Navy Redline 4-15-11

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

ECONOMIC DEVELOPMENT CONVEYANCE
MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE TREASURE ISLAND DEVELOPMENT AUTHORITY
FOR THE CONVEYANCE OF
THE NAVAL STATION TREASURE ISLAND

INDEX

ARTICLE 1 DEFINITIONS 3
ARTICLE 2 ECONOMIC DEVELOPMENT CONVEYANCE 3
ARTICLE 3 CONVEYANCE SCHEDULE AND TRANSFERS 4
ARTICLE 4 CONSIDERATION 12
ARTICLE 5 CONTROLS 21
ARTICLE 6 CONTRACTS AND PERMITS 31
ARTICLE 7 EASEMENTS AND OTHER SIMILAR INSTRUMENTS 31
ARTICLE 8 CLOSING AND SETTLEMENT 34
ARTICLE 9 UTILITIES AGREEMENT 36
ARTICLE 10 TIME OF THE ESSENCE AND POSTPONEMENT 37
ARTICLE 11 ENVIRONMENTAL REPORTS 37
ARTICLE 12 DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS 38
ARTICLE 13 NAVY CARETAKER SITE OFFICE 38
ARTICLE 14 NAVY REPRESENTATIONS 39
ARTICLE 15 AUTHORITY REPRESENTATIONS 39
ARTICLE 16 TITLE AND NAVY COVENANTS 40
ARTICLE 17 ENVIRONMENTAL PROVISIONS 40
ARTICLE 18 PETROLEUM CORRECTIVE ACTION 41
ARTICLE 19 COVENANT AGAINST CONTINGENT FEES 41
ARTICLE 20 NOTICES 42
ARTICLE 21 PRIOR LIABILITIES 43
ARTICLE 22 AUTHORITY'S AVAILABILITY OF FUNDS 43
ARTICLE 23 FINALITY OF CONVEYANCE 44

ARTICLE 24 LIABILITY FOR ENVIRONMENTAL CONTAMINATION 44
ARTICLE 25 SHORT FORM NOTICE 44
ARTICLE 26 FURTHER ASSURANCES 45
ARTICLE 27 DISPUTE RESOLUTION PROCEDURES 45
ARTICLE 28 SURVIVAL AND BENEFIT 49
ARTICLE 29 INTERPRETATION 49
ARTICLE 30 NON-DISCRIMINATION 50
ARTICLE 31 AVAILABILITY OF FUNDS 51
ARTICLE 32 MODIFICATION; WAIVERS 51
ARTICLE 33 REMEDIES FOR NONPERFORMANCE 51
ARTICLE 34 FAILURE TO INSIST ON COMPLIANCE 51
ARTICLE 35 RISK OF LOSS 52
ARTICLE 36 COUNTERPARTS 52

EXHIBITS

DEFINITIONS.....EXHIBIT A

DESCRIPTION OF PROPERTY:

MAP OF PARCEL DESIGNATIONS.....EXHIBIT B-1
FOST PARCEL.....EXHIBIT B-2
REMAINDER PARCEL.....EXHIBIT B-3
RESERVED.....EXHIBIT B-4
SITE 12 DEVELOPMENT PARCEL.....EXHIBIT B-5
BUILDING 233 DEVELOPMENT PARCEL.....EXHIBIT B-6
PROPERTY SUBJECT TO LIFOC, EASEMENT, OR OTHER
INSTRUMENT PRIOR TO INITIAL CLOSING.....EXHIBIT B-7
HISTORIC DISTRICT.....EXHIBIT B-8

RESERVED.....EXHIBIT C

QUITCLAIM DEEDS:

FOST PARCEL.....EXHIBIT D-1
REMAINDER PARCEL.....EXHIBIT D-2
PRE-CLOSING PARCEL.....EXHIBIT D-3

EXCLUDED PERSONAL PROPERTY.....EXHIBIT E

MARINA PROPERTY.....EXHIBIT F

NEPA RECORD OF DECISION.....EXHIBIT G

BILLS OF SALE:

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

EASEMENTS:

ASSIGNABLE EASEMENTS.....EXHIBIT I-1
FORM OF ASSIGNMENT OF EASEMENTS.....EXHIBIT I-2
UTILITY EASEMENTS.....EXHIBIT I-3
ACCESS EASEMENTS.....EXHIBIT I-4
NON-ASSIGNABLE AND UNPERFECTED EASEMENTS.....EXHIBIT I-5
NAVY ACCESS EASEMENTS.....EXHIBIT I-6
NON-ASSIGNABLE AND UNPERFECTED EASEMENT RELATED

TO THE PROVISION OF ELECTRICITY .....EXHIBIT I-7

FOST.....EXHIBIT J

NAVY CARETAKER SITE OFFICE:

CURRENT NAVY CARETAKER SITE OFFICE LOCATION.....EXHIBIT K-1
NAVY OFFICE AGREEMENT.....EXHIBIT K-2
GREAT WHITES LOCATION.....EXHIBIT K-3

RESERVED.....EXHIBIT L

SHORT FORM NOTICE OF CONVEYANCE.....EXHIBIT M

REPRESENTATIONS:

NAVY .....EXHIBIT N-1
AUTHORITY .....EXHIBIT N-2

FEDERAL FACILITIES SITE REMEDIATION AGREEMENT .....EXHIBIT O

CERTIFICATION RESOLUTIONS .....EXHIBIT P

NATIONAL HISTORIC PRESERVATION ACT MOA .....EXHIBIT Q

PROPERTY CONVEYANCE SCHEDULE.....EXHIBIT R

AUCTION BIDDER SELECTION GUIDELINES
FOR RESIDENTIAL LOTS.....EXHIBIT S-1
AUCTION BIDDER SELECTION GUIDELINES
FOR COMMERCIAL LOTS.....EXHIBIT S-2

PRELIMINARY TITLE REPORT.....EXHIBIT T

TITLE EXCEPTIONS TO BE REMOVED, RELEASED OR INSURED .....EXHIBIT U

RESERVED.....EXHIBIT V

APPRAISAL INSTRUCTIONS:
DEVELOPER LOTS .....EXHIBIT X-1
JV LOTS .....EXHIBIT X-2
NON-CRITICAL COMMERCIAL LOTS .....EXHIBIT X-3
DEVELOPED CRITICAL COMMERCIAL LOTS .....EXHIBIT X-4

QUALIFIED APPRAISER POOL .....EXHIBIT Y

ILLUSTRATIVE LAND USE PLAN .....EXHIBIT Z

ECONOMIC DEVELOPMENT CONVEYANCE APPLICATION.....EXHIBIT AA

FORM OF ASSIGNMENT AND ACCEPTANCE OF ASSUMED CONTRACTS.....EXHIBIT BB

SECOND TIER PARTICIPATION CALCULATION.....EXHIBIT CC

EXAMPLE OF IRR CALCULATION .....EXHIBIT DD

FORM OF UTILITIES AGREEMENT.....EXHIBIT EE

GUIDELINES FOR RESIDENTIAL AUCTION LOT SELECTION .....EXHIBIT FF

PRE-APPROVED ARBITERS LIST .....EXHIBIT GG

FORM OF SECURITY
- PROMISSORY NOTE FOR PRE-CLOSING PARCEL CONSIDERATION .....EXHIBIT HH-1
- NON-RECOURSE DEED OF TRUST FOR HISTORIC DISTRICT .....EXHIBIT HH-2
- PROMISSORY NOTE FOR INITIAL CONSIDERATION .....EXHIBIT HH-3

FORM OF ASSIGNMENT OF RENTS .....EXHIBIT II

FORM OF SUBORDINATE PLEDGE .....EXHIBIT JJ

EXAMPLE OF PREDEVELOPMENT COSTS CALCULATION.....EXHIBIT KK

LIST OF MASTER LEASES .....EXHIBIT LL

ECONOMIC DEVELOPMENT CONVEYANCE
MEMORANDUM OF AGREEMENT
BETWEEN
THE UNITED STATES OF AMERICA
AND
THE TREASURE ISLAND DEVELOPMENT AUTHORITY
FOR THE CONVEYANCE OF
THE NAVAL STATION TREASURE ISLAND

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

RECITALS

WHEREAS:

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

2. (a) Pursuant to the power and authority provided by §2905(b)(4) of the Defense Base Closure and Realignment Act of 1990, 10 U.S.C. § 2687 note, as amended, and the implementing regulations of the Department of Defense (32 C.F.R. Part 175), the Secretary of the Navy is authorized to convey surplus property at a closing installation to the Local Redevelopment Authority for economic development purposes. By its "EDC Application and Business Plan for Naval Station Treasure Island" dated June 19, 2000, as amended on July 1, 2003, and amended and restated in its entirety on July 23, 2007, and as further amended by its application dated _____, 2010, as further amended on _____, 2011, the Authority applied for an Economic Development Conveyance ("**EDC**") of approximately **[**one thousand and thirty-three (1,033) / nine hundred and ninety-six (996)**]**)**][to be confirmed by Navy mapping dept.]** acres of Treasure Island together with existing Navy owned off-site utilities serving Treasure Island (the "**EDC Application**"), to be used and redeveloped in accordance with the "Draft Reuse Plan for Naval Station Treasure Island" ("**Reuse Plan**") as endorsed by the City Planning Commission and the City's Board of Supervisors in July 1996 and approved by the United States Department of Housing and Urban Development on November 26, 1996, as shown on the "**Illustrative Land Use Plan**" in the Authority's EDC Application.

