") of (i) the
33 description of the Option Property subject to the Option Notice, and (ii) the proposed method
34 of transfer or conveyance, and (iii) if known, the identity of the proposed Exempt Transferee
35 and the Exempt Transferee's proposed use of the Option Property. The Authority shall have
36 forty-five (45) days after receipt of the Option Notice to exercise the Authority Option by
37 delivering a written exercise notice to the Navy. If the Authority exercises the Authority
38 Option, the Parties shall promptly execute a lease in substantially the form attached hereto as
39 Exhibit. The form of lease will be a LIFO or master lease similar to the existing master
40 leases and will include the following provisions: the Authority will not pay rent and the term
41 will expire on the earlier of 50 years after lease commencement or such time as the Navy
42 satisfies the applicable Closing Condition allowing for conveyance of the Option Property to
43 the Authority.
44

45 3.9 Quitclaim Deeds. The Navy shall convey all of its right, title, and interest in and
46 to the Navy Real Property to the Authority, and the Authority agrees to accept conveyance of the

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

15
16 3.10 Sub-parcels. Sub-parcelization of any Parcel may be considered and a sub-parcel
17 may be conveyed as mutually agreed to by the Parties.

18
19 3.11 Early Transfer Negotiations. At any time, the Parties may enter into early transfer
20 negotiations for the conveyance of any Parcel or agreed upon sub-parcel with a covenant deferral
21 pursuant to Section 120(h)(3)(c) of CERCLA and the terms of a mutually acceptable Early
22 Transfer Cooperative Agreement that has been approved by the Navy, the Authority’s Board of
23 Directors and, if required, the City’s Board of Supervisors and Mayor, each in their sole and
24 absolute discretion.

25
26 3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into
27 negotiations for a LIFOE for any portion of the Navy Real Property on terms mutually
28 acceptable to the Parties, subject to approval by (1) the Authority’s Board of Directors and, if
29 required, the City’s Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her
30 designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority
31 will enter into a LIFOE, easement or other instrument acceptable to the Authority that allows for
32 the construction of roads, utilities and other infrastructure on the properties described in Exhibit
33 B-7, attached hereto, and the Navy shall deliver into escrow an executed original of such LIFOE,
34 easement or other instrument.

35
36 3.13 Marina Property. The Marina Property depicted in Exhibit F will be
37 conveyed to the Authority pursuant to this Agreement, but will not be conveyed by the Authority
38 to the Developer or be subject to the terms and conditions of the DDA. Accordingly, the
39 revenues received by the Authority from the Marina Property shall not be subject to Article 4
40 (“Consideration”) and Article 5 (“Controls”), other than Section 5.13. Revenues received by the
41 Authority from the Marina Property shall be used by the Authority to fund the Authority’s costs
42 of administering the closure and reuse of Treasure Island and implementing the Reuse Plan, and
43 shall directly reduce the Authority Costs Payment. An annual accounting of Marina Property
44 revenues shall be provided to the Navy in accordance with Section 4.3.5.2 hereof.

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ARTICLE 4
CONSIDERATION

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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 4.2.2 below) (the “**Initial Consideration Term**”) and (ii) Additional Consideration based on Net Cash Flow generated from the Navy Property. 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 4.2.5 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

1 Parcel in accordance with Section 3.8.4 hereof, then such termination shall also be treated as a
2 Redesign Trigger Event under Section 4.2.3 hereof.

3
4 4.2.2 Performance Benchmarks/Tolling For Site 12. The provisions of this
5 Section 4.2.2 apply only to the developable area of Site 12 (the “**Site 12 Development**
6 **Parcel**”) as that site is shown on Exhibit B-5 attached hereto. The Navy shall comply with the
7 following performance benchmarks for the Site 12 Development Parcel (each, a “**Performance**
8 **Benchmark**”):

9
10 4.2.2.1 Site 12 Performance Benchmarks. The Navy shall comply
11 with the following Performance Benchmarks for the Site 12 Development Parcel on or before the
12 dates for those benchmarks set forth in the Conveyance Schedule (each, a “**Site 12 Performance**
13 **Benchmark**”):

14 4.2.2.1.1 The issuance of a Record of Decision for the Site
15 12 Development Parcel (the “**Site 12 ROD**”) that would not prohibit the timely development of
16 the Site 12 Development Parcel in accordance with the Illustrative Land Use Plan for multi-
17 family residential use at the densities contemplated by the Project (as shown on Exhibit Z).

18
19 4.2.2.1.2 The Navy’s satisfaction of all Closing
20 Conditions for transfer of the Site 12 Development Parcel to the Authority in accordance with
21 the Conveyance Schedule and delivery of all Navy Closing Documents in accordance with
22 Section 8.2.

23
24 4.2.2.2 Tolling for Failure to Meet Performance Benchmarks. If the
25 Navy fails to meet the Site 12 Performance Benchmarks within the time provided, including by
26 reason of an Excusable Delay, then the Authority’s obligation to pay any future Installment
27 Payment on the Anniversary Date of the Initial Closing will be tolled for the same number of
28 days occurring between the applicable Performance Benchmark date and the date on which the
29 applicable Performance Benchmark is satisfied. If such tolling occurs, the due date for all future
30 Installment Payments shall become the Anniversary Date of the Initial Closing adjusted for the
31 period of tolling. For example, if the Site 12 ROD Performance Benchmark must be satisfied by
32 August 1, 2013, the next subsequent Installment Payment was due on January 1, 2014, and the
33 Site 12 ROD Performance Benchmark was satisfied on April 1, 2014 (a delay of 243 days), then
34 the next Installment Payment would be due on September 1, 2014 (i.e. 243 days from the
35 original Anniversary Date of January 1, 2014), and all future Installment Payments would be due
36 on September 1 of subsequent years in the Initial Consideration Term unless further tolled.

37
38 4.2.2.3 Tolling for More than Two Years. If tolling under Section
39 4.2.2.2 continues for a period of more than two (2) years, the Parties shall meet and confer in
40 good faith to determine whether or not it is reasonably foreseeable that the Navy will be able to
41 meet the applicable Performance Benchmark within a reasonable period of time. If the Parties
42 determine that the reasons for the delay can be overcome through the good faith and diligent
43 efforts of the Navy and will likely result in the satisfaction of the applicable Performance
44 Benchmark, then the Parties may by mutual agreement adjust the Performance Benchmark date
45 to account for the delay. If the Parties do not reach agreement within sixty (60) days after the

1 first meet and confer (subject to extension by mutual agreement of the Parties), then the
2 procedures of Section 4.2.3 and 4.2.4 shall apply.
3

4 4.2.3 Redesign Trigger Events. If the Navy fails to (i) meet the Site 12
5 Performance Benchmarks within the applicable two year period and the Parties do not
6 mutually agree to extend such period, or (ii) if this Agreement terminates as to any Parcel in
7 accordance with Section 3.8.4 hereof (for any reason other than failure to satisfy the Closing
8 Conditions in Section 3.7.1.8 or Section 3.7.1.10 (other than by reason of Navy’s breach of its
9 covenants in Section 3.5.2.2), which Parcel or portion thereof is located within the
10 development footprint (as that area is shown on the Illustrative Land Use Plan) (each of the
11 foregoing events, a “**Redesign Trigger Event**”), the Authority shall have the right to re-entitle,
12 redesign and rebuild portions of the Project (the “**Redesign Plan**”). The scope of the Redesign
13 Plan shall be to the extent reasonably necessary, as determined by the Authority, to recapture
14 the lost value to the Project resulting from the Redesign Trigger Event. The primary goal of
15 any Redesign Plan shall be to recover an equivalent amount of development value attributable
16 to the applicable parcel based on the level of development permitted by the Project and
17 Developer’s financial projections, or if the parcel is an open space parcel, based upon the lost
18 value to the Project resulting from the redesign of the affected open space. The Redesign Plan
19 shall address the rebuilding of already constructed Horizontal Improvements to the extent
20 necessary to accommodate the redesign, and shall identify the incremental level of additional
21 Horizontal Improvements, if any, required as a result of the redesign.
22

23 4.2.4 Work Program and Budget. No later than one hundred eighty (180) days
24 after a Redesign Trigger Event (as such date may be extended in the reasonable discretion of
25 the Navy), the Authority shall submit to the Navy a work program and budget (the “**Work**
26 **Program**” and the “**Redesign Budget**”) for the Redesign Plan. The Work Program shall set
27 forth the anticipated work program and schedule necessary to prepare, entitle and implement
28 the Redesign Plan. The Redesign Budget shall estimate the anticipated costs necessary to
29 prepare, entitle and implement the Redesign Plan (the “**Redevelopment Plan Redesign**
30 **Costs**”). Redevelopment Plan Redesign Costs shall include, without limitation, all Soft Costs
31 related to the Redesign Plan, including without limitation, costs associated with any subsequent
32 environmental review that is required pursuant to CEQA, and Hard Costs related to the
33 rebuilding, replacing, relocating or incremental cost of additional Horizontal Infrastructure as
34 necessary to accommodate the Redesign Plan. The Navy shall have ninety (90) days to review
35 the Work Program and Redesign Budget and shall be deemed to have approved the Work
36 Program and Redesign Budget unless it delivers a written objection notice within such ninety
37 (90) day period including reasonably detailed grounds for any material objections thereto. The
38 sole grounds for the Navy’s objection rights shall be that the proposed Redevelopment Plan
39 Redesign Costs exceeds the scope for such costs permitted under Section 4.2.3 hereof. Failure
40 of the Navy to deliver a written objection notice within such ninety (90) day period shall be
41 deemed approval of the Redevelopment Plan Redesign Costs.
42

43 4.2.5 Credit for Redevelopment Plan Redesign Costs. Starting on the date that
44 is thirty (30) days after submittal of the Work Program and Redesign Budget (or in the event of
45 a Navy objection related to the Work Program and Redesign Budget under Section 4.2.4 that
46 results in approved Redevelopment Plan Redesign Costs, upon the resolution of such dispute)

1 (the “**Credit Commencement Date**”), the period of tolling under Section 4.2.2.2 shall be
2 discontinued, but Authority shall have the right to a credit against all subsequent payments of
3 Initial Consideration or Additional Consideration up to the total amount of either (i) the
4 Redevelopment Plan Redesign Costs set forth in the Redesign Budget, or (ii) the
5 Redevelopment Plan Redesign Costs actually incurred by Developer and Authority if such
6 amount exceeds the Redevelopment Plan Redesign Costs set forth in the Redesign Budget.
7 The Navy is not responsible for Redevelopment Plan Redesign Costs that exceed the Initial and
8 Additional Consideration. Any such credit shall also be subject to the accounting and
9 reconciliation procedures of Section 4.3.5 and 4.3.6.2.

10
11 4.2.6 Security for Initial Consideration. The Authority shall sign and deliver
12 to the Navy through escrow at the Initial Closing a Promissory Note in the principal amount of
13 the Initial Consideration. The Promissory Note shall bear interest and be payable in
14 installments as more particularly described in Section 4.2.1 above. The Promissory Note shall
15 be secured by (i) an Assignment of Rents encumbering the rents, issues and profits payable
16 under all interim subleases for the Navy Real Property including, but not limited to, that certain
17 Sublease, Development, Marketing and Property Management Agreement between the
18 Authority and the John Stewart Company dated March 17, 1999, as amended from time to
19 time, and any successor interim subleases or leases relating to the Navy Real Property whether
20 executed prior to or after a conveyance hereunder, and (ii) to the extent the rents, issues and
21 profits assigned under the Assignment of Rents are not sufficient to cover the unpaid principal
22 and interest due under the Promissory Note, a Subordinate Pledge of Net Available Tax
23 Increment Revenues generated from the Navy Real Property prior to or after a conveyance
24 hereunder. The Subordinate Pledge shall be subordinate to the pledge of Net Available Tax
25 Increment Revenues to the holders of any bonded indebtedness and to the Developer under the
26 DDA; provided, however, that the DDA shall provide that all such Net Available Tax
27 Increment Revenues to be paid directly to Developer in reimbursement for the expenditure of
28 Qualified Project Costs (as defined in the DDA) shall be withheld from Developer by the
29 Authority and held for the account of the Navy upon the occurrence of and for the duration of
30 any default of a payment of Initial Consideration hereunder. “Net Available Tax Increment
31 Revenues” means the tax increment revenues arising under the Treasure Island/Yerba Buena
32 Island Redevelopment Plan and received by the Authority, exclusive of (a) the tax increment
33 revenues required under California Community Redevelopment Law (“CRL”) to be set aside
34 for housing, (b) tax increment revenues required under CRL to be paid to other taxing
35 agencies, (c) tax increment revenues needed to pay the Authority Costs Payment, and (d) tax
36 increment revenues required to make a valid payment obligation imposed by law on the
37 Authority, such as a required payment into the State’s Education Revenue Augmentation Fund.
38 The forms of the Promissory Note, Assignment of Rents, and the Subordinate Pledge are
39 attached to this Agreement as Exhibit HH, Exhibit II, and Exhibit JJ. All rents, issues and
40 profits payable to Developer under any agreement subject to the Assignment of Rents shall be
41 immediately paid and payable directly to the Authority on account of the Navy, or directly to
42 the Navy, as provided by the terms of the Assignment of Rents, commencing on, and for the
43 duration of, any default in the payment of Initial Consideration hereunder.