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

(c) The Navy has approved the Authority's EDC Application on _____, 2011, attached hereto as Exhibit AA for approximately _____ acres of Treasure Island and Yerba Buena Island.

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

3. In accordance with the provisions of the Community Environmental Response Facilitation Act, the Navy prepared Environmental Baseline Surveys ("**EBSs**") for the Navy Real Property, copies of which have been provided to the Authority. Subsequently, the Navy prepared a Supplemental Environmental Baseline Survey ("**SEBS**") for the Navy Real Property dated _____, a copy of which has been provided to the Authority. In accordance with *DOD Policy on the Environmental Review Process to Reach a Finding of Suitability to Transfer* ("**FOST**") *for Property Where Release or Disposal Has Occurred*, the Navy prepared FOSTs dated February 15, 2006, March 22, 2006, and _____, 20__, attached hereto as Exhibit J.

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

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

6. In accordance with the provisions of the California Environmental Quality Act ("**CEQA**"), as amended, the Authority and the City, as co-lead agencies, have prepared a project-level Environmental Impact Report ("**EIR**") for the Illustrative Land Use Plan and related documents and actions. The Authority certified the EIR as complete and the Planning Commission certified the EIR as complete on _____, 2011 (collectively, the "**Certification**"). The Certification resolutions are attached hereto as Exhibit P.

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

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

9. The Authority shall cause the Disposition and Development Agreement ("**DDA**") to incorporate all applicable terms of this Agreement substantially in the same form as they appear herein.

AGREEMENTS

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

ARTICLE 1
DEFINITIONS

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

ARTICLE 2
ECONOMIC DEVELOPMENT CONVEYANCE

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

ARTICLE 3
CONVEYANCE SCHEDULE AND TRANSFERS

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

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

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

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

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

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

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

3.1.3 The Navy Personal Property consisting of the Navy's right, title, and interest in all personal property, except for (i) items identified in Article 13 relating to the Navy Caretaker Office, and (ii) property under the cognizance of the Navy Historical Center that is identified on Exhibit E, attached hereto (collectively, the "**Excluded Personal Property**"), located on or used in connection with the ownership, use, or operation of the specific portion of the Navy Real Property to be transferred to the Authority at each Closing, substantially in the form of and pursuant to the terms and conditions of the Bill of Sale as more particularly described in Exhibit H-1, attached hereto. The Navy shall retain responsibility for all Excluded Personal Property under the cognizance of the Navy Historical Center and/or the Navy Caretaker Office. Unless the Navy and the Authority enter into a separate agreement regarding the Excluded Personal Property under the cognizance of the Navy Historical Center, Navy shall remove all such Excluded Personal Property from the Navy Real Property within 24

months after notice from the Authority requesting removal. The Authority shall have the right to relocate the Excluded Personal Property related to the Navy Historical Center prior to its removal so long as such artifacts are moved with appropriate care and with Navy approval.

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

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

3.2.2 Prior to the satisfaction or waiver of the Closing Conditions and the Initial Conveyance, the Authority may request the conveyance of an approximately five (5) acre parcel ("**Pre-Closing Parcel**"), provided that if any portion of the Navy Real Property selected by the Authority as the Pre-Closing Parcel is in the Historic District, or the conveyance or planned use may affect property that is or may be eligible for listing on the National Register, then the entire Historic District and any other property that is or may be eligible for listing on the National Register shall be added to the selected Navy Real Property and included in the Pre-Closing Parcel.

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

3.3 Conveyance Process.

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

3.3.2 Remainder Parcel. Upon satisfaction of the Closing Conditions for the transfer of the Remainder Parcel or applicable portions thereof, the Navy shall convey to the Authority, and the Authority shall accept, the portions of the Navy Real Property that are more particularly described and delineated as the Remainder Parcel on Exhibit B-3, attached hereto, or portions of such Remainder Parcel, in accordance with the process otherwise provided herein.

3.3.3 Pre-Closing Parcel. The Navy shall convey the Pre-Closing Parcel to the Authority, via a Quitclaim Deed in accordance with the Closing Conditions described in Section 3.7.2, within sixty (60) days following both (i) an agreement on the Pre-Closing Parcel Consideration established pursuant to Section 4.3.5, and (ii) a request by the Authority.

3.4 FOST Conveyances.

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

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

3.5 Title to Property.

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

3.5.2 Condition of Title.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3.8 Failure to Satisfy Closing Conditions.

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

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

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

3.8.4 If any Closing Conditions described in Section 3.7.1 and/or 3.7.2 are not satisfied within four (4) years after the date the Navy was required to convey the applicable Parcel to the Authority in accordance with the Conveyance Schedule, as may be amended by the Parties (except as otherwise provided for Site 12 in Section 4.2.2), and such failure to satisfy a Closing Condition is not caused by a Navy breach of an obligation under this Agreement, then the Authority shall have sixty (60) days from receipt of a written notice from the Navy to elect to waive in writing the Closing Condition in question and proceed with Closing. If after sixty (60) days the Authority has not chosen to waive in writing the Closing Condition then, this Agreement shall terminate as to the affected Parcel(s). If this Agreement terminates as to the affected Parcel(s), the Navy shall have the right to transfer or convey such Parcel(s) according to applicable law and in accordance with Section 3.8.6 and 3.8.7, provided, however if this

Agreement terminates as to all of the Navy Real Property prior to the Initial Closing, then the Navy shall have the right to transfer or convey such Parcel(s) according to applicable law and without complying with Section 3.8.6 or Section 3.8.7.

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

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

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

3.9 Quitclaim Deeds. The Navy shall convey all of its right, title, and interest in and to the Navy Real Property to the Authority, and the Authority agrees to accept conveyance of the Navy Real Property "as is" and "where is" by good and sufficient Quitclaim Deeds in accordance with this Agreement, by separate conveyance and Closing. Acceptance of the Navy

Real Property by the Authority shall be by execution of the Authority's acceptance statement on the Quitclaim Deeds. The Navy shall prepare plats and legal descriptions of areas that are subject to environmental restrictions and covenants at its own expense and provide such plats and legal descriptions to the Authority for review. The Authority shall prepare draft plats and legal descriptions of the metes and bounds of the outer boundary of the Naval Station Treasure Island and the Parcels of Navy Real Property at its own expense and provide such plats and legal descriptions to the Navy for review. The Parties shall work cooperatively to ensure that plats and legal descriptions are correct and agreed to by each Party. The Authority shall be responsible for recording Quitclaim Deeds at its own expense. The Parties shall cooperate in executing and delivering corrective deeds necessary to convey omitted land intended to be included in the Navy Real Property and to correct any erroneous description of the Navy Real Property.

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

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

3.12 Lease in Furtherance of Conveyance. At any time, the Parties may enter into negotiations for a LIFOC for any portion of the Navy Real Property on terms mutually acceptable to the Parties, subject to approval by (1) the Authority's Board of Directors and, if required, the City's Board of Supervisors and Mayor, and (2) the Secretary of the Navy or his/her designee as appropriate, each in their sole and absolute discretion. The Navy and the Authority will enter into a LIFOC, easement or other instrument acceptable to the Authority that allows for the construction of roads, utilities and other infrastructure on the properties described in Exhibit B-7.

3.13 Marina Property. The Marina Property depicted in Exhibit F will be conveyed to the Authority pursuant to this Agreement, but will not be conveyed by the Authority to the **Developer** or be subject to the terms and conditions of the DDA. Accordingly, the revenues received by the Authority from the Marina Property shall not be subject to Article 4 ("Consideration") and Article 5 ("Controls"), other than Section 5.13. Revenues received by the Authority from the Marina Property shall be used by the Authority to fund the Authority's costs of administering the closure and reuse of Treasure Island and implementing the Reuse Plan, and shall directly reduce the Authority Costs Payment. An annual accounting of Marina Property revenues shall be provided to the Navy in accordance with Section 4.3.6.2 hereof.

ARTICLE 4
CONSIDERATION

4.1 Consideration. In consideration for the conveyance of the Navy Real Property, the Authority shall pay to the Navy (i) an initial purchase price of Fifty Five Million Dollars ($55,000,000) (the "**Initial Consideration**"), payable over a term of ten (10) years (as such term may be extended pursuant to Section 4.2.2 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 Parcel in accordance with Section 3.8.4 hereof, then such termination shall also be treated as a Redesign Trigger Event under Section 4.2.3 hereof.

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

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

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

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

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

4.2.2.3 Tolling for More than Two Years. If tolling under Section 4.2.2.2 continues for a period of more than two (2) years, the Parties shall meet and confer in good faith to determine whether or not it is reasonably foreseeable that the Navy will be able to meet the applicable Performance Benchmark within a reasonable period of time. If the Parties determine that the reasons for the delay can be overcome through the good faith and diligent efforts of the Navy and will likely result in the satisfaction of the applicable Performance Benchmark, then the Parties may by mutual agreement adjust the Performance Benchmark date to account for the delay. If the Parties do not reach agreement within sixty (60) days after the first meet and confer (subject to extension by mutual agreement of the Parties), then the procedures of Section 4.2.3 and 4.2.4 shall apply.

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

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

4.2.5 Credit for Redesign Costs. Starting on the date that is thirty (30) days after submittal of the Work Program and Redesign Budget (or in the event of a Navy objection related to the Work Program and Redesign Budget under Section 4.2.4 that results in approved Redesign Costs, upon the resolution of such dispute) (the "**Credit Commencement Date**"), the period of tolling under Section 4.2.2.2 shall be discontinued, but Authority shall have the right to a credit against all subsequent payments of Initial Consideration or Additional Consideration up to the total amount of either (i) the Redesign Costs set forth in the Redesign Budget, or (ii) the Redesign Costs actually incurred by Developer and Authority if such

amount exceeds the Redesign Costs set forth in the Redesign Budget. The Navy is not responsible for Redesign Costs that exceed the Initial and Additional Consideration. Any such credit shall also be subject to the accounting and reconciliation procedures of Section 4.3.7 and 4.3.7.2.

4.2.6 Security for Pre-Closing Parcel Consideration and Initial Consideration.

4.2.6.1 Pre-Closing Parcel Consideration. The Authority shall sign and deliver to the Navy through escrow at the Closing of the Pre-Closing Parcel a Promissory Note in the principal amount of the Pre-Closing Parcel Consideration as established in accordance with Section 4.3.5.1. The Promissory Note for the Pre-Closing Parcel Consideration shall provide that the Pre-Closing Parcel Consideration may be paid in five annual installment payments, each equal to one-fifth (1/5) of the Pre-Closing Parcel Consideration. The first installment payment shall be equal to one-fifth (1/5) of the Pre-Closing Parcel Consideration, and any subsequent installment payments shall consist of (i) the Interest Rate multiplied by the unpaid balance of the Pre-Closing Parcel Consideration (the balance before the current installment payment is made), plus (ii) the amount of the installment payment then due. The Promissory Note for the Pre-Closing Parcel Consideration shall be secured solely by a non-recourse deed of trust encumbering the Historic District. The form of the Promissory Note for the Pre-Closing Parcel is attached to this Agreement as Exhibit HH-1, and the form of the non-recourse deed of trust encumbering the Historic District is attached to this Agreement as Exhibit HH-2. The Parties shall take the applicable action with respect to the Promissory Note for the Pre-Closing Parcel Consideration, as follows:

4.2.6.1.1 If the Initial Closing proceeds as described in Section 4.3.5.2, then the Promissory Note for the Pre-Closing Parcel Consideration shall be returned to the Authority at the Initial Closing;

4.2.6.1.2 If the Initial Closing does not occur because the Agreement is terminated as described in Section 4.3.5.3, then, at the Authority's election, which shall be provided to the Navy in writing within thirty (30) days of the Agreement's termination, either (i) the Promissory Note for the Pre-Closing Parcel Consideration shall be honored according to its terms, or (ii) the Promissory Note for the Pre-Closing Parcel Consideration shall be returned to the Authority, and the Historic District shall revert to the Navy pursuant to the non-recourse deed of trust; or

4.2.6.1.3 If (i) the Initial Closing is delayed in accordance with Section 3.8.4, (ii) the Authority notifies the Navy of its election that the Promissory Note for the Pre-Closing Parcel Consideration shall be honored according to its terms, and (iii) the Parties agree on a date for payments to commence, then the Promissory Note for the Pre-Closing Parcel Consideration shall be honored according to its terms beginning on such date agreed to by the Parties in accordance with Section 4.3.5.4.

4.2.6.2 Initial Consideration. The Authority shall sign and deliver to the Navy through escrow at the Initial Closing a Promissory Note in the principal amount of the Initial Consideration. The Promissory Note for the Initial Consideration shall bear interest and

be payable in installments as more particularly described in Section 4.2.1 above. The Promissory Note for the Initial Consideration shall be secured by (i) an Assignment of Rents encumbering the rents, issues and profits payable under all interim subleases for the Navy Real Property including, but not limited to, that certain Sublease, Development, Marketing and Property Management Agreement between the Authority and the John Stewart Company dated March 17, 1999, as amended from time to time, and any successor interim subleases or leases relating to the Navy Real Property whether executed prior to or after a conveyance hereunder, and (ii) to the extent the rents, issues and profits assigned under the Assignment of Rents are not sufficient to cover the unpaid principal and interest due under the Promissory Note for the Initial Consideration, a Subordinate Pledge of Net Available Tax Increment Revenues generated from the Navy Real Property prior to or after a conveyance hereunder. The Subordinate Pledge shall be subordinate to the pledge of Net Available Tax Increment Revenues to the holders of any bonded indebtedness and to the Developer under the DDA; provided, however, that the DDA shall provide that all such Net Available Tax Increment Revenues to be paid directly to Developer in reimbursement for the expenditure of Qualified Project Costs (as defined in the DDA) shall be withheld from Developer by the City and held for the account of the Navy upon the occurrence of and for the duration of any default of a payment of Initial Consideration hereunder. "Net Available Tax Increment Revenues" means tax increment revenues allocated by the City to any Infrastructure Financing District established for all or any portion of the Navy Real Property and received by the City. The forms of the Promissory Note for the Initial Consideration, Assignment of Rents, and the Subordinate Pledge are attached to this Agreement as Exhibit HH-3, Exhibit II, and Exhibit JJ. All rents, issues and profits payable to Developer under any agreement subject to the Assignment of Rents shall be immediately paid and payable directly to the Authority on account of the Navy, or directly to the Navy, as provided by the terms of the Assignment of Rents, commencing on, and for the duration of, any default in the payment of Initial Consideration hereunder.

4.3 Additional Consideration.

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

4.3.2 Payment of First Tier Participation. Within forty-five (45) days after the expiration of the eighth full calendar Quarter occurring after the Initial Closing and forty-five (45) days after the expiration of each subsequent Quarter during the Term hereof, the Authority shall require the Developer to submit a reasonably detailed statement to the Authority and the Navy (the "**IRR Statement**") accompanied by an Accounting consistent with Section 4.3.6 hereof showing (i) the cumulative IRR achieved for each of the eight (8) immediately prior Quarters for any IRR Statement provided during the Initial Consideration Term, and (ii) the

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

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

4.3.4 Late Payments and Default. Any failure to pay Initial Consideration and associated interest or Additional Consideration within ten (10) days after the payment due date shall be considered late ("**Late Payment**"). Any Late Payment will incur a late payment penalty equal to two and one-half percent (2 ½ %) of the payment due. Failure to make any required payment under this Agreement in full within thirty (30) calendar days shall constitute a default under this Agreement. Any Late Payment constituting a default hereunder shall accrue interest at the Default Interest Rate from the due date and the Default Interest Rate shall remain in effect on the Late Payment amount until paid. Any late payment penalty and default interest shall not be allowed as a Development Cost. Without limiting any other remedies that the Navy may have at law or equity, if the Authority is in default of this Agreement, the Navy may delay conveyances of additional Parcels without the tolling provisions of Section 4.2.2.2 until the Authority has cured the default.