44
45 4.3 Additional Consideration.
46

1 4.3.1 Amount of Additional Consideration. The Authority shall pay the Navy
2 additional consideration consisting of (1) 100% of Net Cash Flow generated by the Project in
3 excess of a Developer 18% IRR until the Navy has received Fifty Million Dollars
4 (\$50,000,000) (the “**First Tier Participation**”), as more fully described below; and (2) 35% of
5 Net Cash Flow generated by the Project in excess of a Developer 22.5% IRR (the “**Second**
6 **Tier Participation**”), as more fully described below. The First Tier Participation and Second
7 Tier Participation are collectively referred to herein as the “**Additional Consideration.**”
8 Payments of Additional Consideration may be made directly by the Developer on behalf of the
9 Authority to the Navy.

10
11 4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the
12 expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five
13 (45) days after the expiration of each subsequent Quarter during the Term hereof, the Authority
14 shall require the Developer to submit a reasonably detailed statement to the Authority and the
15 Navy (the “**IRR Statement**”) accompanied by an Accounting consistent with Section 4.3.5
16 hereof showing (i) the cumulative IRR achieved for each of the eight (8) immediately prior
17 Quarters for any IRR Statement provided during the Initial Consideration Term, and (ii) the
18 cumulative IRR achieved for each of the six (6) prior Quarters for any IRR Statement provided
19 after expiration of the Initial Consideration Term (the eight or six Quarter Period, as
20 applicable, the “**Reporting Period**”). The IRR Statement shall also calculate the average IRR
21 over the Reporting Period, calculated by adding the IRR of each Quarter in the Reporting
22 Period and dividing the total by the number of Quarters in the Reporting Period. If the IRR
23 Statement shows that Developer has achieved an average IRR of more than 18.00% over the
24 Reporting Period, then the Authority shall within forty-five (45) days after the expiration of the
25 eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the
26 expiration of each subsequent Quarter during the Term hereof, pay the Navy an amount that
27 would reduce the cumulative IRR to 18.00% as of the end of the Reporting Period (each, a
28 “**First Tier Payment**”) provided that the total First Tier Payments made to the Navy shall not
29 exceed Fifty Million Dollars (\$50,000,000). First Tier Payments shall be made until the total
30 of all First Tier Payments equals Fifty Million Dollars (\$50,000,000). All payments of First
31 Tier Participation shall be due and payable in accordance with Section 4.3.5 hereof.

32
33 4.3.3 Payment of Second Tier Participation. The Authority shall continue to
34 submit the IRR Statement and Accounting through the Termination Date. If an IRR Statement
35 shows that Developer has achieved an average IRR of more than 22.5% within any Reporting
36 Period occurring after considering all First Tier Payments, then the Authority shall within
37 forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the
38 Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during
39 the Term hereof, pay the Navy 35% of the total amount of Net Cash Flow that would reduce
40 the cumulative IRR to 22.5% as of the end of the Reporting Period (each, a “**Second Tier**
41 **Payment**”). Second Tier Payments shall be made until the Termination Date. All payments of
42 Second Tier Participation shall be due and payable in accordance with Section 4.3.5 hereof.

43
44 4.3.4 Late Payments and Default. Any failure to pay Initial Consideration and
45 associated interest or Additional Consideration within ten (10) days after the payment due date
46 shall be considered late (“**Late Payment**”). Any Late Payment will incur a late payment

1 penalty equal to two and one-half percent (2 ½ %) of the payment due. Failure to make any
2 required payment under this Agreement in full within thirty (30) calendar days shall constitute
3 a default under this Agreement. Any Late Payment constituting a default hereunder shall
4 accrue interest at the Default Interest Rate from the due date and the Default Interest Rate shall
5 remain in effect on the Late Payment amount until paid. Any late payment penalty and default
6 interest shall not be allowed as a Development Cost. Without limiting any other remedies that
7 the Navy may have at law or equity, if the Authority is in default of this Agreement, the Navy
8 may delay conveyances of additional Parcels without the tolling provisions of Section 4.2.2.2
9 until the Authority has cured the default.

10
11 4.3.5 Accounting.
12

13 4.3.5.1 Accounting. The Authority shall cause the Developer to
14 maintain accurate books and records specific to the Project setting forth all components used for
15 determining the Additional Consideration, including, without limitation, each component of Net
16 Cash Flow, and to determine the amount of Redevelopment Plan Redesign Costs and credits
17 against Initial and Additional Consideration. The Authority shall ensure that each IRR Statement
18 submitted by Developer as required by Sections 4.3.2 and 4.3.3 is accompanied by a complete
19 accounting and computations setting forth the basis of each Additional Consideration to be paid,
20 including the Gross Revenues and Development Costs for the relevant determination period,
21 together with a narrative description of the methodology employed to calculate each Additional
22 Consideration Payment to be due for the relevant period (the “**Accounting**”). The Accounting
23 shall be in conformance with generally accepted accounting principals consistently applied
24 (“**GAAP**”) where applicable, or with respect to the IRR Statement, in conformance with
25 appropriate industry standards. An annual accounting shall be provided to the Navy in
26 accordance with Section 5.9.1 hereof. The Navy shall either approve each Accounting in writing
27 or provide written notice providing reasonable detail of its objections to or queries of the
28 Accounting within forty-five (45) days of receipt thereof, provided that the Navy’s failure to
29 respond within such forty-five (45) day period shall be deemed consent. If the Navy objects to
30 the Accounting, it may determine to exercise its audit rights pursuant to Section 4.3.7.

31 4.3.5.2 Marina Property Accounting. The Authority shall determine
32 on a quarterly basis all gross revenues and related expenses associated with the Marina Property,
33 and shall prepare a reasonably detailed statement showing all net revenues received by Authority
34 from the Marina Property. Authority shall provide such statement to Developer in a timely
35 manner in order for Developer to credit against its payment of Authority Costs for the applicable
36 quarter the amount of net revenues received by Authority from the Marina Property. Authority
37 shall provide a copy of such Marina Property statement to the Navy along with each Accounting,
38 and each Annual Accounting provided, and the Accounting and Annual Accounting provided to
39 the Navy shall reflect the credit for the Authority Costs.

40
41 4.3.6 Reconciliation.
42

43 4.3.6.1 Reconciliation of Final IRR. The Authority shall, within one
44 hundred and eighty (180) days after the Termination Date, submit a Final IRR Statement and

1 Accounting to the Navy, showing the Developer's IRR for the entire term of the Project (the
2 "Final IRR") and all payments of Additional Consideration made to the Navy hereunder. The
3 Final IRR Statement and Accounting shall be performed and certified by an independent
4 Certified Public Accountant in accordance with appropriate industry standards. If the Final IRR
5 Statement and Accounting discloses that the Final IRR exceeded 18% but payments to the Navy
6 of First Tier Participation were less than \$50 million, the Authority shall pay to the Navy the
7 amount necessary to reduce the Final IRR to 18%, so long as the total of all First Tier
8 Participation payments do not exceed \$50 million. If the Final IRR Statement and Accounting
9 discloses that the Final IRR exceeded 22.5%, but payments to Navy of Second Tier Participation
10 hereunder totaled less than 35% of Net Cash Flow for the Project above a 22.5% Final IRR, then
11 Authority shall cause to be paid to Navy the amount of Net Cash Flow necessary to raise the total
12 of Second Tier Participation payments to equal 35% of all Net Cash Flow above a 22.5% Final
13 IRR.
14

15 4.3.6.2 Reconciliation of Redevelopment Plan Redesign Costs. Within
16 one hundred eighty (180) days after completion of all planning, entitlement, design and
17 rebuilding work required under the Redesign Plan, as evidenced by City acceptance of all public
18 improvements and final building inspection sign-off for all improvements as identified in the
19 Work Program, Authority shall provide Navy with a statement that includes an accounting of all
20 Redevelopment Plan Redesign Costs actually incurred by Developer and Authority, and a
21 statement of the amount of credit against Initial Consideration actually taken by Authority. The
22 accounting shall be performed and certified by an independent Certified Public Accountant in
23 accordance with GAAP. To the extent that the amount of the credits taken against Initial
24 Consideration exceeds the actual Redevelopment Plan Redesign Costs shown on the statement,
25 Authority shall promptly cause the Navy to be paid the difference. If the amount of the credit
26 against Initial Consideration is less than the actual Redevelopment Plan Redesign Costs as
27 shown on the Statement, then Authority shall be permitted to continue to credit Initial
28 Consideration and Additional Consideration until the entire actual Redevelopment Plan Redesign
29 Costs are recovered. The Navy is not responsible for Redevelopment Plan Redesign Costs that
30 exceed the Initial and Additional Consideration.
31

32 4.3.7 Audit Rights. The Navy shall be entitled from time to time to audit the
33 Developer's books, records, and accounts pertaining to the Net Cash Flow and all components
34 thereof, the payment of Additional Consideration and the calculations, payments and credits
35 relating to the Redevelopment Plan Redesign Costs. Such audit shall be conducted during
36 normal business hours upon ten (10) business days notice at the principal place of business of
37 the Developer and other places where records are kept. The Navy shall provide the Developer
38 with copies of any audit performed. If it shall be determined as a result of such audit that there
39 has been a deficiency in the payment of any Additional Consideration or an over-credit against
40 Initial Consideration, the Authority shall immediately pay any such deficiency with interest at
41 the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an
42 Accounting has understated the Net Cash Flow for the applicable period by more than five
43 percent (5%), the Authority or the Developer on behalf of the Authority, shall be required to
44 pay, in addition to interest as aforesaid, all of the Navy's costs and expenses connected with
45 the audit or review of Developer's accounts and records for the Project. All such payments

1 shall be paid within thirty (30) days of receipt of written notice to the Authority of such
2 underpayment and such audit costs shall not be allowed as a Development Cost.
3

4 **ARTICLE 5**
5 **CONTROLS**
6

7 5.1 Horizontal Development Process. The Parties acknowledge that the transaction
8 contemplated by the DDA anticipates that the Developer will (among other things) construct
9 certain infrastructure improvements and otherwise prepare the Navy Real Property to be divided
10 into Lots that will be offered for sale or ground lease for the development of the vertical
11 improvements. As described below, the sale price or ground lease value of Lots shall be
12 determined in accordance with this Article.
13

14 5.2 Sale or Ground Lease of Commercial Lots.
15

16 5.2.1 Development by Developer of Critical Commercial Lots. Those Lots
17 designated for commercial use or development in the Illustrative Land Use Plan (collectively,
18 the “**Commercial Lots**”) will be divided into two groups. The first group (the “**Critical**
19 **Commercial Lots**”), consists of Block M-1 and Buildings 1, 2 and 3 which will be developed
20 by Developer pursuant to the terms of the DDA. Developer may ground lease or purchase (as
21 the case may be) up to one hundred percent (100%) of the Critical Commercial Lots in
22 accordance with this Section 5.2.1. The second group (“**Non-Critical Commercial Lots**”)
23 consists of all other Commercial Lots including any of the Critical Commercial Lots that
24 Developer elects not to develop, to the extent permitted under the DDA. If Developer by itself
25 or in joint ventures with other development partners develops the Critical Commercial Lots,
26 the sales price or capitalized ground lease rent (as the case may be) for the Critical Commercial
27 Lots purchased by or ground leased to Developer or the Developer joint venture entity (the
28 “**Critical Commercial Lots Payment**”) shall be derived from a pro-forma (including the
29 financial model of any vertical development that requires a subsidy) prepared by Developer at
30 the commencement of each "Major Phase" described in the DDA (and updated periodically
31 during the Major Phase), showing reasonable detail of projected revenues, expenses, subsidies
32 and/or target returns associated with the Critical Commercial Lots, acknowledging that to the
33 extent that the Critical Commercial Lots require subsidy for development, the Critical
34 Commercial Lots Payment may be \$0.00. Developer will provide this information to an
35 independent appraiser and shall request a letter report confirming the appropriateness of
36 Developer’s assumptions and conclusions related to the Critical Commercial Lots. No potential
37 or actual investor or lender shall be prohibited by an exclusivity agreement between the
38 Developer and other investors or lenders from participating in any financing of any
39 Commercial Lot or any other commercial product type developed by parties other than
40 Developer.
41
42
43

1 5.2.2 Transfer by Developer of Developed Critical Commercial Lots.

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

20 5.2.3 Sale or Ground Lease of Non-Critical Commercial Lots. At such time as

21 deemed appropriate by the Authority and Developer pursuant to the terms of the DDA, the
22 Authority shall convey to Developer the Non-Critical Commercial Lots. Upon such
23 conveyance, Developer shall be required to offer by Auction the Non-Critical Commercial Lots
24 for sale or sub-ground lease or assignment of ground lease (as applicable).
25

26 5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical

27 Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the
28 Developer at the commencement of the applicable Major Phase and updated from time to time
29 (as confirmed by an appraiser letter described in Section 5.2.1). The minimum bid price shall
30 be set for the Auction for a Non-Developer Critical Commercial Lot immediately prior to the
31 applicable Auction. The pool of qualified bidders in the Auction of any Non-Critical
32 Commercial Lots or any Non-Developer Critical Commercial Lots shall be determined by the
33 Authority and Developer prior to the applicable Auction based on the Auction Bidder
34 Selection Guidelines applicable to Commercial Lots (attached hereto as Exhibit S-2). The pool
35 of qualified bidders in the Auction of any Non-Critical Commercial Lot or any Non-Developer
36 Critical Commercial Lot and the minimum bid price for the Auction of Non-Developer Critical
37 Commercial Lots shall be provided to the Navy at least 10 days prior to the applicable Auction.
38 If no qualified bids are received for the Non-Critical Commercial Lots, Developer and/or its
39 affiliates will have the option to purchase such Commercial Lot(s) based upon an appraisal in
40 accordance with Section 5.4 hereof. If Developer does not exercise the option to purchase
41 unsold Non-Critical Commercial Lot(s), the Authority and Developer shall mutually agree
42 upon a new minimum bid price to be used in a new Auction, which may take the form of
43 adjustment to the pro forma minimum bid price or an appraisal. In such case, the Authority
44 shall cause Developer to re-bid the Non-Critical Commercial Lot at such time deemed
45 appropriate by the Authority and Developer pursuant to the terms of the DDA. If no minimum
46 bids from qualified bidders are received for the Non-Developer Critical Commercial Lots that

1 are acceptable to Developer, Developer shall reserve the right to withdraw the Non-Developer
2 Critical Commercial Lot from sale and re-bid the Non-Developer Critical Commercial Lot at
3 such future time deemed appropriate in accordance with the terms of the DDA.
4

5 **5.3 Sale of Market Rate Lots.** Those Lots identified on the Illustrative Land Use Plan
6 as appropriate for the development of residential units that are sold or leased at predominantly
7 market rates (the “**Market Rate Units**”) shall be referred to in this Agreement as the “Market
8 Rate Lots.” Developer may purchase Market Rate Lots for up to sixty percent (60%) of the
9 Market Rate Units (the “**Developer Lots**”), at a purchase price established by the Appraisal
10 Process described in Section 5.4. Market Rate Lots for approximately twenty percent (20%) of
11 the Market Rate Units shall be available for purchase (at a purchase price established by the
12 Appraisal Process set forth in Section 5.4) by joint ventures in which the Developer or its
13 affiliates have no more than a fifty percent (50%) ownership interest and under which a non-
14 affiliated joint venture partner exercises management control as the “managing partner” (or
15 member, as the case may be) of the joint venture entity (collectively, the “**JV Lots**”). In order to
16 ensure that the Developer Lots and JV Lots are sold at fair market value, Market Rate Lots for
17 approximately twenty percent (20%) of the Market Rate Units will be offered for sale via
18 Auction (collectively, the “**Residential Auction Lots**”) in accordance with Section 5.5. No
19 potential or actual investor or lender shall be prohibited by an exclusivity agreement between the
20 Developer and other investors or lenders from participating in any financing of any Market Rate
21 Lot or any other residential product type developed by parties other than Developer.

22 **5.3.1 Developer Lots.** Unless otherwise agreed upon by the Parties in their
23 reasonable discretion, no more than one-third of the Developer Lots (which also equals 20% of
24 the Market Rate Lots) can be sold directly to Developer, and the balance of the Developer Lots
25 may be sold to an entity or entities comprised of some or all of the same partners as Developer,
26 but having a materially different capital structure than Developer, in accordance with the
27 Appraisal Process. Concurrent with the sale of any Developer Lot to an entity or entities
28 comprised of some or all of the same partners as Developer, but having a materially different
29 capital structure than Developer, a duly authorized officer of Developer shall provide the
30 Authority and Navy with a certified statement that the prospective purchaser has a materially
31 different capital structure than Developer. For purposes hereof, an entity having a “materially
32 different capital structure” means an entity comprised of some or all of the same partners as
33 Developer but one in which there has been a cumulative change of at least 25% in the capital
34 positions of all the partners, and at least one of the partners has changed its capital position by
35 at least 15%. Before the close of each Major Phase, the Developer will provide to the
36 Authority and Navy a list of equity investors for that Major Phase. During the implementation
37 of any Major Phase, Developer will provide to the Authority and Navy immediately prior to
38 the sale of any parcels to an affiliate of Developer or the equity investors of that Major Phase, a
39 notice of such affiliate sale which notice shall describe why the sale is permitted under the
40 terms of this Agreement. Prior to the close of any sale directly to Developer, the Authority
41 shall cause Developer to provide to the Navy a letter from a real estate broker or licensed real
42 estate professional familiar with the Bay Area market who is not an affiliate of the Developer
43 and has no equity investment in the Developer in such Major Phase, finding that acquisition
44 and development of the Market Rate Lot by the Developer is appropriate in the context of then-
45 existing market conditions. The basis of such findings could include, but is not limited to,
46 establishing a new product type, initiating or establishing the development of a new phase in

1 the Project, responding to changes in market conditions, or other similar market-based factors.
2 Any disputes arising out of this Section 5.3.1 shall be referred to the arbitration process for
3 other disputes set forth in Section 27.3.3 hereof.

4
5 5.4 Appraisal Process. The process described in this Section 5.4 (the “**Appraisal**
6 **Process**”) shall apply to the Developer Lots, the JV Lots and those Developed Critical
7 Commercial Lots and Non-Critical Commercial Lots for which an appraisal is required under
8 Sections 5.2.2 or 5.2.4. The Authority and Developer shall confer and select an appraiser from
9 the Qualified Appraiser Pool for each such Developed Critical Commercial Lot, Developer Lot,
10 Non-Critical Commercial Lot or JV Lot to be appraised. An appraisal used for the purpose of
11 determining the parcel sale price (or ground lease rent, if applicable) shall be updated if a sales
12 contract (or ground lease) for such parcel has not been executed within one (1) year from the
13 date of the appraisal.

14 5.4.1 Qualified Appraiser Pool. Appraisals of any Developed Critical
15 Commercial Lots required to be appraised by Section 5.2.2, the Developer Lots, Non-Critical
16 Commercial Lots required to be appraised under Section 5.2.4 and JV Lots shall be conducted
17 by a qualified appraiser, which for purposes of this Agreement and the DDA shall be defined
18 as an appraiser (i) licensed in the State of California as a Certified General Appraiser and
19 holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least
20 ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an
21 affiliate of the Developer and has no equity investment in the Developer or the Project
22 investors, (iv) who has particular experience with coastal California real property transactions
23 involving the Product Type that is the subject of the appraisal, and (v) who has no conflict of
24 interest as evidenced by contractual relationships with Developer either existing or in the
25 immediately prior 24 months, unless a conflict waiver is obtained from the Navy. The Parties
26 have agreed upon a list of pre-qualified appraisers, which list is attached hereto as Exhibit Y
27 (the “**Qualified Appraiser Pool**”). From time to time, either Party may propose in writing to
28 add or subtract additional persons meeting the above qualifications. If the Parties disagree on a
29 proposed addition or subtraction, then the Parties shall follow the dispute resolution procedure
30 set forth in Section 27.3.2.

31 5.4.2 Appraisal Instructions. The selected appraiser shall appraise the
32 applicable Developer Lot, JV Lot, Non-Critical Commercial Lot (to the extent subject to
33 appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the extent subject to
34 appraisal by Section 5.2.2) utilizing appraisal instructions by appropriate Product Type
35 substantially in the form of those attached hereto as Exhibit X-1 through X-4, as the Parties
36 hereto may agree to amend from time to time which agreement shall not be unreasonably
37 withheld, conditioned or delayed. If an Excess Land Appreciation Structure is established in a
38 Major Phase by Product Type, such structure will be deemed to apply to all Market Rate Lots,
39 and the appraisal instructions shall incorporate such terms. If material changes are proposed to
40 appraisal instructions, including assumptions, special assumptions, limiting conditions,
41 hypothetical conditions, and other special instructions, the requesting Party shall propose such
42 amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution
43 procedure set forth in Section 27.3.2.

1
2 5.4.3 Notification of Appraisal. The Authority shall provide to the Navy
3 documentation of appraiser selection and appraisal instructions prior to the commencement of
4 the appraisal and shall provide a copy of the complete appraisals promptly following
5 completion of all appraisals.

6 5.5 Auction Process for Residential Auction Lots. The Authority and Developer at
7 the commencement of any Major Phase, as described below in Section 5.6, shall jointly
8 determine the pool of qualified bidders for each Auction of an Auction Lot based on the Auction
9 Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit S) set forth
10 for each Product Type, as agreed upon by the Parties. In the event no qualified third party bids
11 are received at or above the minimum bid price (as described in Section 5.6.3) for the Residential
12 Auction Lots, Developer and/or its affiliates will have the option to purchase such Auction Lot(s)
13 at the minimum bid price and any Residential Auction Lots so acquired by Developer shall not
14 be deemed to apply against the percentage limits otherwise applicable to the Developer Lots or
15 the JV Lots. If Developer does not exercise the option to purchase unsold Auction Lot(s), the
16 Authority and Developer shall mutually agree upon a new minimum bid price to be used in a
17 new Auction (the “**Re-Setting of the Minimum Bid Price**”). The Re-Setting of the Minimum
18 Bid Price may take the form of adjustment to the pro forma minimum bid price or an appraisal.
19 All costs associated with the Auction shall be treated as Development Costs.

20 5.5.1 Timing of Residential Auction Lots Selection. The Residential Auction
21 Lots will be selected by mutual agreement by the Authority and the Developer prior to close of
22 escrow for each Major Phase.

23 5.5.2 Residential Auction Lots as Benchmarks. The Auction Lot sales prices,
24 as deemed appropriate by the appraisers, and other relevant market data shall be used as
25 comparables in the appraisal process for the Developer Lots and the JV Lots. The mix of
26 Product Types of the Market Rate Lots subject to Auction shall roughly mirror that of the
27 Market Rate Lots to be allocated and sold in that Major Phase, with a goal of selecting at least
28 one representative parcel for each Market Rate Lot Product Type offered in that Major Phase.
29 For the purposes of this Agreement and the DDA, “**Product Types**” are defined as a
30 residential building with a typical unit count and building typology that allows general
31 assumptions of construction costs. Examples of such Product Types are townhomes; low rise
32 (up to [76’/85’] in height); mid rise (above 76’/85’ and up to 120’ in height) and towers (above
33 120’ in height).

34 5.5.3 Guidelines for Residential Auction Lots Selection. The distribution and
35 selection of the Residential Auction Lots shall be based on a principle of nondiscrimination.
36 The selected Residential Auction Lots shall be generally representative of the average
37 advantages and disadvantages of the Market Rate Lots to be developed in that Major Phase.
38 Factors to be considered in such selection include, but are not limited to, parcel size, views,
39 proximity to parks, proximity to the transit center, proximity to the Job Corps site, proximity to
40 the Bay Bridge, proximity to the retail core and exposure to wind (collectively, the
41 “**Guidelines for Residential Auction Lot Selection**”), attached hereto as Exhibit FF.

1 5.6 Major Phase Decisions. Prior to the close of escrow of each Major Phase, the
2 following decisions (collectively, the “**Major Phase Decisions**”) shall be agreed upon by the
3 Authority and the Developer and notice thereof shall be provided to the Navy as more fully
4 described in Section 5.6 below:

5 5.6.1 The proposed location of Residential Auction Lots within that Major
6 Phase as shown on a revised land plan for that Major Phase showing the distribution of various
7 Product Types.

8 5.6.2 The qualifications of Residential Auction Lot bidders by Product Type
9 for that Major Phase based on the applicable Auction Bidder Selection Guidelines.

10 5.6.3 Minimum bid prices for the Residential Auction Lots and the Non-
11 Critical Commercial Lots, which shall be based on the pro forma, as updated prior to the close
12 of escrow for such Major Phase, as well as any Re-Setting of the Minimum Bid Price, as
13 described above.
14

15 5.6.4 The Excess Land Appreciation Structure for that Major Phase for each
16 Product Type in such Major Phase, as well as any re-evaluation of the Excess Land
17 Appreciation Structure during any Major Phase. For purposes of this Agreement and the DDA
18 the “Excess Land Appreciation Structure” is defined as the structure, procedures and metrics of
19 the then-prevailing, industry standard market based participation in price appreciation greater
20 than forecast at the time of such pad sale (if any) for horizontal development land sellers.

21
22 5.7 Navy Objection Rights to Major Phase Decisions.

23
24 5.7.1 Notice. The Authority shall send a notice to the Navy in writing
25 providing the details of the Major Phase Decisions (the “**Major Phase Decision Notice**”). The
26 Navy shall have the right to reasonably object to any of the Major Phase Decisions (or any
27 component part thereof) if the Navy believes any of the following is true with respect to the
28 Major Phase Decision at issue: (i) the mix of Product Types for the Residential Auction Lots
29 were not sufficient to achieve adequate benchmarking for that Major Phase; or (ii) the
30 Guidelines for Residential Auction Lot Selection were not followed; or (iii) the Excess Land
31 Appreciation Structure is not commensurate with industry practice, market based participations
32 for that Product Type in such Major Phase; or (iv) the Auction Bidder Selection Guidelines
33 were not followed.

34 5.7.2 Right to Object. The Navy shall have ten (10) business days from
35 certified receipt of the Major Phase Decision Notice to object in writing, which grounds may
36 include failure to provide adequate information necessary for the Navy’s review, and any such
37 objection shall state with specificity the item or items to which the Navy objects or the items of
38 additional information reasonably requested by Navy. Failure to so object in writing within
39 such ten (10) business day period shall be deemed consent. The Authority shall have five (5)
40 business days to respond to the objection or to seek to confer, as more fully set forth in Section

1 27.2. If the Authority responds and the Parties do not reach agreement with one another after
2 such response, either Party can request to confer (as set forth in Section 27.2.1). If a
3 conference is requested, the Parties shall confer and attempt to resolve the outstanding
4 objections within five (5) business days of the conference request. Failure to reach agreement
5 at such meeting shall be referred to the expedited dispute resolution process set forth more
6 fully in Section 27.3.2.

7 5.8 Audit Rights and Reporting. The Authority agrees to submit to the Navy annual
8 audited financial statements specific to this Project within thirty (30) calendar days of
9 completion of the annual audited financial statements, which completion shall in no case be later
10 than ninety (90) calendar days after the end of the year being audited. The Navy shall have
11 commercially reasonable access to the Developer's auditors if the Navy needs clarifications
12 relating to the financial statements. Authority shall provide Navy with annual statements of its
13 records maintained pursuant to Section 5.13.2 hereof, certified by Authority's chief financial
14 officer or equivalent.