4.3.5 Consideration for Pre-Closing Parcel.

4.3.5.1 The Parties shall establish the value of the Pre-Closing Parcel within ninety (90) days following the Authority's identification of the Pre-Closing Parcel and request for its conveyance under Section 3.2.2 ("**Pre-Closing Parcel Consideration**"), which appraisal shall be conducted in accordance with Section 5.4 hereof.

4.3.5.2 If the Pre-Closing Parcel is conveyed to the Authority prior to the Initial Closing, and the Initial Closing subsequently occurs in accordance with this Agreement, then the Initial Consideration shall be deemed to include the Pre-Closing Parcel Consideration, and no additional consideration will be due for the Pre-Closing Parcel.

4.3.5.3 If (i) the Pre-Closing Parcel is conveyed to the Authority prior to the Initial Closing, (ii) the Initial Closing does not occur because the Agreement is terminated pursuant to Section 3.8.4, and (iii) the Historic District does not revert to the Navy pursuant to the non-recourse deed of trust as described in Section 4.2.6.1.2, then the Authority shall make its first installment payment pursuant to the Promissory Note for the Pre-Closing Parcel Consideration commencing ninety (90) days following the termination pursuant to Section 3.8.4, and continuing on each anniversary date thereafter.

4.3.5.4 If the Pre-Closing Parcel is conveyed to the Authority prior to the Initial Closing, and the Initial Closing is extended by mutual agreement of the Parties in accordance with Section 3.8.4, then the Parties shall agree upon the date when the Authority shall provide notice to the Navy that either (i) the Promissory Note for the Pre-Closing Parcel Consideration shall be honored according to its terms, or (ii) the Promissory Note for the Pre-Closing Parcel Consideration shall be returned to the Authority, and the Historic District shall revert to the Navy pursuant to the non-recourse deed of trust. If the Parties mutually agree to commence payments prior to the Initial Closing, then the Authority shall make its first installment payment pursuant to the Promissory Note for the Pre-Closing Parcel Consideration commencing on such date agreed to by the Parties, and continuing on each anniversary date thereafter.

4.3.5.5 If the Authority pays all or any part of the Pre-Closing Parcel Consideration to the Navy under Section 4.3.5.4, and the Initial Closing subsequently occurs, then the principal portion of all or any part of the Pre-Closing Parcel Consideration paid to the Navy shall be credited in full against the Initial Consideration at the Initial Closing.

4.3.6 Accounting.

4.3.6.1 Accounting. The Authority shall cause the Developer to maintain accurate books and records specific to the Project setting forth all components used for determining the Additional Consideration, including, without limitation, each component of Net Cash Flow, and to determine the amount of Redesign Costs and credits against Initial and Additional Consideration. The Authority shall ensure that each IRR Statement submitted by Developer as required by Sections 4.3.2 and 4.3.3 is accompanied by a complete accounting and computations setting forth the basis of each Additional Consideration to be paid, including the Gross Revenues and Development Costs for the relevant determination period, together with a narrative description of the methodology employed to calculate each Additional Consideration Payment to be due for the relevant period (the "**Accounting**"). The Accounting shall be in conformance with generally accepted accounting principals consistently applied ("**GAAP**") where applicable, or with respect to the IRR Statement, in conformance with appropriate industry standards. An annual accounting shall be provided to the Navy in accordance with

Section 5.9.1 hereof. The Navy shall either approve each Accounting in writing or provide written notice providing reasonable detail of its objections to or queries of the Accounting within forty-five (45) days of receipt thereof, provided that the Navy's failure to respond within such forty-five (45) day period shall be deemed consent. If the Navy objects to the Accounting, it may determine to exercise its audit rights pursuant to Section 4.3.8.

4.3.6.2 Marina Property Accounting. The Authority shall determine on a quarterly basis all gross revenues and related expenses associated with the Marina Property, and shall prepare a reasonably detailed statement showing all net revenues received by Authority from the Marina Property. Authority shall provide a copy of such Marina Property statement to the Navy along with each accounting in a timely manner.

4.3.7 Reconciliation.

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

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

4.3.8 Audit Rights. The Navy shall be entitled from time to time to audit the Developer's books, records, and accounts pertaining to the Net Cash Flow and all components thereof, the payment of Additional Consideration and the calculations, payments and credits relating to the Redesign Costs. Such audit shall be conducted during normal business hours upon ten (10) business days notice at the principal place of business of the Developer and other places where records are kept. The Navy shall provide the Developer with copies of any audit performed. If it shall be determined as a result of such audit that there has been a deficiency in the payment of any Additional Consideration or an over-credit against Initial Consideration, the Authority shall immediately pay any such deficiency with interest at the Default Interest Rate. In addition, if it shall be determined as a result of such audit that an Accounting has understated the Net Cash Flow for the applicable period by more than five percent (5%), the Authority or the Developer on behalf of the Authority, shall be required to pay, in addition to interest as aforesaid, all of the Navy's costs and expenses connected with the audit or review of Developer's accounts and records for the Project. All such payments shall be paid within thirty (30) days of receipt of written notice to the Authority of such underpayment and such audit costs shall not be allowed as a Development Cost.

ARTICLE 5
CONTROLS

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

5.2 Sale or Ground Lease of Commercial Lots.

5.2.1 Development by Developer of Critical Commercial Lots. Those Lots designated for commercial use or development in the Illustrative Land Use Plan (collectively, the "**Commercial Lots**") will be divided into two groups. The first group (the "**Critical Commercial Lots**"), consists of Block M-1 and Buildings 1, 2 and 3, which will be developed by Developer pursuant to the terms of the DDA. Developer may ground lease or purchase (as the case may be) up to one hundred percent (100%) of the Critical Commercial Lots in accordance with this Section 5.2.1. The second group ("**Non-Critical Commercial Lots**") consists of all other Commercial Lots including any of the Critical Commercial Lots that Developer elects not to develop, to the extent permitted under the DDA. If Developer by itself or in joint ventures with other development partners develops the Critical Commercial Lots, the sales price or capitalized ground lease rent (as the case may be) for the Critical Commercial Lots purchased by or ground leased to Developer or the Developer joint venture entity (the "**Critical Commercial Lots Payment**") shall be derived from a pro-forma (including the financial model of any vertical development that requires a subsidy) prepared by Developer at the approval by Authority of the Sub-Phase application described in the DDA that contains the applicable Critical Commercial Lot, showing reasonable detail of projected revenues, expenses, subsidies and/or target returns associated with the Critical Commercial Lots,

acknowledging that to the extent that the Critical Commercial Lots require subsidy for development, the Critical Commercial Lots Payment may be $0.00. Developer will provide this information to an independent appraiser and shall request a letter report confirming the appropriateness of Developer's assumptions and conclusions related to the Critical Commercial Lots. No potential or actual investor or lender shall be prohibited by an exclusivity agreement between the Developer and other investors or lenders from participating in any financing of any Commercial Lot or any other commercial product type developed by parties other than Developer.

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

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

5.2.4 Auction Process for Commercial Lots. The Auction for a Non-Critical Commercial Lot shall set a minimum bid price based on the pro-forma prepared by the Developer at the approval of each applicable Sub-Phase application(as confirmed by an appraiser letter described in Section 5.2.1) . The minimum bid price shall be set for the Auction for a Non-Developer Critical Commercial Lot immediately prior to the applicable Auction**.** The pool of qualified bidders in the Auction of any Non-Critical Commercial Lots or any Non-Developer Critical Commercial Lots shall be determined by the Authority and Developer prior to the applicable Auction based on the Auction Bidder Selection Guidelines applicable to Commercial Lots (attached hereto as Exhibit S-2). The pool of qualified bidders in the Auction of any Non-Critical Commercial Lot or any Non-Developer Critical Commercial Lot and the minimum bid price for the Auction of Non-Developer Critical Commercial Lots shall be provided to the Navy at least 10 days prior to the applicable Auction.