15 5.9 DDA Audit Rights and Reporting. The Authority agrees to provide the Navy with
16 copies of the DDA Reports and any audits promptly upon their receipt by the Authority and
17 further agrees to cause the DDA to provide the following audit rights and reporting requirements
18 for the benefit of the Authority and the Navy, provided, however, that the Navy shall treat such
19 information as confidential to the fullest extent permitted under all laws, rules and regulations
20 applicable to the Navy related to public disclosure of information as long as such confidentiality
21 does not in any way limit the Navy's remedies hereunder:

22 5.9.1 The Developer shall provide to the Authority and the Navy, within
23 ninety (90) calendar days after the end of each year, an annual Accounting consistent with the
24 requirements of Section 4.3.5.1 annualized, including reports of Gross Revenues and
25 Development Costs, including Net Cash Flow, specified by Major Phases and including a
26 cumulative project level summary of IRR, executed by the Developer's Chief Financial
27 Officer, certified by the Developer and reviewed by an independent accounting firm.

28 5.9.2 A summary pro forma (including the financial model of any vertical
29 development that requires a subsidy) will be attached to the DDA as an exhibit and the budget
30 will be updated by the Developer prior to the close of each Major Phase and submitted to the
31 Authority and the Navy for its review.

32 5.9.3 The pro forma budget will be updated by the Developer and submitted to
33 the Authority and the Navy annually in both a printed and electronic form. The electronic form
34 of the pro forma must be in Microsoft Excel 2007 or its successor format.

35 5.9.4 The DDA shall provide the Authority and the Navy the right, but not the
36 obligation, to audit the books and accounts of the Developer no more frequently than once per
37 twelve (12) month period, unless such audit reveals a discrepancy in the calculation of Gross
38 Revenues and/or Development Costs or the Developer is otherwise in material default of its
39 financial obligations under the DDA. The Authority, or the Navy, as the case may be, shall
40 bear all costs of such audit unless the results of the audit demonstrate more than a five percent
41 (5%) discrepancy between the results of the audit and the annual financial statements provided

1 by the Developer. Payment by the Authority of audit costs shall not be allowed as a
2 Development Cost if there is a discrepancy of more than five percent (5%). All such reports
3 and audits are subject to the Authority's obligation to treat such information as confidential to
4 the full extent permitted by law. The Navy shall treat such information as confidential to the
5 fullest extent permitted under all laws, rules and regulations applicable to the Navy related to
6 public disclosure of information as long as such confidentiality does not in any way limit the
7 Navy's remedies hereunder.

8 5.10 DDA Timelines. The Authority shall provide a Schedule of Performance
9 establishing commercially reasonable timelines for completion of each Major Phase, subject to
10 industry standard force majeure provisions, including regulatory, economic and litigation force
11 majeure.

12 5.11 Limit on Soft Costs for Purposes of Calculating Consideration. Except for a
13 reasonable limit on Developer management and overhead fees as further provided herein,
14 Developer Soft Costs will not be capped, but will be subject to a "reasonableness" standard,
15 certain approval rights by the Authority, and subject to audit by the Authority. The Authority
16 agrees that "reasonable" Developer's Soft Costs shall be defined as "incurred in a manner that is
17 consistent with an efficient, well-managed project of comparable scope, duration and complexity
18 and is commensurate with market-based charges by third party providers for similar projects."
19 Whether or not the Developer utilizes unrelated third-party contractors for development,
20 construction and property management services, such management fees and costs will not exceed
21 market-based charges by third-party providers for similar projects, taking into account the level
22 of project management, auditing and reporting requirements. The Developer may provide such
23 management services internally, or through a combination of internal management services and
24 third-party management contractors not owned or controlled by Developer. For purposes of
25 determining Soft Costs for any particular scope of work, a construction management fee may be
26 included not to exceed the lesser of four percent (4%) of Hard Costs or actual construction
27 management fees actually incurred for such scope; a property management fee may be included
28 not to exceed the lesser of two and one-half percent (2.5%) of lease revenues or actual property
29 management fees actually incurred for such scope; and a development/project management fee
30 not to exceed the lesser of three percent (3%) of Hard Costs or actual development/project
31 management fees actually incurred for such scope. If the actual and reasonable costs incurred by
32 Developer exceed the above limits, Developer, on behalf of the Authority may submit a request
33 to the Navy to approve the increase of any applicable fee to an amount equal to the actual cost.
34 Such requests shall be made in writing with appropriate supporting documentation. Failure of
35 the Navy to respond in writing to any such request within thirty (30) days shall be deemed
36 consent. Navy's consent shall not be unreasonably withheld or delayed, and Navy shall make its
37 determination within thirty (30) days of Developer's request. If Navy requests additional
38 information as may be reasonably required to make its determination within ten (10) days of
39 Developer's request, then Navy shall make its determination denying or granting the request
40 within thirty (30) days after receipt of such additional information. The Navy shall only deny its
41 consent if it reasonably determines, as evidenced by its written determination provided to
42 Developer and the Authority, that the cost limit exceedance is inconsistent with current market
43 standards as applied to the scope and nature of the Project and the fee limit request is
44 unreasonable under the circumstances. Any such exceedance objected to by the Navy in
45 accordance with this Section shall not be included as Development Cost

1 5.12 Limit on City Fees and Exactions. The Authority shall limit City fees and
2 exactions to those fees and exactions as set forth in the DDA, at the rate or amounts in effect as
3 of the date of the DDA for a period of time specified in the DDA. The agreed upon development
4 fees and exactions for the Project will be fixed for a specified period of time (through a
5 Development Agreement, the Redevelopment Plan or other legally enforceable mechanism) and
6 the application of new fees and exactions and changes in City regulations will be limited over the
7 life of the Redevelopment Plan. To the extent legally permissible, the DDA or other legally
8 enforceable mechanism shall include certain limits on the authority of the City and the Authority
9 to impose new or amend City laws and regulations that would have a material adverse effect on
10 the horizontal or vertical development by the Developer or Vertical Builders or the rights and
11 obligations of the Developer or any Vertical Builder under the Redevelopment Plan and the
12 DDA or other applicable transactional documents. Any City fees and exactions in violation of
13 these limitations will not qualify as Development Costs.

14 5.13 Economic Development Purposes. Any proceeds from a sale, lease, or equivalent
15 use of the Navy Real Property (i.e., any mechanism that serves to accomplish the same purposes
16 of a sale or lease such as licenses, permits, concession agreements, etc.) received by the
17 Authority for the Navy Real Property during the first seven (7) years after the recordation of the
18 first Quitclaim Deed for a part of the Navy Real Property, must be used to pay the Navy the
19 Initial Consideration and the Additional Consideration as set forth herein, or to support long-term
20 job creation and the economic redevelopment of, or related to, the Navy Real Property. Tax
21 revenues shall not be construed to be proceeds from a sale, lease, or equivalent use of the Navy
22 Real Property.

23 5.13.1 Examples of Allowable Uses of Proceeds. Allowable uses of proceeds
24 pursuant to Section 5.13 include payment for, or offsetting the costs of public investment, for
25 the following purposes:

26
27 5.13.1.1 Land acquisition;

28 5.13.1.2 Road construction;

29 5.13.1.3 Transportation management facilities;

30 5.13.1.4 Storm and sanitary sewer construction;

31 5.13.1.5 Police and fire protection facilities and other public facilities;

32 5.13.1.6 Utility construction;

33 5.13.1.7 Building rehabilitation;

34 5.13.1.8 Historic property preservation;

35 5.13.1.9 Pollution prevention equipment or facilities;

36 5.13.1.10 Demolition;

1
2 specifically list the assignable contract, permits or agreements in this Section and delete exhibit].

3
4 At the Initial Closing, the Navy shall assign to the Authority the contracts, licenses, permits or
5 other agreements listed in this Section 6.1.

6
7 **ARTICLE 7**
8 **EASEMENTS AND OTHER SIMILAR INSTRUMENTS**
9

10 7.1 Easements or Other Similar Instruments. At each Closing, the Navy shall grant to
11 the Authority or reserve to itself the following easements, licenses, rights of way, or other similar
12 instruments, as applicable, and at locations mutually and reasonably agreeable to the Parties and
13 adjusted from time to time.

14
15 7.1.1 Access Easements.

16
17 7.1.1.1 The Navy shall grant to the Authority non-exclusive
18 easements, licenses, rights of way, or other similar instruments for ingress and egress on, over
19 and across existing roads on Navy owned Parcels for pedestrian, vehicular and other access (the
20 “**Road Easement**”) as required to connect the Authority owned Parcels to each other and to
21 connect the Authority owned Parcels to publicly accessible roads adjacent to the Navy owned
22 Parcels (the “**Authority Access Easements**”). At the Initial Closing, the Authority Access
23 Easements related to the FOST Parcel shall be granted for the area described in Exhibit I-4
24 attached hereto, or to the extent mutually agreed by the Parties, in the applicable Quitclaim
25 Deeds or as a license, right of way, or other similar instrument. The Parties shall negotiate in
26 good faith subsequent Authority Access Easements related to other Parcels prior to the
27 subsequent Closing of each such Parcel.

28
29 7.1.1.2 The Navy may reserve to itself, its successors and assigns non-
30 exclusive easements or other similar instruments for ingress and egress on, over and across
31 existing roads on Parcels to be conveyed to the Authority for pedestrian, vehicular and other
32 access as required to connect the Navy owned Parcels to each other, to connect the Navy owned
33 Parcels to publicly accessible roads adjacent to the Parcel to be conveyed to the Authority
34 (“**Navy Reserved Access Easement**”). The Navy may reserve non-exclusive easements or other
35 similar instruments for access to third parties that own portions of the former Naval Station
36 Treasure Island, which were previously disposed of and conveyed by the Navy, for ingress and
37 egress on, over and across existing roads on Parcels to be conveyed to the Authority for
38 pedestrian, vehicular and other access as required to connect third party owned parcels of real
39 property to public roads adjacent to the Parcel to be conveyed to the Authority (“**Third Party**
40 **Access Easement**”). The Navy Reserved Access Easement and Third Party Access Easement
41 are collectively referred to as the “**Navy Access Easements.**” Such Navy Access Easements
42 shall be reserved or granted by the Navy substantially in conformance with the areas shown on
43 Exhibit I-6.

44
45 7.1.1.3 The Authority Access Easements and Navy Access Easements
46 shall include the following:

1
2 7.1.1.3.1 Each Party shall have the right, but not the
3 obligation, to access, repair and maintain such roads, at its own expense, and to the extent that
4 such access, repair or maintenance does not interfere with the development or the environmental
5 remediation of any of its own property.

6
7 7.1.1.3.2 Use of existing roadways by the Parties to the
8 Authority Access Easements or Navy Access Easements, or their successors or assigns, shall be
9 at the sole cost and expense of said Parties, their successors and assigns, without any
10 representation or warranty on the part of the Parties regarding the condition or state of repair of
11 said roadways or any obligation to make, or liability for, any alterations, improvements, repairs
12 or additions thereto.

13
14 7.1.1.3.3 The location of the Authority Access Easements
15 and Navy Access Easements will be adjusted from time to time as necessary to accommodate the
16 redevelopment activity. The Party on whose property the Authority Access Easements or Navy
17 Access Easements exists (the “**Owner Property**”) shall not redevelop, close, abandon,
18 reconfigure or replace existing roadways within such easement in such a manner that would
19 unreasonably interfere with the ability of the other Party to exercise its access rights to the
20 easement except where the Party on whose property the Authority Access Easements or Navy
21 Access Easements exists provides the other Party with suitable comparable alternative access
22 over other areas of the Property. Where such redevelopment, closure, abandonment,
23 reconfiguration or replacement is necessary to conduct actions required by the redevelopment
24 that results in such roadway subject to this easement no longer providing the intended access or
25 otherwise ceasing to exist, the Authority Access Easement or Navy Access Easements, as
26 applicable, shall be moved from time to time to include, in the following order of priority either
27 (i) access over other improved roads that may exist on the Owner Property, (ii) access over other
28 unimproved roads that may exist on the Owner Property, or (iii) access over other unimproved
29 portions of the Owner Property. The adjustment of the Access Easements shall be completed by
30 revising the exhibits in the original Quitclaim Deeds or other applicable instruments with written
31 approval by the Navy or the Authority. The approval will not be unreasonably withheld.

32
33 7.1.1.3.4 The Navy Access Easements shall continue until
34 such time as final subdivision maps are recorded and attendant street dedications provide public
35 access. The Authority Access Easements shall continue until such time as either the Parcel is
36 owned by the Authority or final subdivision maps are recorded and attendant street dedications
37 provide equivalent access.

38
39 7.1.2 Utility Easements. Prior to the Initial Closing and any subsequent
40 Closing, as appropriate, the Navy shall grant to the Authority on Navy owned Parcels, or
41 reserve to itself on Parcels being conveyed to the Authority, easements, licenses, rights of way,
42 or other similar instruments for the operation and maintenance of existing utilities, and
43 installation, operation and maintenance of all or portions of new utility systems on said Parcels
44 (“**Utility Easements**”). Such Utility Easements on Navy owned Parcels may be provided
45 pursuant to the Utility Agreement referenced in Article 9 hereof. Such Utility Easements on
46 Parcels being conveyed to the Authority shall be reserved by the Navy substantially in

1 8.2 Navy Deliveries. The Navy shall deliver to escrow at least five (5) days prior to
2 the Initial Closing and each subsequent Closing the following documents, as applicable (“**Navy**
3 **Closing Documents**”), in a form previously reviewed and approved by the Authority, and duly
4 executed and authorized (and acknowledged if necessary for recordation):
5

6 8.2.1 Quitclaim Deed(s) substantially in the form as set forth in Exhibit D-1
7 and Exhibit D-2, as applicable, attached hereto.
8

9 8.2.2 Final FOST(s), as appropriate for such Parcel(s) to be conveyed at such
10 Closing that meet the conditions of Section 3.4, and copies of all Regulatory Authority
11 approvals obtained for the applicable Parcel relating to the investigation and environmental
12 response for underground and above-ground petroleum storage tanks, and any releases of
13 petroleum, petroleum derivatives, petroleum fractions, or any chemicals, compounds or
14 products that result from their degradation that meet the conditions of Article 18.
15

16 8.2.3 Bill of Sale for the Navy Personal Property conveyed to the Authority
17 for such Parcel(s), in substantially the form set forth in Exhibit H-1.
18

19 8.2.4 Any appropriate instrument(s) assigning the Assumed Contracts and
20 copies of the Assumed Contract(s), as applicable.
21

22 8.2.5 Any Access Easement(s) required by the Authority relating to such
23 Parcel(s), in accordance with this Agreement, which shall be substantially in the form set forth
24 in Exhibit I-4.
25

26 8.2.6 Any Utility Easement(s) required by the Authority relating to such
27 Parcel(s), in accordance with this Agreement, which shall be substantially in the form set forth
28 in Exhibit I-3.
29

30 8.2.7 Any appropriate instruments assigning the Assignable Easement(s)
31 required by the Authority in accordance with this Agreement, which shall be substantially in
32 the form set forth in Exhibit I-2.
33

34 8.2.8 Any appropriate instruments assigning or replacing the Non-Assignable
35 Easements and perfecting the Unperfected Easements necessary for electricity to be provided
36 to Treasure Island as required by Section 3.7.1.8 hereof that the Navy has obtained.
37

38 8.2.9 Any LIFO, easements, or other instruments that may be required under
39 Section 3.12.
40

41 8.2.10 A Utilities Agreement or subsequent amendments, as the case may be, as
42 set forth in Article 9, as applicable.
43

44 8.2.11 The Land Use Covenant, as applicable.
45

1 8.2.12 Such additional documents as may be required to close escrow, under
2 this Agreement or by California law.
3

4
5 8.2.13 Representation to the Authority, in substantially the form set forth in
6 Exhibit N-1, stating that as of the date of Closing, the Navy has the full capacity, right, power,
7 and authority to execute, deliver, and perform this Agreement pursuant hereto for the Closing
8 unless subsequently prohibited by law.
9

10 8.3 The Authority Deliveries. The Authority shall deliver to escrow at least five (5)
11 days prior to the Initial Closing and, to the extent applicable, each subsequent Closing, the first
12 Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the
13 following documents in a form previously reviewed and approved by the Navy, and duly
14 executed and authorized (and acknowledged if necessary for recordation) (the “**Authority**
15 **Closing Documents**”):
16

17 8.3.1 Acceptance of Quitclaim Deed(s) substantially as set forth in Exhibit D-
18 1 and Exhibit D-2, as applicable, attached hereto.
19

20 8.3.2 Acceptance of the assignment of the Assumed Contracts substantially in
21 the form attached hereto as Exhibit BB.
22

23 8.3.3 Any LIFOC, easements, or other instruments that may be required under
24 Section 3.12.
25

26 8.3.4 A Utilities Agreement, or subsequent amendments, as the case may be,
27 as set forth in Article 9, as applicable.
28

29 8.3.5 Any appropriate instruments assigning or replacing the Non-Assignable
30 Easements and perfecting the Unperfected Easements necessary for electricity to be provided
31 to Treasure Island as required by Section 3.7.1.8 hereof that the Authority has obtained.

32
33 8.3.6 Acceptance of any Access Easement(s) required by the Authority
34 relating to such Parcel(s) in accordance with this Agreement, which shall be substantially in the
35 form set forth in Exhibit I-4, attached hereto.
36

37 8.3.7 Acceptance of any Utility Easement(s) required by the Authority relating
38 to such Parcel(s) in accordance with this Agreement, which shall be substantially in the form
39 set forth in Exhibit I-3, attached hereto.
40

41 8.3.8 Acceptance of any Assignable Easement(s), Non-Assignable Easements
42 and the Unperfected Easements required by the Authority relating to such Parcel(s), in
43 accordance with this Agreement, which shall be substantially in the form set forth in Exhibit I-
44 1, attached hereto.
45

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

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

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

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

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

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

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

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

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

7 13.1 Commencing on the date of the Initial Closing and continuing until the date that is
8 seven (7) years after the Initial Closing (unless terminated earlier by Navy), the Navy shall have
9 the right to occupy up to three thousand five hundred (3,500) square feet of office space and up
10 to two thousand (2,000) square feet of space for file storage, which file storage may be located
11 in non-contiguous or non-adjacent spaces, for use as a Navy caretaker site office (the “**Navy**
12 **Office**”) and six reserved parking spaces. At the Initial Closing, the Navy Office will continue to
13 be located in Building 1, as more particularly shown on Exhibit K-1 attached hereto and to the
14 extent practicable, Navy shall be permitted to remain in its presently existing office space until
15 such space is required for implementation of the Project. The terms of occupancy for the Navy
16 Office shall be substantially in the form of Exhibit K-2 attached hereto (“**Navy Office**
17 **Agreement**”). Navy shall be responsible for its cost of utilities serving the Navy Office, but the
18 Navy Office Agreement shall otherwise be rent free for the seven (7) year period. The Authority
19 shall have the right, from time to time during the Navy Office Agreement term, to relocate the
20 Navy Office to another location within Building 1 or to one of the buildings known as the Great
21 Whites as more particularly shown on Exhibit K-3 attached hereto, or to any other adequate
22 location on Treasure Island or Yerba Buena Island, by giving Navy no less than three (3)
23 months’ prior written notice. The relocation premises shall be substantially equivalent in size
24 and dimensions to the then-existing premises but while the office space shall be contiguous, the
25 relocated storage space may be located in one or more non-contiguous spaces. The Authority
26 shall bear any reasonable costs incurred by the Authority to physically relocate Navy to any
27 relocation space, and shall be responsible for the cost of standard tenant improvements for the
28 relocation consistent in quality with the Navy’s current space in Building 1. Navy shall be
29 entitled at any time upon thirty (30) days prior written notice to terminate the Navy Office. At
30 the expiration of the initial seven (7) year occupancy period, the Navy may elect to terminate the
31 Navy Office Agreement, or to renew the Navy Office Agreement at fair market rent, to be
32 determined by the Authority based on the highest and best use permitted for the occupied space.
33

34 13.2 All personal property associated with the Navy Office shall be excluded from
35 transfer until such time as the Navy Office Agreement is terminated. Upon Navy Office
36 Agreement termination, the Navy upon its sole right shall determine excess personal property to
37 be made available to the Authority.
38

39 **ARTICLE 14**
40 **NAVY REPRESENTATIONS**
41

42 14.1 The Navy hereby represents to the Authority on and as of the Effective Date and
43 will represent as of the date of each Closing as follows:
44

45 14.1.1 Execution of Agreement. That the Navy has full capacity, right, power
46 and authority to execute, deliver and perform this Agreement and all documents to be executed

1 by the Navy pursuant hereto, and all required action and approvals therefor have been duly
2 taken and obtained for the execution of this Agreement. The Navy further represents to the
3 Authority that as of the date of Closing, the Navy shall have full capacity, right, power and
4 authority to execute, deliver and perform this Agreement and all documents to be executed by
5 the Navy pursuant hereto for the Closing unless subsequently prohibited by law. This
6 Agreement and all documents to be executed pursuant hereto by the Navy are and shall be
7 binding upon and enforceable against the Navy in accordance with their respective terms.
8

9 14.1.2 Complete Information. All known relevant Environmental Reports and
10 Navy Real Property Documents of material significance have been made available to the
11 Authority for inspection and copying.
12

13 **ARTICLE 15** 14 **AUTHORITY REPRESENTATIONS** 15

16 15.1 The Authority hereby represents to the Navy that on and as of the Effective Date,
17 the Authority has full capacity, right, power and authority to execute, deliver and perform this
18 Agreement and all documents to be executed by the Authority pursuant hereto, and all required
19 action and approvals therefor have been duly taken and obtained for the execution of this
20 Agreement. The Authority further represents to the Navy that as of each Closing, the Authority
21 shall have full capacity, right, power and authority to execute, deliver and perform this
22 Agreement and all documents to be executed by the Authority pursuant hereto, and all required
23 action and approvals will have been duly taken and obtained for the Closing. The individuals
24 signing this Agreement and all other documents executed or to be executed pursuant hereto on
25 behalf of the Authority shall be duly authorized to sign the same on the Authority's behalf and to
26 bind the Authority thereto. This Agreement and all documents to be executed pursuant hereto by
27 the Authority are and shall be binding upon and enforceable against the Authority in accordance
28 with their respective terms.
29

30 **ARTICLE 16** 31 **TITLE AND NAVY COVENANTS** 32

33 16.1 From the Effective Date to the Closing, the Navy shall not do, permit, or agree to
34 sell, encumber or grant any interest in the Navy Property or any part thereof in any form or
35 manner whatsoever or otherwise perform or permit any act which will diminish or otherwise
36 affect the Authority's interest under this Agreement or in or to the Navy Property or which will
37 prevent the Navy's full performance of its obligations hereunder, without the prior written
38 consent of the Authority except environmental restrictions or land use covenants consistent with
39 Section 3.4.2 as may be designated in the CERCLA Record of Decision, an approved Corrective
40 Action Plan or the FOST.
41

42 16.2 The Navy shall not remove or alter any Navy Personal Property or Utility
43 Infrastructure that is intended to be transferred by this Agreement to the Authority, without the
44 prior written consent of the Authority, except when such removals or alterations are in
45 association with the Navy's continuing obligations under CERCLA, 42 U.S.C. § 9601, et seq.
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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 *[report name]* dated the __ day of ____, 20XX, 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.

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, Site 25 and Site 6, which shall be governed by Section 18.2 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 YF-3, Site 25 and Site 6 prior to Closing for those parcels.

1
2
3 **ARTICLE 19**
4 **COVENANT AGAINST CONTINGENT FEES**

5 19.1 The Authority warrants that no person or agency has been employed or retained to
6 solicit or secure this Agreement upon an agreement or understanding for a commission,
7 percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established
8 commercial agencies maintained by the Authority for the purpose of securing the successful
9 purchase of the Navy Property by the Authority. "Bona fide established commercial agencies"
10 has been construed to include licensed real estate brokers engaged in the business generally. For
11 breach or violation of the warranty, Navy has the right to annul this Agreement without liability
12 or in its discretion to require the Authority to pay, in addition to the consideration, the full
13 amount of such commission, percentage, brokerage, or contingent fee.
14

15 **ARTICLE 20**
16 **NOTICES**

17
18 20.1 Notices shall be deemed sufficient under this Agreement if made in writing and
19 delivered personally (including by messenger) or sent by United States registered or certified
20 mail, return receipt requested, postage prepaid, or by courier, postage prepaid and addressed to
21 the Parties at their respective addresses set forth below (or to any new or substitute address
22 hereinafter specified, in a writing theretofore delivered in accordance with the notice procedure
23 set forth herein by the intended recipient of such notice), and the same shall be effective upon
24 receipt, if delivered personally or by messenger, or two (2) business days after deposit in the mail
25 if mailed:
26

27 If to the Authority: Treasure Island Development Authority
28 City and County of San Francisco
29 City Hall, Room 448
30 1 Dr. Carlton B. Goodlett Place
31 San Francisco, CA 94102-410
32 Attn:
33 Telephone:
34 Facsimile:
35 Email:

36
37 With a copy to: Office of the City Attorney
38 City and County of San Francisco
39 City Hall, Room 448
40 1 Dr. Carlton B. Goodlett Place
41 San Francisco, CA 94102
42 Attn: Eileen Malley, Deputy City Attorney
43 Telephone: (415) 554-6781
44 Facsimile: (415) 554-4755
45 Email: eileen.malley@sfgov.org
46

1 With a copy to: George R. Schlossberg, Esq.
2 Kutak Rock LLP
3 1101 Connecticut Avenue, N.W.
4 Suite 1000
5 Washington, DC 20036
6 Telephone: (202) 828-2418
7 Facsimile: (202) 828-2488
8 Email: george.schlossberg@kutakrock.com
9

10 If to the Navy: Base Realignment and Closure
11 Program Management Office West
12 1455 Frazee Road
13 Suite 900
14 San Diego, California 92108-4310
15 Attn: Douglas Gilkey
16 Telephone: (619) 532-0949
17 Facsimile: (619) 532-0983
18 Email: douglas.gilkey@navy.mil
19

20 With a copy to: Base Realignment and Closure
21 Office of Counsel
22 1455 Frazee Road
23 Suite 900
24 San Diego, California 92108-4310
25 Attn:
26 Telephone:
27 Facsimile:
28 Email:
29

30 20.2 Either Party may direct in writing that any notices be sent to additional parties.
31 The provision of notice to additional parties shall not make such additional parties third party
32 beneficiaries of this Agreement.
33

34 **ARTICLE 21**
35 **PRIOR LIABILITIES**
36

37 21.1 To the extent provided by law, the Navy shall remain responsible for all
38 liabilities, claims, demands, judgments, suits, litigation, amounts payable (collectively, “**Pre-**
39 **Closing Obligations**”) against the Navy attributable to the Navy’s construction, installation,
40 placement, operation, maintenance, misuse, abandonment or failure to maintain the buildings and
41 equipment and land during the period prior to the conveyance of the Navy Real Property to the
42 Authority pursuant to this Agreement, and with regard to a separate lease, contract for caretaker
43 services, or other agreement, the Navy’s responsibility and the Authority’s responsibility for Pre-
44 Closing Obligations will be as set forth in those documents. Except as otherwise provided in the
45 Quitclaim Deeds, the Authority shall notify the Navy of the existence or occurrence of any such
46 Pre-Closing Obligations of which it has knowledge sufficiently in advance of the scheduled

1 Closing date to allow disposition thereof, if necessary, and shall cooperate with the Navy in the
2 disposition thereof prior to the scheduled Closing date.