If no qualified bids are received for the Non-Critical Commercial Lots, Developer and/or its affiliates will have the option to purchase such Commercial Lot(s) based upon an appraisal in accordance with Section 5.4 hereof. If Developer does not exercise the option to purchase unsold Non-Critical Commercial Lot(s), the Authority and Developer shall mutually agree upon a new minimum bid price to be used in a new Auction, which may take the form of adjustment to the pro forma minimum bid price or an appraisal. In such case, the Authority shall cause Developer to re-bid the Non-Critical Commercial Lot at such time deemed appropriate by the Authority and Developer pursuant to the terms of the DDA. If no minimum bids from qualified bidders are received for the Non-Developer Critical Commercial Lots that are acceptable to Developer, Developer shall reserve the right to withdraw the Non-Developer Critical Commercial Lot from sale and re-bid the Non-Developer Critical Commercial Lot at such future time deemed appropriate in accordance with the terms of the DDA.

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

5.3.1 Developer Lots. Unless otherwise agreed upon by the Parties in their reasonable discretion, no more than one-third of the Developer Lots (which also equals 20% of the Market Rate Lots) can be sold directly to Developer, and the balance of the Developer Lots may be sold to an entity or entities comprised of some or all of the same partners as Developer, but having a materially different capital structure than Developer, in accordance with the Appraisal Process. Concurrent with the sale of any Developer Lot to an entity or entities comprised of some or all of the same partners as Developer, but having a materially different capital structure than Developer, a duly authorized officer of Developer shall provide the Authority and Navy with a certified statement that the prospective purchaser has a materially different capital structure than Developer. For purposes hereof, an entity having a "materially different capital structure" means an entity comprised of some or all of the same partners as Developer but one in which there has been a cumulative change of at least 25% in the capital positions of all the partners, and at least one of the partners has changed its capital position by at least 15%. Before the close of each Sub-Phase within each Major Phase, the Developer will provide to the Authority and Navy a list of equity investors for that Sub-Phase. During the

implementation of any Sub-Phase, Developer will provide to the Authority and Navy immediately prior to the sale of any parcels to an affiliate of Developer or the equity investors of that Major Phase, a notice of such affiliate sale which notice shall describe why the sale is permitted under the terms of this Agreement. Prior to the close of any sale directly to Developer, the Authority shall cause Developer to provide to the Navy a letter from a real estate broker or licensed real estate professional familiar with the Bay Area market who is not an affiliate of the Developer and has no equity investment in the Developer in such Sub-Phase, finding that acquisition and development of the Market Rate Lot by the Developer is appropriate in the context of then-existing market conditions. The basis of such findings could include, but is not limited to, establishing a new product type, initiating or establishing the development of a new phase in the Project, responding to changes in market conditions, or other similar market-based factors. Any disputes arising out of this Section 5.3.1 shall be referred to the arbitration process for other disputes set forth in Section 27.3.3 hereof.

5.4 Appraisal Process. The process described in this Section 5.4 (the "**Appraisal Process**") shall apply to the Pre-Closing Parcel, the Developer Lots, the JV Lots and those Developed Critical Commercial Lots and Non-Critical Commercial Lots for which an appraisal is required under Sections 4.3.5.1, 5.2.2 or 5.2.4. The Authority and Developer shall confer and select an appraiser from the Qualified Appraiser Pool for each such Pre-Closing Parcel, Developed Critical Commercial Lot, Developer Lot, Non-Critical Commercial Lot or JV Lot to be appraised. An appraisal used for the purpose of determining the parcel sale price (or ground lease rent, if applicable) shall be updated if a sales contract (or ground lease) for such parcel has not been executed within one (1) year from the date of the appraisal.

5.4.1 Qualified Appraiser Pool. Appraisals of the Pre-Closing Parcel required to be appraised under Section 4.3.5.1, any Developed Critical Commercial Lots required to be appraised by Section 5.2.2, the Developer Lots, Non-Critical Commercial Lots required to be appraised under Section 5.2.4 and JV Lots shall be conducted by a qualified appraiser, which for purposes of this Agreement and the DDA shall be defined as an appraiser (i) licensed in the State of California as a Certified General Appraiser and holding the MAI designation from the Appraisal Institute, (ii) practicing or working for at least ten (10) years in either a national firm, or regional firm based in California, (iii) who is not an affiliate of the Developer and has no equity investment in the Developer or the Project investors, (iv) who has particular experience with coastal California real property transactions involving the Product Type that is the subject of the appraisal, and (v) who has no conflict of interest as evidenced by contractual relationships with Developer either existing or in the immediately prior 24 months, unless a conflict waiver is obtained from the Navy. The Parties have agreed upon a list of pre-qualified appraisers, which list is attached hereto as Exhibit Y (the "**Qualified Appraiser Pool**"). From time to time, either Party may propose in writing to add or subtract additional persons meeting the above qualifications. If the Parties disagree on a proposed addition or subtraction, then the Parties shall follow the dispute resolution procedure set forth in Section 27.3.2.

5.4.2 Appraisal Instructions. The selected appraiser shall appraise the applicable Pre-Closing Parcel, Developer Lot, JV Lot, Non-Critical Commercial Lot (to the extent subject to appraisal under Section 5.2.4) or Developed Critical Commercial Lot (to the extent subject to appraisal by Section 5.2.2) utilizing appraisal instructions by appropriate

Product Type substantially in the form of those attached hereto as Exhibit X-1 through X-4, as the Parties hereto may agree to amend from time to time which agreement shall not be unreasonably withheld, conditioned or delayed. If an Excess Land Appreciation Structure is established in a Major Phase by Product Type, such structure will be deemed to apply to all Market Rate Lots in the applicable Major Phase, and the appraisal instructions shall incorporate such terms. If an Excess Land Appreciation Structure established for a Major Phase is later revised in connection with a Sub-Phase, in accordance with Section 5.6 hereof, then such structure will be deemed to apply to all Market Rate Lots in the applicable Sub-Phase, and the appraisal instructions shall incorporate such terms. If material changes are proposed to appraisal instructions, including assumptions, special assumptions, limiting conditions, hypothetical conditions, and other special instructions, the requesting Party shall propose such amendment in writing, and, if the Parties disagree, they shall follow the dispute resolution procedure set forth in Section 27.3.2.

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

5.5 Auction Process for Residential Auction Lots. The Authority and Developer in connection with the approval of each Major Phase application, as described below in Section 5.6, shall jointly determine the pool of qualified bidders for each Auction of an Auction Lot based on the Auction Bidder Selection Guidelines for Residential Auction Lots (attached hereto as Exhibit S-1), as agreed upon by the Parties. In the event no qualified third party bids are received at or above the minimum bid price (as described in Section 5.6.3) for the Residential Auction Lots, Developer and/or its affiliates will have the option to purchase such Auction Lot(s) at the minimum bid price and any Residential Auction Lots so acquired by Developer shall not be deemed to apply against the percentage limits otherwise applicable to the Developer Lots or the JV Lots. If Developer does not exercise the option to purchase unsold Auction Lot(s), the Authority and Developer shall mutually agree upon a new minimum bid price to be used in a new Auction (the "**Re-Setting of the Minimum Bid Price**"). The Re-Setting of the Minimum Bid Price may take the form of adjustment to the pro forma minimum bid price or an appraisal. All costs associated with the Auction shall be treated as Development Costs.

5.5.1 Timing of Residential Auction Lots Selection. The Residential Auction Lots will be selected by mutual agreement by the Authority and the Developer prior to approval of each Major Phase application.

5.5.2 Residential Auction Lots as Benchmarks. The Auction Lot sales prices, as deemed appropriate by the appraisers, and other relevant market data shall be used as comparables in the appraisal process for the Developer Lots and the JV Lots. The mix of Product Types of the Market Rate Lots subject to Auction shall roughly mirror that of the Market Rate Lots to be allocated and sold in that Major Phase, with a goal of selecting at least one representative parcel for each Market Rate Lot Product Type offered in that Major Phase. For the purposes of this Agreement and the DDA, "**Product Types**" are defined as a residential building with a typical unit count and building typology that allows general

assumptions of construction costs. Examples of such Product Types are townhomes; low rise (up to 70' in height); mid rise (above 70' and up to 125' in height) and towers (above 125' in height).