3
4 **ARTICLE 22**
5 **AUTHORITY'S AVAILABILITY OF FUNDS**
6

7 22.1 Except for the Authority's recoupment obligations as set forth in Section 5.13.3
8 and the Authority's obligation to provide security for the payment of the Initial Consideration as
9 set forth in Section 4.2.6 of this Agreement, there shall be no obligation for the payment or
10 expenditure of money by the Authority under this Agreement unless there is a valid
11 appropriation from which the expenditure may be made and that unencumbered funds are
12 available from the appropriation for the expenditure.

13
14 **ARTICLE 23**
15 **FINALITY OF CONVEYANCE**
16

17 23.1 Possession. Upon each Closing, the Navy shall immediately deliver to the
18 Authority possession of the Navy Real Property conveyed at the Closing.

19
20 23.2 No Right of Rescission. There shall be no right of rescission in the Navy as to the
21 Navy Real Property, or any portion thereof, once conveyed to the Authority. The foregoing shall
22 not be interpreted to limit any future exercise of the power of eminent domain by the Navy.
23

24 **ARTICLE 24**
25 **LIABILITY FOR ENVIRONMENTAL CONTAMINATION**
26

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

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ARTICLE 25
SHORT FORM NOTICE

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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 immediately 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.

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ARTICLE 26
FURTHER ASSURANCES

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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.

44
45

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.

46
47

27.2 Good Faith Meet and Confer Requirement.

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49

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

1 arbitration. Within five (5) business days after a request to confer regarding an identified
2 matter, representatives of the Parties who are vested with decision-making authority shall meet
3 to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter
4 shall immediately be submitted to the expedited dispute resolution process set forth in Section
5 27.3.2.

6 27.2.2 With respect to any other dispute arising hereunder, the Parties shall
7 make a good faith effort to resolve the dispute in the most expeditious manner possible.
8 Within five (5) business days after receipt of the notice of dispute, representatives of the
9 affected Parties shall meet to resolve the dispute. If the Parties are unable to resolve the
10 dispute in good faith within ten (10) business days after receipt of the notice of dispute, the
11 Parties shall either agree within ten (10) business days after receipt of the notice of dispute to
12 proceed with the non-binding arbitration procedures set forth in Section 27.3.3, or barring such
13 agreement, either Party may proceed unilaterally as permitted by this Agreement or by law.

14 27.3 Dispute Resolution Procedures.

15 27.3.1 Arbiters. The non-binding arbitrator (“**Arbiter**”) will be selected
16 by mutual agreement of the parties to be determined no later than thirty (30) days prior to the
17 Initial Closing from a list of at least six (6) and up to ten (10) pre-approved Arbiters from the
18 list attached hereto as Exhibit GG (the “**Pre-Approved Arbiters List**”). The Arbiter will hear
19 all disputes under this Agreement unless the Arbiter is not available to meet the time schedule
20 set forth herein, in which case the Parties may agree to direct the dispute to another Arbiter on
21 the Pre-Approved Arbiters List. If none of the Arbiters listed is able or willing to serve, the
22 parties shall mutually agree on the selection of an Arbiter to serve for the purposes of this
23 dispute. The Arbiter appointed must meet the Arbiters’ Qualifications. The “**Arbiters’**
24 **Qualifications**” shall be defined as at least ten (10) years experience in a real property
25 professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney,
26 in the Bay Area. The Parties shall review the Pre-Approved Arbiters List on an annual basis,
27 determine the continued availability and willingness to serve of each Arbiter, and may at that
28 time or from time to time, seek to add or subtract arbiters from the Pre-Approved Arbiter List,
29 by notice in writing to the other Party. Any such notice will be accompanied by supporting
30 documentation of the new proposed Arbiter’s qualifications or with the reasons for seeking to
31 remove an Arbiter from the Pre-Approved Arbiters List, as applicable. The other Party shall
32 have fifteen (15) business days to respond in writing to such request, and failure to respond
33 shall be deemed consent. If the other Party objects, the Parties shall confer pursuant to Section
34 27.2.2 and thereafter such disputes (if still unresolved after conferring) shall be referred to
35 arbitration pursuant to Section 27.3.2. Notwithstanding the foregoing, if based upon the annual
36 review or at any time during the Term, the Parties become aware that an Arbiter has become
37 unavailable to serve in any prospective Arbitration or has expressed an unwillingness to
38 continue to serve, the Parties shall replace that Arbiter with a new Arbiter mutually agreed-
39 upon by the Parties.

40 27.3.2 Expedited Dispute Resolution Procedure. The Parties hereby agree that
41 the following disputes shall be subject to this expedited dispute resolution procedure: (i) Major
42 Phase Decisions (pursuant to Section 5.6 hereof); (ii) proposed amendments to appraisal
43 instructions (pursuant to Section 5.4 hereof); (iii) proposed additions or subtractions to the

1 Qualified Appraiser Pool (pursuant to Section 5.4.1 hereof); (iv) proposed additions or
2 subtractions to the Pre-Approved Arbiters List (pursuant to Section 27.3.1); (v) disputes related
3 to Redesign Work Program and Costs (pursuant to Section 4.2.4); or (vi) any matter the
4 Authority in its reasonable discretion believes has the potential to materially delay the Project.

5 27.3.2.1 The Party(ies) disputing any matter subject to this expedited
6 dispute resolution procedure shall, within five (5) business days after submittal of the dispute to
7 non-binding arbitration, submit a brief with all supporting evidence to the Arbiter with copies to
8 all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form
9 of graphic evidence, including photos, maps or graphs and any other evidence the Parties may
10 choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case,
11 any interested Party may submit an additional brief within three (3) business days after
12 distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a
13 decision in the matter promptly, but in any event within ten (10) business days after the initiation
14 of the non-binding arbitration, unless the Arbiter determines that further briefing is necessary, in
15 which case the additional brief(s) addressing only those items or issues identified by the Arbiter
16 shall be submitted to the Arbiter (with copies to all Parties) within five (5) business days after the
17 Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision
18 promptly but in any event within two (2) business days after submission of such additional
19 briefs, and no later than seventeen (17) business days after the initiation of the non-binding
20 arbitration. Each Party will give due consideration to the Arbiter's decision prior to pursuing
21 further legal action, which decision to pursue further legal action shall be made in each Party's
22 sole and absolute discretion.

23 27.3.3 Non-Binding Arbitration Process for Other Disputes.

24 27.3.3.1 Election to Participate in Non-Binding Arbitration. If the
25 dispute is arising under this Agreement and is not otherwise subject to Section 27.3.2, and the
26 Parties so agree in accordance with Section 27.2.2, the Parties shall submit the dispute to non-
27 binding arbitration by notifying the Arbiter (selected as described in Section 27.3.1) of the
28 dispute within ten (10) business days after expiration of the good faith meet and confer
29 provisions of Section 27.2. Thereafter, within ten (10) business days, each Party to the dispute
30 shall submit to the Arbiter and serve on the other Party to the non-binding arbitration a short
31 statement of the dispute and a proposed discovery and hearing schedule.

32 27.3.3.2 Preliminary Hearing. Within twenty (20) business days after
33 notice of the election to participate in non-binding arbitration, the Arbiter shall conduct, either
34 telephonically or in-person, a preliminary hearing. At the preliminary hearing the Arbiter shall
35 decide discovery and briefing issues and set dates, including a hearing date. In resolving
36 discovery issues, the Arbiter shall consider expediency, cost effectiveness, fairness, and the
37 needs of the Parties for adequate information with respect to the dispute.
38

39 27.3.3.3 Retention of Consultants. The Parties by mutual agreement
40 may retain consultants to assist the Arbiter in the course of Arbitration, if requested by the
41 Arbiter. In his or her request, the Arbiter shall provide to all Parties to the dispute an explanation
42 for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of

1 the service. All Parties to the dispute must approve the retention of the consultant and, if
2 retention of the consultant is approved, Authority, or Developer on behalf of Authority, shall
3 contract with, if necessary, and pay the costs of the consultant, subject to the provisions
4 regarding fees and costs set forth in Section 27.3.5 below. The consultant's cost shall not exceed
5 \$10,000 without the prior written consent of the Parties to the dispute. All consultant costs paid
6 by Authority that are not credited against Initial or Additional Consideration in accordance with
7 Section 27.3.5 below shall be included as Development Costs in calculating the Additional
8 Consideration.

9 27.3.3.4 Commencement of Non-Binding Arbitration. The non-binding
10 arbitration hearing shall commence no later than sixty (60) days after the initial preliminary
11 hearing, unless the Parties to the dispute mutually agree to extend the date or the Arbiter extends
12 the date.

13 27.3.3.5 Additional Procedural Requirements. The procedural rules of
14 the non-binding arbitration under Section 27.3.3 shall be supplemented by any non-conflicting
15 non-binding arbitration procedures of other alternative dispute resolution providers as may be
16 mutually agreed upon by the Parties from time to time, applicable to commercial non-binding
17 arbitration, and may be modified by agreement of the Parties.

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

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

27 27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

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

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

1 27.3.4.3 No Ex Parte Communications. No Party or anyone acting on
2 its behalf shall have any ex parte communication with the Arbiter with regard to any matters in
3 issue. Communications concerning procedural matters such as scheduling shall not be included
4 in this prohibition.

5 27.3.4.4 Submission. Unless otherwise directed by the Arbiter or
6 agreed by the Parties to a given dispute, the Parties involved in the dispute shall strive to make
7 joint submissions to the Arbiter. The Arbiter shall determine the schedule for the Parties'
8 submissions, the page and form limitations for the submissions, and the schedule and form of
9 any hearing(s).

10 27.3.4.5 Governing Law. The Arbiter shall apply Federal laws and the
11 laws of the State of California, provided that in the event of a conflict between Federal law and
12 the laws of the State of California, the Federal law shall govern.

13 27.3.5 Fees and Costs. Initially, Authority, or Developer on behalf of
14 Authority, shall contract directly with the selected Arbiter and shall be responsible for payment
15 of the fees and costs of the Arbiter. The Authority shall have the right to credit against the next
16 payment of Initial Consideration (or if no payment of Initial Consideration remain due, then at
17 the next payment of Additional Consideration), fifty percent (50%) of the full amount of the
18 Arbiter's fees and costs, including the Arbiter's consultant costs. Costs of the Arbitration
19 incurred by the Authority and not credited against Initial or Additional Consideration shall be
20 included as Project costs in calculating the Additional Consideration.

21 27.3.6 No Cessation of Work Pending Resolution of a Dispute. Pending the
22 decision of the Arbiter of any dispute submitted to the Dispute Resolution Procedure
23 hereunder, the Parties agree that time is of the essence under this Agreement and the DDA and
24 the Project shall not cease or be delayed, unless Authority in its reasonable discretion elects not
25 to proceed until such dispute is resolved. If Authority elects not to proceed with any aspect of
26 the Project during the pendency of a dispute, Authority shall notify the Navy of such election
27 promptly in writing. If Authority proceeds pending a decision of the Arbiter, then, if the
28 parties mutually elect to accept the decision of the Arbiter, the Parties shall prepare a written
29 reconciliation of the amounts paid by the Parties that should have been paid in accordance with
30 the decision of the Arbiter, and the Parties shall then make any necessary adjustments between
31 them based on the reconciliation.

32 27.4 Institution of Legal Actions. Either Party may institute legal action to cure,
33 correct or remedy any default, to seek resolution of any dispute under this Agreement or to
34 obtain any other remedy consistent with the terms of this Agreement.

35
36
37 **ARTICLE 28**
38 **SURVIVAL AND BENEFIT**
39

40 28.1 Continuing rights, interests, and obligations of the Parties pursuant to this
41 Agreement shall survive Closing as provided in this Agreement and the same shall inure to the

1 benefit of and be binding upon the respective successors and assigns of the Parties. Nothing in
2 this Agreement otherwise shall be construed as creating any rights of enforcement by any person
3 or entity that is not a party hereto, nor any rights, interest, or third party beneficiary status for any
4 entity or person other than the Parties hereto. The Authority may assign its rights, interests, and
5 obligations under this Agreement to the City of San Francisco if the City of San Francisco
6 replaces the Authority as the designated and federally approved Local Redevelopment Authority
7 under the Defense Base Closure and Realignment Act of 1990, as amended.
8

9
10 **ARTICLE 29**
11 **INTERPRETATION**

12 29.1 The headings and captions herein are inserted for convenient reference only and
13 the same shall not limit or construe the paragraphs or sections to which they apply or otherwise
14 affect the interpretation hereof.
15

16 29.2 The terms “hereby,” “hereof,” “hereto,” “herein,” “hereunder” and any similar
17 terms shall refer to this Agreement, and the term “hereafter” shall mean after, and the term
18 “heretofore” shall mean before, the date of this Agreement.
19

20 29.3 Words of the masculine, feminine or neuter gender shall mean and include the
21 correlative words of other genders, and words importing the singular number shall mean and
22 include the plural number and vice versa.
23

24 29.4 Words importing persons shall include firms, associations, partnerships (including
25 limited partnerships), trusts, corporations and other legal entities, including public bodies, as well
26 as natural persons.
27

28 29.5 The terms “include,” “including” and similar terms shall be construed as if
29 followed by the phrase “without being limited to.”
30

31 29.6 This Agreement shall be governed by and construed in accordance with Federal
32 law and the laws of the State of California, provided, that in the event of a conflict between
33 Federal law and the laws of the State of California, the Federal law shall govern.
34

35 29.7 Whenever under the terms of this Agreement the time for performance of a
36 covenant or condition falls upon a Saturday, Sunday or holiday observed by the performing
37 party, such time for performance shall be extended to the next business day. Otherwise all
38 references herein to “days” shall mean calendar days.
39

40 29.8 If any term or provision of this Agreement or the application thereof to any person
41 or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this
42 Agreement, or the application of such term or provision to persons or circumstances other than
43 those as to which it is held invalid or unenforceable, shall not be affected thereby, and each such
44 term and provision of this Agreement shall be valid and be enforced to the fullest extent
45 permitted by law.
46

1 **ARTICLE 33**
2 **REMEDIES FOR NONPERFORMANCE**
3

4 33.1 In the event a Party hereto fails to observe or perform any of its obligations under
5 this Agreement or otherwise breaches this Agreement, after having been provided written notice
6 and failing to cure the default within thirty (30) days after such notice, the other Party will be
7 entitled to exercise any and all of the remedies for breach which are provided herein, as well as
8 any other remedies to which the Party is entitled at law or in equity. Notwithstanding the
9 foregoing, the Authority shall not be liable for monetary damages if it does not accept
10 conveyance of the Navy Real Property in a timely manner. Notwithstanding the foregoing, the
11 sole and exclusive remedies for failure to satisfy a Closing Condition as described in Section 3.7,
12 shall be as set out in Section 3.8.1 and 3.8.2 Notwithstanding the foregoing, the sole remedy for
13 failure by the Navy to meet a Site 12 Performance Benchmark shall be set out in Sections 4.2.2.2
14 and 4.2.3 through 4.2.5, above.
15

16 **ARTICLE 34**
17 **FAILURE TO INSIST ON COMPLIANCE**
18

19 34.1 The failure of either Party to insist, in any one or more instances, upon strict
20 performance of any of the terms of this Agreement shall not be construed as a waiver or
21 relinquishment of such Party's right to future performance of this Agreement, but the obligations
22 of the other Party with respect to such future performance shall continue in full force and effect.
23 Whenever the terms of this Agreement call for one Party to approve an action or make a
24 determination before the other Party may undertake or perform such action, said approval or
25 determination shall not be unreasonably denied or delayed.
26

27 **ARTICLE 35**
28 **RISK OF LOSS**
29

30 35.1 From the effective date of this Agreement, the Party then owning a Parcel shall
31 bear all risks of loss and damage due to casualty that may be suffered by the Parcel(s).
32 Notwithstanding any such loss or damage, each and all of the provisions of this Agreement shall
33 remain unimpaired and in full force and effect.
34

35 **ARTICLE 36**
36 **COUNTERPARTS**
37

38 36.1 This Agreement may be executed in multiple counterparts and/or with the
39 signatures of the Parties set forth on different signature sheets and all such counterparts, when
40 taken together, shall be deemed one original.
41

42 **[SIGNATURE PAGE FOLLOWS]**

1 **IN WITNESS WHEREOF**, the Parties, intending to be legally bound hereby, have
2 caused their duly appointed representatives to execute this Agreement as of the Effective Date
3 set forth above.
4

5
6 WITNESS/ATTEST:

THE UNITED STATES OF AMERICA

7
8
9
10
11 By: _____

By: _____

12 Name:
13 Title:

Real Estate Contracting Officer

14
15
16
17
18
19 WITNESS/ATTEST:

**THE TREASURE ISLAND
DEVELOPMENT AUTHORITY**

20
21
22
23
24
25 By: _____

By: _____

26 Name:
27 Title:

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

3
4 **“Authority Access Easements”** has the meaning set forth in Section 7.1.1.1.

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

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

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

14
15 **“Caretaker Agreement”** has the meaning set forth in the ninth Recital and is set forth in
16 Exhibit LL.

17
18 **“CDPH”** means the California Department of Public Health.

19
20 **“CEQA”** has the meaning set forth in the seventh Recital.

21
22 **“CERCLA”** means the Comprehensive Environmental Response, Compensation and
23 Liability Act, 42 U.S.C. § 9601, et seq.

24
25 **“Certification”** has the meaning set forth in the seventh Recital.

26
27 **“City”** has the meaning set forth in the first Recital.

28
29 **“Closing”** means the transactions by which the Navy Real Property, or a portion thereof,
30 is conveyed by Quitclaim Deed by the Navy to the Authority.

31
32 **“Closing Conditions”** has the meaning set forth in Section 3.7.

33
34 **“Commercial Lot”** has the meaning set forth in Section 5.2.1.

35
36 **“Contract Assumption List”** has the meaning set forth in Section 6.1.

37
38 **“Conveyance Schedule”** means the schedule for conveyance of the Navy Real Property
39 to the Authority that is set forth in Exhibit R.

40
41 **“Credit Commencement Date”** has the meaning set forth in Section 4.2.5.

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

44
45 **“Critical Commercial Lots Payment”** has the meaning set forth in Section 5.2.1.

1 **“CRL”** has the meaning set forth in Section 4.2.6.

2
3 **“DDA”** means the Disposition and Development Agreement entered into by and between
4 the Authority and the Developer, dated as of _____, 20__.

5
6 **“DDA Reports”** means, collectively, the items set forth in Section 5.9, Section 5.13.2,
7 and Section 5.13.3.

8
9 **“Default Interest Rate”** means an interest rate of three hundred (300) basis points above
10 the Interest Rate.

11
12 **“Developed Critical Commercial Lot”** has the meaning set forth in Section 5.2.2.

13
14 **“Developer”** means Treasure Island Community Development, LLC and its successors
15 and assigns, or other such entity that is the master developer, and expressly excludes the Marina
16 Developer.

17
18 **“Development Costs”** means all Hard Costs, Soft Costs, and Pre-Development Costs,
19 except to the extent specifically excluded under this Agreement and specifically excluding any
20 costs, fees or charges related to debt financing that are not also Permissible Financing Costs.

21
22 **“Developer Lots”** has the meaning set forth in Section 5.3.

23
24 **“DTSC”** means the California Department of Toxic Substances Control.

25
26 **“Easements”** means the interests in real property as set forth in Article 7.

27
28 **“EBSs”** has the meaning set forth in the fourth Recital.

29
30 **“EDC”** has the meaning set forth in the third Recital.

31
32 **“EDC Application”** has the meaning set forth in the third Recital.

33
34 **“Effective Date”** has the meaning set forth in the Preamble.

35
36 **“EIR”** has the meaning set forth in the seventh Recital.

37
38 **“EIS”** has the meaning set forth in the sixth Recital.

39
40 **“Entitlements”** means all land use approvals and entitlements, including all conditions
41 of approval and CEQA mitigation measures legally required by the Authority, City or any other
42 Regulatory Authority as a condition to the subdivision of the Property and development of the
43 Property in accordance with the DDA.

44
45 **“Environmental Reports”** means the documents included in the CERCLA
46 administrative record for Treasure Island and Environmental Baseline Surveys (EBSs), FOSTs,

1 FOSETs, and any Environmental Services Cooperative Agreements, which documents include
2 Toxic Substances Control Act 15 U.S.C. §2601 et seq. documents, radiological materials
3 documents, petroleum corrective action program documents, any lead-based paint and asbestos
4 surveys relating to the improvements on the Property and any regulatory order or consent
5 agreement, and any supporting documents specifically referenced therein.

6
7 **“Excess Land Appreciation Structure”** has the meaning set forth in Section 5.6.4.

8
9 **“Excluded Personal Property”** has the meaning set forth in Section 3.1.3.

10
11 **“Excusable Delay”** means a delay in a Party’s performance of its obligations hereunder
12 that is caused by (a) acts of God, enemy action, civil commotion, fire, flood, earthquake or other
13 casualty; (b) strikes or other labor disputes (to the extent not resulting from the labor practices of
14 the Party claiming the benefit of the Excusable Delay); (c) material shortages of or inability to
15 obtain labor or materials beyond the reasonable control of the Party claiming the benefit of
16 Excusable Delay (except to the extent caused by the negligent act or omission or willful
17 misconduct of the Party claiming the benefit of Excusable Delay); (d) unanticipated breakage or
18 accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; (e)
19 materially adverse weather conditions to the extent that such conditions could not be reasonably
20 predicted or anticipated; (f) a delay caused by federally-imposed increased security measures that
21 require upgrades in threat condition or combating terrorism on the Property; (g) Litigation
22 Excusable Delays; and (h) Regulatory Excusable Delays.

23
24 **“Exempt Transferee”** has the meaning set forth in Section 3.6.7.

25
26 **“FFSRA”** means Federal Facilities Site Remediation Agreement dated September 29,
27 1992, as may be amended, between the Navy and the State of California Department of Toxic
28 Substances Control (“**DTSC**”) and San Francisco Regional Water Quality Control Board
29 (“**RWQCB**”) setting forth the Navy’s obligations to investigate and remediate sites at the Navy
30 Real Property subject to the availability of funds and other provisions of the FFSRA. In
31 addition, the FFSRA establishes the terms and conditions for DTSC and RWQCB approved
32 changes to schedules and penalties for failure to meet environmental remediation schedules. The
33 current FFSRA is attached hereto as Exhibit O.

34
35 **“Final IRR”** has the meaning set forth in Section 4.3.6.1.

36
37 **“First Tier Participation”** has the meaning set forth in Section 4.3.1.

38
39 **“First Tier Payment”** has the meaning set forth in Section 4.3.2.

40
41 **“FOST”** means a written determination by the Navy that a Parcel may be transferred by
42 a Quitclaim Deed to the Authority in full compliance with 42 U.S.C. §9620(h)(3)(A) or
43 §9620(h)(4) of CERCLA and described in the fourth Recital. The FOST for the FOST Parcel is
44 set forth in Exhibit J, attached hereto and made a part hereof.

45
46 **“FOST Parcel”** has the meaning set forth in the fifth Recital.

1
2 **“FSSR”** has the meaning set forth in Section 3.7.1.2.

3
4 **“GAAP”** has the meaning set forth in Section 4.3.5.

5
6 **“Government”** means the United States of America.

7
8 **“Government Real Property”** means the real property owned by the United States of
9 America as described in Exhibit C, attached hereto and made a part hereof, which includes real
10 property under the jurisdiction, custody or control of the United States Coast Guard, the United
11 States Department of Labor, and the Federal Highway Administration, and specifically excludes
12 the real property, easements, rights of access or other interests under the jurisdiction, custody, or
13 control of the Navy as specified in Section 3.1.1.

14
15 **“Gross Revenues”** means, for any period, all cash revenues received by the Developer
16 from any source whatsoever, and whether collected through or outside of escrow in connection
17 with all or any part of the Project, in each case for such period, which shall include, the gross
18 proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to
19 Developer as the master landlord under any ground lease or as a property manager under an
20 interim management agreement with the Authority for existing facilities and open space,
21 including any of the Authority's revenues assigned to the Developer pursuant to the DDA (which
22 assignment may exclude revenues of the Authority that are used to pay for the Authority's costs
23 and expenses that are not included in the Authority Cost Payment pursuant to the DDA);
24 proceeds from the first sale of ground leases or refinancing intended to capitalize ground value;
25 any damage recoveries, insurance payments or condemnation proceeds payable to the Developer
26 with respect to the Project to the extent not otherwise used for repair or reconstruction of the
27 Property, all revenues derived from agreements to which the Developer is a party pursuant to
28 which the Developer participates in the proceeds of the operation or sale of any portion of the
29 Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special
30 tax districts formed for purposes of providing funds for costs associated with the Project, and
31 amounts paid to Developer from tax increment financing or other public financing, and grants
32 and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross
33 Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by
34 its partners or members or the proceeds of any loan made to the Developer.

35
36 **“Guidelines for Residential Auction Lot Selection”** has the meaning set forth in
37 Section 5.5.3.

38
39 **“Hard Costs”** means Developer's reasonable out-of-pocket costs actually incurred in
40 connection with the construction of the Horizontal Improvements (which include, without
41 limitation, construction of improvements by Developer on the Critical Commercial Lots to the
42 extent required under the DDA). Hard Costs include, without limitation, necessary permit fees,
43 bond premiums and similar fees and charges required for the construction of the Horizontal
44 Improvements.

1 **“Hazardous Substance”** means (A) any substance designated pursuant to section
2 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated
3 pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified
4 under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but
5 not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C.
6 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under
7 section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean
8 Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with
9 respect to which the Administrator of the Environmental Protection Agency has taken action
10 pursuant to section 2606 of title 15. The term does not include natural gas, natural gas liquids,
11 liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such
12 synthetic gas).

13
14 **“Horizontal Improvements”** means demolition, grading, geotechnical improvements,
15 environmental investigation, environmental characterization, regulatory agency coordination and
16 negotiation and environmental remediation for which Developer’s costs are not reimbursed
17 through an Environmental Services Cooperative Agreement or other Navy funds, infrastructure
18 and utilities, and all other improvements and related costs required to be performed or installed
19 by Developer pursuant to the terms of the DDA, including but not limited to, the preparation of
20 land for vertical development, public service and community improvements, transportation
21 program improvements and subsidies, facilities and equipment, open space and parks
22 improvements and maintenance, rehabilitation of historic buildings, affordable housing program
23 and transition housing improvements.

24
25 **“Illustrative Land Use Plan”** means the Illustrative Land Use Plan attached hereto as
26 Exhibit Z and described in the third Recital.

27
28 **“Initial Consideration”** has the meaning set forth in Section 4.1.