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

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

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

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

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

5.6.4 Prior to approval of each Major Phase or Sub-Phase, the Excess Land Appreciation Structure for that Phase for each Product Type in such Phase. For purposes of this Agreement and the DDA the "Excess Land Appreciation Structure" is defined as the structure, procedures and metrics of the then-prevailing, industry standard market based participation in price appreciation greater than forecast at the time of such pad sale (if any) for horizontal development land sellers.

5.7 Navy Objection Rights to Major Phase Decisions.

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

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

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

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

5.9.1 The Developer shall provide to the Authority and the Navy, within ninety (90) calendar days after the end of each year, an annual Accounting consistent with the requirements of Section 4.3.6.1 annualized, including reports of Gross Revenues and Development Costs, including Net Cash Flow, specified by Major Phases and including a

cumulative project level summary of IRR, executed by the Developer's Chief Financial Officer, certified by the Developer and reviewed by an independent accounting firm.

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

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

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

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

5.11 Limit on Soft Costs for Purposes of Calculating Consideration. Except for a reasonable limit on Developer management and overhead fees as further provided herein, Developer Soft Costs will not be capped, but will be subject to a "reasonableness" standard, certain approval rights by the Authority, and subject to audit by the Authority. The Authority agrees that "reasonable" Developer's Soft Costs shall be defined as "incurred in a manner that is consistent with an efficient, well-managed project of comparable scope, duration and complexity and is commensurate with market-based charges by third party providers for similar projects." Whether or not the Developer utilizes unrelated third-party contractors for development, construction and property management services, such management fees and costs will not exceed market-based charges by third-party providers for similar projects, taking into account the level of project management, auditing and reporting requirements. The Developer may provide such management services internally, or through a combination of internal management services and third-party management contractors not owned or controlled by Developer. For purposes of determining Soft Costs for any particular scope of work, a construction management fee may be

included not to exceed the lesser of four percent (4%) of Hard Costs or actual construction management fees actually incurred for such scope; a property management fee may be included not to exceed the lesser of two and one-half percent (2.5%) of lease revenues or actual property management fees actually incurred for such scope; and a development/project management fee not to exceed the lesser of three percent (3%) of Hard Costs or actual development/project management fees actually incurred for such scope. If the actual and reasonable costs incurred by Developer exceed the above limits, Developer, on behalf of the Authority may submit a request to the Navy to approve the increase of any applicable fee to an amount equal to the actual cost. Such requests shall be made in writing with appropriate supporting documentation. Failure of the Navy to respond in writing to any such request within thirty (30) days shall be deemed consent. Navy's consent shall not be unreasonably withheld or delayed, and Navy shall make its determination within thirty (30) days of Developer's request. If Navy requests additional information as may be reasonably required to make its determination within ten (10) days of Developer's request, then Navy shall make its determination denying or granting the request within thirty (30) days after receipt of such additional information. The Navy shall only deny its consent if it reasonably determines, as evidenced by its written determination provided to Developer and the Authority, that the cost limit exceedance is inconsistent with current market standards as applied to the scope and nature of the Project and the fee limit request is unreasonable under the circumstances. Any such exceedance objected to by the Navy in accordance with this Section shall not be included as Development Cost

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

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

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

5.13.1.1 Land acquisition;

5.13.1.2 Road construction;

5.13.1.3 Transportation management facilities;

5.13.1.4 Storm and sanitary sewer construction;

5.13.1.5 Police and fire protection facilities and other public facilities;

5.13.1.6 Utility construction;

5.13.1.7 Building rehabilitation;

5.13.1.8 Historic property preservation;

5.13.1.9 Pollution prevention equipment or facilities;

5.13.1.10 Demolition;

5.13.1.11 Disposal of hazardous materials generated by demolition;

5.13.1.12 Landscaping, grading, and other site or public improvements; and

5.13.1.13 Planning for or the marketing of the redevelopment and reuse of the Navy Real Property.

Other activities on the Navy Real Property that are related to those listed above (including, for example, new construction related to job creation and economic redevelopment, construction of affordable housing, environmental remediation of the Navy Real Property, environmental insurance, any other capital improvements required to support the economic redevelopment of the Navy Real Property, management and leasing of the Navy Real Property needed to market its redevelopment and reuse and implementation, oversight and regulation of redevelopment of the Navy Real Property via any contracts with public or private entities) would also be considered an appropriate, allowable use of such proceeds.

5.13.2 Records. Consistent with standard accounting practices for tax purposes, the Authority shall maintain adequate records and books of account for income and expenses related to the redevelopment of the Navy Real Property detailing transactions described in Section 5.13 and Section 5.13.1. The Authority shall provide the Navy with access to such records and books of account and proper facilities for inspection thereof at all reasonable times.

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

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

5.15 Use of Pre-Closing Parcel. If the Pre-Closing Parcel is conveyed to the Authority in advance of the Initial Closing and the Pre-Closing Parcel includes the Historic District or property that is or may be eligible for listing on the National Register pursuant to Section 3.2.2, then the Authority may use the Parcel only for those uses allowed under that certain Master Lease dated _____, until such time as the Authority pays the Pre-Closing Parcel Consideration.

ARTICLE 6
CONTRACTS AND PERMITS

6.1 The contracts, permits, licenses, permits or other agreements relating to Navy Property that Authority agrees to assume on each Parcel are limited to the following (the "**Contract Assumption List**")

[specifically list the assignable contract, permits or agreements in this Section].

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

ARTICLE 7
EASEMENTS AND OTHER SIMILAR INSTRUMENTS

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

7.1.1 Access Easements.

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

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

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

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

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

7.1.1.3.3 The location of the Authority Access Easements and Navy Access Easements will be adjusted from time to time as necessary to accommodate the redevelopment activity. The Party on whose property the Authority Access Easements or Navy

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

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

7.1.2 Utility Easements. Prior to the Initial Closing and any subsequent Closing, as appropriate, the Navy shall grant to the Authority on Navy owned Parcels, or reserve to itself on Parcels being conveyed to the Authority, easements, licenses, rights of way, or other similar instruments for the operation and maintenance of existing utilities, and installation, operation and maintenance of all or portions of new utility systems on said Parcels ("**Utility Easements**"). Such Utility Easements on Navy owned Parcels may be provided pursuant to the Utility Agreement referenced in Article 9 hereof. Such Utility Easements on Parcels being conveyed to the Authority shall be reserved by the Navy substantially in conformance with the areas shown on Exhibit I-3. The location of the Utility Easements will be adjusted from time to time as necessary to accommodate the redevelopment activity. The Party on whose property the Utility Easements exist (the "**Owner Property**") shall not redevelop, close, abandon, reconfigure or replace existing utilities within such easement in such a manner that would unreasonably interfere with the ability of the other Party to exercise its use of the utilities except where the Party on whose property the Utility Easements exists provides the other Party with suitable comparable alternative utility service and easements over other areas of the Property. Where such redevelopment, closure, abandonment, reconfiguration or replacement is necessary to conduct actions required by the redevelopment that results in such utility no longer providing the intended service or otherwise ceasing to exist, the Utility Easement, as applicable, shall be moved from time to time to include, in the following order of priority either (i) utilities in other improved roads that may exist on the Owner Property, (ii) utilities in other unimproved roads that may exist on the Owner Property, or (iii) utilities in other unimproved portions of the Owner Property. The adjustment of the Utility Easements shall be completed by revising the exhibits in the original Quitclaim Deeds or other applicable

instruments with written approval by the Navy or the Authority. The approval will not be unreasonably withheld.

7.1.3 Assignable Easements. As part of the Initial Closing, the Navy shall assign to the Authority the assignable easements, leases, licenses and encroachment permits held by the Navy over, under, or through non-Navy owned property necessary for the operation, maintenance, or improvement of the Property, as listed on Exhibit I-1, attached hereto (the "**Assignable Easements**").

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

ARTICLE 8
CLOSING AND SETTLEMENT

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

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

8.2.1 Quitclaim Deed(s) substantially in the form as set forth in Exhibit D-1, Exhibit D-2, or Exhibit D-3, as applicable, attached hereto.

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

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

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

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

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

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

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

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

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

8.2.11 The Land Use Covenant, as applicable.

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

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

8.3 The Authority Deliveries. The Authority shall deliver to escrow at least five (5) days prior to the Initial Closing and, to the extent applicable, any other Closings, the first Installment Payment of the Initial Consideration payable in accordance with Section 4.2 and the following documents in a form previously reviewed and approved by the Navy, and duly executed and authorized (and acknowledged if necessary for recordation) (the "**Authority Closing Documents**"):

8.3.1 Acceptance of Quitclaim Deed(s) substantially as set forth in Exhibit D-1,Exhibit D-2, or Exhibit D-3, as applicable, attached hereto.

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

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

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

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

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

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

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

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

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

ARTICLE 9
UTILITIES AGREEMENT

9.1 Without limiting the Parties' obligations under this Agreement, the Parties shall execute and enter into an agreement that addresses ownership and use of existing utilities by the Parties in light of the Parties separate ownership of the different Parcels of the Navy Real Property (a "**Utilities Agreement**"). The Parties shall enter into a Utilities Agreement related to the conveyance of the FOST Parcel in substantially the form attached hereto as Exhibit EE at the Initial Closing and shall enter into amendments thereto (pursuant to the terms of the Utilities

Agreement) at each subsequent Closing, as necessary.

ARTICLE 10
TIME OF THE ESSENCE AND POSTPONEMENT

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

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

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

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

ARTICLE 11
ENVIRONMENTAL REPORTS

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

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

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

ARTICLE 12
DELIVERY OF THE NAVY REAL PROPERTY DOCUMENTS

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

ARTICLE 13
NAVY CARETAKER SITE OFFICE

13.1 Commencing on the date of the Initial Closing and continuing until the date that is seven (7) years after the Initial Closing (unless terminated earlier by Navy), the Navy shall have the right to occupy up to three thousand five hundred (3,500) square feet of office space and up to two thousand (2,000) square feet of space for file storage, which file storage may be located in non-contiguous or non-adjacent spaces, for the Navy caretaker site office (the "**Navy Office**") and six reserved parking spaces. At the Initial Closing, the Navy Office will continue to be located in Building 1, as more particularly shown on Exhibit K-1 attached hereto and to the extent practicable, Navy shall be permitted to remain in its presently existing office space until such space is required for implementation of the Project. The terms of occupancy for the Navy Office shall be substantially in the form of Exhibit K-2 attached hereto ("**Navy Office Agreement**"). Navy shall be responsible for its cost of utilities serving the Navy Office, but the

Navy Office Agreement shall otherwise be rent free for the seven (7) year period. The Authority shall have the right, from time to time during the Navy Office Agreement term, to relocate the Navy Office to another location within Building 1 or to one of the buildings known as the Great Whites as more particularly shown on Exhibit K-3 attached hereto, or to any other adequate location on Treasure Island or Yerba Buena Island, by giving Navy no less than three (3) months' prior written notice. The relocation premises shall be substantially equivalent in size and dimensions to the then-existing premises but while the office space shall be contiguous, the relocated storage space may be located in one or more non-contiguous spaces. The Authority shall bear any reasonable costs incurred by the Authority to physically relocate Navy to any relocation space, and shall be responsible for the cost of standard tenant improvements for the relocation consistent in quality with the Navy's current space in Building 1. Navy shall be entitled at any time upon thirty (30) days prior written notice to terminate the Navy Office. At the expiration of the initial seven (7) year occupancy period, the Navy may elect to terminate the Navy Office Agreement, or to renew the Navy Office Agreement at fair market rent, to be determined by the Authority based on the highest and best use permitted for the occupied space.

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

ARTICLE 14
NAVY REPRESENTATIONS

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

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

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

ARTICLE 15
AUTHORITY REPRESENTATIONS

15.1 The Authority hereby represents to the Navy that on and as of the Effective Date, the Authority has full capacity, right, power and authority to execute, deliver and perform this

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

ARTICLE 16
TITLE AND NAVY COVENANTS

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

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

ARTICLE 17
ENVIRONMENTAL PROVISIONS

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

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

17.3 Lead-Based Paint. The Quitclaim Deeds shall incorporate the Lead-Based Paint (hereinafter referred to as "**LBP**") Disclosure and restrictions required by 40 CFR § 745.113, if applicable, and other applicable authority. The Parties agree that the Authority, or its successors or assigns, will seek approval of a procedure through the State of California whereby once the LBP is removed from the Navy Real Property in compliance with Federal and State standards,

the LBP Disclosure and restrictions can be removed from the Quitclaim Deeds in accordance with the approved procedure. The Navy agrees to cooperate with such procedure upon approval by the State of California, and, if applicable, sign all amended Quitclaim Deeds as necessary.

17.4 Asbestos. The Quitclaim Deeds shall include any notifications or restrictions concerning asbestos or asbestos-containing materials ("**ACM**") that have been found on the Navy Real Property, as described in the *[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.

ARTICLE 19
COVENANT AGAINST CONTINGENT FEES

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

ARTICLE 20
NOTICES

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

If to the Authority:	Treasure Island Development Authority City and County of San Francisco City Hall, Room 448 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-410 Attn: Rich Hillis Telephone: (415) 554-4082 Facsimile: Email: Rich.Hillis2@sfgov.org
With a copy to:	Office of the City Attorney City and County of San Francisco City Hall, Room 448 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102 Attn: Eileen Malley, Deputy City Attorney Telephone: (415) 554-6781 Facsimile: (415) 554-4755 Email: eileen.malley@sfgov.org
With a copy to:	George R. Schlossberg, Esq. Kutak Rock LLP 1101 Connecticut Avenue, N.W. Suite 1000 Washington, DC 20036 Telephone: (202) 828-2418 Facsimile: (202) 828-2488 Email: george.schlossberg@kutakrock.com
If to the Navy:	Base Realignment and Closure Program Management Office West 1455 Frazee Road Suite 900 San Diego, California 92108-4310

Attn: Director
Telephone: (619) 532-0992
Facsimile: (619) 532-0983
Email:

With a copy to: Base Realignment and Closure
Office of Counsel
1455 Frazee Road
Suite 900
San Diego, California 92108-4310
Attn:
Telephone:
Facsimile:
Email:

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

ARTICLE 21
PRIOR LIABILITIES

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

ARTICLE 22
AUTHORITY'S AVAILABILITY OF FUNDS

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

ARTICLE 23
FINALITY OF CONVEYANCE

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

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

ARTICLE 24
LIABILITY FOR ENVIRONMENTAL CONTAMINATION

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

ARTICLE 25
SHORT FORM NOTICE

25.1 Upon execution of this Agreement, the Authority and Navy shall execute the Short Form Notice of Conveyance attached hereto as Exhibit M. The Short Form Notice of Conveyance shall be recorded in the Official Records of the City of San Francisco 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.

ARTICLE 26
FURTHER ASSURANCES

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

ARTICLE 27
DISPUTE RESOLUTION PROCEDURES

27.1 Resolution of Certain Disputes. Any other provision of this Agreement notwithstanding, (i) disputes identified in Section 27.3.2 shall be resolved by non-binding arbitration in accordance with the expedited dispute resolution procedure set forth in Section 27.3.2, and (ii) such other disputes under this Agreement shall be resolved either by non-binding arbitration in accordance with the non-binding arbitration procedures set forth in Section 27.3.3 if the Parties mutually agree, or barring such mutual agreement as to a particular other dispute, in accordance with this Agreement and all applicable laws.

27.2 Good Faith Meet and Confer Requirement.

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

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

27.3 Dispute Resolution Procedures.

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

27.3.2 Expedited Dispute Resolution Procedure. The Parties hereby agree that the following disputes shall be subject to this expedited dispute resolution procedure: (i) Major Phase Decisions (pursuant to Section 5.6 hereof); (ii) proposed amendments to appraisal instructions (pursuant to Section 5.4 hereof); (iii) proposed additions or subtractions to the Qualified Appraiser Pool (pursuant to Section 5.4.1 hereof); (iv) proposed additions or subtractions to the Pre-Approved Arbiters List (pursuant to Section 27.3.1); (v) disputes related to Redesign Work Program and Costs (pursuant to Section 4.2.4); (vi) valuation of the Pre-Closing Parcel (pursuant to Section 4.3.5.1); or (vii) any matter the Authority in its reasonable discretion believes has the potential to materially delay the Project.