29
30 **“Initial Consideration Term”** has the meaning set forth in Section 4.1.

31
32 **“Initial Closing”** means the date on which the first conveyance of the FOST Parcel by
33 Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3 hereof.

34
35 **“Installment Payment”** has the meaning set forth in Section 4.2.1.

36
37 **“Interest Rate”** means an annual interest rate of _____%, which equals the interest rate
38 payable on ten year (10) Treasury Notes in effect as of the month that this Agreement is entered
39 into plus one hundred fifty basis points (150 bps), which Interest Rate will be locked for the
40 duration of this Agreement.

41
42 **“IRR”** means the internal rate of return, annualized, calculated on the Project’s Net Cash
43 Flow by the Excel 2007 “IRR” function using quarterly Net Cash Flows. The Project’s Net Cash
44 Flow shall be adjusted to show all costs incurred in the quarter paid and all revenues in the
45 quarter received, provided that Pre-Development Costs are applied as of the Initial Closing. An
46 example of the IRR calculation is attached hereto as Exhibit DD.

1
2 **“IRR Statement”** has the meaning set forth in Section 4.3.2.

3
4 **“JV Lots”** has the meaning set forth in Section 5.3.

5
6 **“Land Use Covenant”** means that certain land use covenant(s) entitled “Covenant to
7 Restrict Use of Property; Environmental Restrictions” regarding environmental restrictions,
8 entered into by the Authority and the State of California Department of Toxic Substances
9 Control, that may be executed for a given Parcel.

10
11 **“Late Payment”** has the meaning set forth in Section 4.3.4.

12
13 **“LBP”** has the meaning set forth in Section 17.3.

14
15 **“LIFO”** has the meaning set forth in Section 3.8.1.

16
17 **“Litigation Excusable Delay”** means any action or proceeding before any court,
18 tribunal, or other judicial, adjudicative or legislative decision-making body, including any
19 administrative appeal, brought by plaintiffs unaffiliated with the Party claiming the benefit of
20 Excusable Delay which both (1) (x) seeks to challenge the validity of any action taken by the
21 Party claiming the benefit of Excusable Delay, including the Party’s approval, execution, and
22 delivery of this Agreement and its performance hereunder, or the performance of any action
23 required or permitted to be performed by the Party hereunder, or (y) seeks to challenge the
24 failure of any Regulatory Authority to issue, the conditions of, or the validity of any other permit
25 required to conduct the Party’s obligations under this Agreement, and (2) is reasonably likely to
26 prevent the Parties from timely performing its obligations under this Agreement. Performance
27 by a Party hereunder shall be deemed delayed or made impossible by virtue of Litigation
28 Excusable Delay during the pendency thereof, and until a judgment, order, or other decision
29 resolving such matter in favor of the Party whose performance is delayed has become final and
30 unappealable. The Parties shall each proceed with due diligence and shall cooperate with one
31 another to defend the action or proceeding or take other measures to resolve the dispute that is
32 the subject of such action or proceeding.

33
34 **“Lots”** means a building site to be prepared by Developer and conveyed for
35 consideration to a third party or Developer affiliate pursuant to the terms of the DDA, including,
36 without limitation, the Commercial Lots.

37
38 **“Major Phase”** has the meaning set forth in Section 5.2.1.

39
40 **“Major Phase Decision Notice”** has the meaning set forth in Section 5.7.1.

41
42 **“Major Phase Decisions”** has the meaning set forth in Section 5.6.

43
44 **“Marina Developer”** means Treasure Island Enterprises, LLC, its successors and
45 assigns, or such other entity that is the master tenant and developer of the Treasure Island
46 Marina.

1
2 **“Marina Project”** means the redevelopment and operation of the Treasure Island Marina
3 in accordance with a Lease Disposition and Development Agreement and a Ground Lease
4 between the Authority and the Marina Developer.

5
6 **“Marina Property”** means the property described in Exhibit F attached hereto which
7 will be used for the Marina Project.

8
9 **“Marina Revenues”** means minimum rent, percentage rent and any proceeds from
10 refinancings, sales or subleases for the Marina Project that are actually received by the Authority
11 under the terms of the Marina Ground Lease and/or the Marina Lease Disposition and
12 Development Agreement. Marina Revenues shall not include the amount of any rent credits that
13 the Marina Developer is entitled to receive under the terms of the Marina Ground Lease.

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

16
17 **“Market Rate Units”** has the meaning set forth in Section 5.3.

18
19 **“Multiple Conveyances”** means a series of Partial Conveyances.

20
21 **“Navy”** has the meaning set forth in the Preamble.

22
23 **“Navy Access Easements”** has the meaning set forth in Section 7.1.1.2.

24
25 **“Navy Closing Documents”** has the meaning set forth in Section 8.2.

26
27 **“Navy Office”** has the meaning set forth in Section 13.1.

28
29 **“Navy Office Agreement”** has the meaning set forth in Section 13.1 and is attached as
30 Exhibit K-2.

31
32 **“Navy Personal Property”** has the meaning set forth in Section 3.1.3.

33
34 **“Navy Property”** means, collectively, the Navy Personal Property and the Navy Real
35 Property.

36
37 **“Navy Real Property”** means real property owned by the United States of America
38 under the jurisdiction, custody, and control of the Navy as specified in Section 3.1.1, and
39 specifically excludes the real property, easements, rights of access or other interests under the
40 jurisdiction, custody, and control of the United States Coast Guard, the United States Department
41 of Labor, or the Federal Highway Administration, as described in Exhibit C attached hereto.

42
43 **“Navy Real Property Documents”** has the meaning set forth in Section 12.1.

44
45 **“Navy Reserved Access Easement”** has the meaning set forth in Section 7.1.1.2.

46

1 **“NEPA”** has the meaning set forth in the sixth Recital.

2
3 **“NEPA ROD”** has the meaning set forth in the sixth Recital.

4
5 **“Net Available Tax Increment Revenues”** has the meaning set forth in Section 4.2.6.

6
7 **“Net Cash Flow”** means Gross Revenues received by the Developer from the Project
8 less Development Costs paid by the Developer.

9
10 **“Non-Assignable Easements”** has the meaning set forth in Section 3.6.

11
12 **“Non-Critical Commercial Lot”** has the meaning set forth in Section 5.2.1.

13
14 **“Non-Developer Critical Commercial Lot”** has the meaning set forth in Section 5.2.2.

15
16 **“Open Space Acres”** means those portions of the Navy Real Property identified in the
17 Illustrative Land Use Plan as ‘Open Space’ or ‘Public Services, Civic, Institutional’, consisting
18 of approximately _____ acres.

19
20 **“Option Notice”** has the meaning set forth in Section 3.8.7.

21
22 **“Option Property”** has the meaning set forth in Section 3.8.7.

23
24 **“Owner Property”** has the meaning set forth in Section 7.1.1.3.3.

25
26 **“Parcel”** or **“Parcels”** has the meaning set forth in the fifth Recital.

27
28 **“Partial Conveyance”** means a conveyance by deed from the Navy to the Authority of
29 any number of Parcels comprising less than the entire Navy Real Property.

30
31 **“Party”** or **“Parties”** has the meaning set forth in the Preamble.

32
33 **“Performance Benchmark”** has the meaning set forth in Section 4.2.2.

34
35 **“Permissible Financing Costs”** means debt service and required reserves for Mello-
36 Roos Bonds that are not withheld in such Mello-Roos Bonds issuances; and debt service and all
37 other related financing costs, including, without limitation, bond issuance costs and fees, legal
38 fees, and bond marketing costs, actually incurred and paid by Developer to pay for certain public
39 facilities to be constructed on the Property, including a fire/police station and public parking
40 garages, to the extent financed using public finance vehicles such as certificates of participation
41 or revenue bonds.

42
43 **“Pre-Approved Arbiters List”** has the meaning set forth in Section 27.3.1.

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

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

16
17 **“Product Types”** has the meaning set forth in Section 5.5.2.

18
19 **“Project”** means the mixed use development more particularly described in the DDA,
20 and expressly excludes the Marina Project.

21
22 **“Property”** means, collectively, the Government Real Property and the Navy Property.

23
24 **“Qualified Appraiser Pool”** has the meaning set forth in Section 5.4.1.

25
26 **“Quarter”** means a three-month period commencing on the first day of the Initial
27 Closing and continuing until the Termination Date hereof.

28
29 **“Quitclaim Deed(s)”** means those certain recordable quitclaim deeds conveying the
30 Navy’s right, title, and interest to the Navy Real Property and the Easements to the Authority, in
31 the forms attached hereto and made a part hereof as Exhibit D-1 and Exhibit D-2.

32
33 **“RACR”** has the meaning set forth in Section 3.7.1.4.

34
35 **“Redesign Budget”** has the meaning set forth in Section 4.2.4.

36
37 **“Redesign Plan”** has the meaning set forth in Section 4.2.3.

38
39 **“Redesign Trigger Event”** has the meaning set forth in Section 4.2.3.

40
41 **“Redevelopment Plan Redesign Costs”** has the meaning set forth in Section 4.2.4.

42
43 **“Regulatory Authority”** means any governmental agency having regulatory jurisdiction
44 over the Property to issue any required authorization, approval or permit.

1 **“Regulatory Excusable Delay”** means delays by Regulatory Authorities in issuing
2 requisite approvals or consents beyond the reasonable control of the Party claiming the benefit of
3 Regulatory Excusable Delay, provided that the Party claiming the benefit of Regulatory
4 Excusable Delay is diligently proceeding to obtain all necessary approvals from Regulatory
5 Authorities. Without limiting the foregoing, Regulatory Excusable Delays shall not include
6 delays resulting from (i) the Party’s failure to timely respond to requests for information or (ii)
7 the Party’s failure to take actions or proceed in a manner requested by the Regulatory Authority
8 that is consistent with industry standard practices and Regulatory Authority requirements as
9 commonly applied for the intended land use for property within the jurisdiction of the applicable
10 Regulatory Authority.

11 **“Remainder Parcel”** has the meaning set forth in the fifth Recital.

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

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

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

15 **“Reuse Plan”** has the meaning set forth in the third Recital.

16 **“Road Easement”** has the meaning set forth in Section 7.1.1.1.

17 **“SEBS”** has the meaning set forth in the fourth Recital.

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

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

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

21 **“Site 12 Performance Benchmark”** has the meaning set forth in Section 4.2.2.1.

22 **“Site 12 ROD”** has the meaning set forth in Section 4.2.2.1.1.

23 **“Site 12 ROD Notice”** has the meaning set forth in Section 4.2.2.1.

24 **“SHPO”** has the meaning set forth in the eighth Recital.

25 **“Soft Costs”** means Developer’s reasonable out-of-pocket costs actually incurred and
26 paid on or after the Initial Closing (except as otherwise provided below or in Section 5.13) and
27 attributable to the following: designing the Horizontal Improvements and improvements on the
28 Critical Commercial Lots; marketing and selling the Lots, including Auction costs; Entitlements;
29 architectural, engineering, consultants, community outreach, attorney and other professional
30 fees; real property taxes and assessments; Permissible Financing Costs; insurance expenses,
31 including environmental insurance; sales and marketing expenses; security and site maintenance;
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1 customary closing costs incurred in connection with sales of the Lots; Authority Costs Payments;
2 costs and subsidies incurred pursuant to the DDA, including, without limitation: costs and
3 subsidies not otherwise included in Hard Costs related to implementation of the transportation
4 program, affordable housing and transition housing program, rehabilitation of the historic
5 buildings, development of the Critical Commercial Lots, development of the parks and open
6 space, and public art; any Initial Consideration, Additional Consideration, and interest payments
7 on both, and expenses incurred by Developer related to management of existing facilities and
8 open space under a management agreement with the Authority. Without limiting the foregoing,
9 the following shall not constitute “Soft Costs”: (1) repayment of the principal and interest, fees
10 or costs of any loan, investment or financing other than Permissible Financing Costs; and (2)
11 distributions, preferred return or other capital return to the members of Developer; and (3) costs
12 and fees related to compliance and reporting to lenders other than those required for any
13 financing allowed under Permissible Financing Costs.

14
15 **“Subordinate Pledge”** has the meaning set forth in Section 4.2.6.

16
17 **“Term”** means the term of this Agreement, commencing on the Effective Date and
18 expiring on the Termination Date unless terminated earlier as otherwise provided for herein.

19
20 **“Termination Date”** means the date twenty five (25) years from the Initial Closing or as
21 adjusted by mutual agreement of all Parties based on the annually updated pro forma.

22
23 **“Third Party Access Easement”** has the meaning set forth in Section 7.1.1.2.

24
25 **“Title Company”** means such title insurance company as the Authority shall from time
26 to time designate.

27
28 **“Treasure Island”** has the meaning set forth in the first Recital.

29
30 **“Unperfected Easements”** has the meaning set forth in Section 3.6.

31
32 **“Utilities Agreement”** has the meaning set forth in Section 9.1.

33
34 **“Utility Easements”** has the meaning set forth in Section 7.1.2.

35
36 **“Utility Infrastructure”** means all utilities and related support infrastructure located on
37 and off the Navy Real Property that are assignable or transferable by the Navy such as electrical,
38 water, sewer, gas, and storm drainage lines to be transferred to the Authority under this
39 Agreement pursuant to the terms and conditions set forth in a Bill of Sale in the form attached
40 hereto and made a part hereof as Exhibit H-2 or the Quitclaim Deeds in the form attached hereto
41 and made a part hereof as Exhibit D-1 or Exhibit D-2.

42
43 **“Vertical Builder”** means the successor owner of a Lot pursuant to a transfer permitted
44 under the DDA who is building Vertical Improvements.

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

3

4 **“Work Program”** has the meaning set forth in Section 4.2.4.