27.3.2.1 The Party(ies) disputing any matter subject to this expedited dispute resolution procedure shall, within five (5) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the Arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the Arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within three (3) business days after distribution of the initial brief. The Arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within ten (10) business days after the initiation of the non-binding arbitration, unless the Arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the Arbiter

shall be submitted to the Arbiter (with copies to all Parties) within five (5) business days after the Arbiter's request, and thereafter the Arbiter shall hold a telephonic hearing and issue a decision promptly but in any event within two (2) business days after submission of such additional briefs, and no later than seventeen (17) business days after the initiation of the non-binding arbitration. Each Party will give due consideration to the Arbiter's decision prior to pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

27.3.3 Non-Binding Arbitration Process for Other Disputes.

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

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

27.3.3.3 Retention of Consultants. The Parties by mutual agreement may retain consultants to assist the Arbiter in the course of Arbitration, if requested by the Arbiter. In his or her request, the Arbiter shall provide to all Parties to the dispute an explanation for the need for the consultant, the consultant's identity, hourly rate, and the estimated costs of the service. All Parties to the dispute must approve the retention of the consultant and, if retention of the consultant is approved, Authority, or Developer on behalf of Authority, shall contract with, if necessary, and pay the costs of the consultant, subject to the provisions regarding fees and costs set forth in Section 27.3.5 below. The consultant's cost shall not exceed $10,000 without the prior written consent of the Parties to the dispute. All consultant costs paid by Authority that are not credited against Initial or Additional Consideration in accordance with Section 27.3.5 below shall be included as Development Costs in calculating the Additional Consideration.

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

27.3.3.5 Additional Procedural Requirements. The procedural rules of the non-binding arbitration under Section 27.3.3 shall be supplemented by any non-conflicting

non-binding arbitration procedures of other alternative dispute resolution providers as may be mutually agreed upon by the Parties from time to time, applicable to commercial non-binding arbitration, and may be modified by agreement of the Parties.

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

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

27.3.4 Additional Provisions Governing Non-binding Arbitration of Disputes.

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

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

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

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

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

27.3.5 Fees and Costs. Initially, Authority, or Developer on behalf of Authority, shall contract directly with the selected Arbiter and shall be responsible for payment

of the fees and costs of the Arbiter. The Authority shall have the right to credit against the next payment of Initial Consideration (or if no payment of Initial Consideration remain due, then at the next payment of Additional Consideration), fifty percent (50%) of the full amount of the Arbiter's fees and costs, including the Arbiter's consultant costs. Costs of the Arbitration incurred by the Authority and not credited against Initial or Additional Consideration shall be included as Project costs in calculating the Additional Consideration.

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

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

ARTICLE 28
SURVIVAL AND BENEFIT

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

ARTICLE 29
INTERPRETATION

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

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

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

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

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

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

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

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

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

ARTICLE 30
NON-DISCRIMINATION

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

interest therein in the locality of the Navy Real Property hereby conveyed and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

ARTICLE 31
AVAILABILITY OF FUNDS

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

ARTICLE 32
MODIFICATION; WAIVERS

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

ARTICLE 33
REMEDIES FOR NONPERFORMANCE

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

ARTICLE 34
FAILURE TO INSIST ON COMPLIANCE

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

determination before the other Party may undertake or perform such action, said approval or determination shall not be unreasonably denied or delayed.

ARTICLE 35
RISK OF LOSS

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

ARTICLE 36
COUNTERPARTS

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

[SIGNATURE PAGE FOLLOWS]

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

WITNESS/ATTEST:

THE UNITED STATES OF AMERICA

By:_____

Name:

Title:

By:_____

_____

Real Estate Contracting Officer

WITNESS/ATTEST:

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

By:_____

Name:

Title:

By:_____

_____

_____

EXHIBITS

EXHIBIT A

DEFINITIONS

"Accounting" has the meaning set forth in Section 4.3.6.1.

"ACM" has the meaning set forth in Section 17.4.

"Additional Consideration" has the meaning set forth in Section 4.3.1.

"Agreement" has the meaning set forth in the Preamble.

"Anniversary Date" means the first anniversary of the Initial Closing and each anniversary of such date thereafter; provided, however, that if any Anniversary Date falls on other than a business day, then the Anniversary Date for that year shall be the first business day after the Anniversary Date.

"Annual" means a calendar year beginning on the Initial Closing date and commencing on each successive Anniversary Date and continuing until the Termination Date hereof.

"Appraisal Process" has the meaning set forth in Section 5.4.

"Arbiter" has the meaning set forth in Section 27.3.1.

"Arbiters' Qualifications" has the meaning set forth in Section 27.3.1.1.

"Assignable Easements" has the meaning set forth in Section 7.1.3.

"Assignment of Rents" has the meaning set forth in Section 4.2.6.

"Assumed Contracts" means the contracts, licenses and permits listed in Section 6.1.

"Auction" means any arm's length transaction designed to maximize revenues from the sale of parcels to qualified bidders. Auction formats may include any industry standard marketing approach or typical auction formats as outcry, sealed bid, sealed bid convertible or online and may be left to the discretion of the auction broker to determine the most appropriate format given current market conditions. In no case shall an absolute auction, in which a parcel is sold to the highest bidder regardless of price, or a reserve auction, in which the seller reserves the right to accept or reject the highest bid, be utilized unless agreed upon in advance by all Parties. The Auction shall be managed by a qualified third party real estate broker unrelated to the Developer or Authority, in a manner consistent with industry practice for a non-distressed offering of quality real estate that provides at a minimum: (i) commercially standard due diligence information and access, including, without limitation, information regarding the site and entitlements; (ii) iterative rounds of bidding by qualified bidders; and (iii) commercially standard closing conditions and processes.

"Authority" means the Treasure Island Development Authority and its successors and assigns.

"Authority Access Easements" has the meaning set forth in Section 7.1.1.1.

"Authority Closing Documents" has the meaning set forth in Section 8.3.

"Authority Costs Payment" means the Authority's costs paid by Developer in accordance with the terms of the DDA. Because the Authority will use Marina Revenues to fund the Authority's costs, Developer's obligation under the DDA to pay for the Authority's costs will be reduced by Marina Revenues as more particularly described in the DDA.

"Authority Option" has the meaning set forth in Section 3.8.7.

"Caretaker Agreement" has the meaning set forth in the eighth Recital and is set forth in Exhibit LL.

"CDPH" means the California Department of Public Health.

"CEQA" has the meaning set forth in the sixth Recital.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601, et seq.

"Certification" has the meaning set forth in the sixth Recital.

"City" has the meaning set forth in the first Recital.

"Closing" means the transactions by which the Navy Real Property, or a portion thereof, is conveyed by Quitclaim Deed by the Navy to the Authority.

"Closing Conditions" has the meaning set forth in Section 3.7.

"Commercial Lot" has the meaning set forth in Section 5.2.1.

"Contract Assumption List" has the meaning set forth in Section 6.1.

"Conveyance Schedule" means the schedule for conveyance of the Navy Real Property to the Authority that is set forth in Exhibit R.

"Credit Commencement Date" has the meaning set forth in Section 4.2.5.

"Critical Commercial Lot" has the meaning set forth in Section 5.2.1.

"Critical Commercial Lots Payment" has the meaning set forth in Section 5.2.1.

"DDA" means the Disposition and Development Agreement entered into by and between the Authority and the Developer, dated as of _____, 20___.

"DDA Reports" means, collectively, the items set forth in Section 5.9, Section 5.13.2, and Section 5.13.3.

"Default Interest Rate" means an interest rate of three hundred (300) basis points above the Interest Rate.

"Developed Critical Commercial Lot" has the meaning set forth in Section 5.2.2.

"Developer" means Treasure Island Community Development, LLC and its successors and assigns, or other such entity that is the master developer, and expressly excludes the Marina Developer.

"Development Agreement" means the Development Agreement entered into by and between the Authority and the City, dated as of _____, 20___._____.

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

"Developer Lots" has the meaning set forth in Section 5.3.

"DTSC" means the California Department of Toxic Substances Control.

"Easements" means the interests in real property as set forth in Article 7.

"EBSs" has the meaning set forth in the third Recital.

"EDC" has the meaning set forth in the second Recital.

"EDC Application" has the meaning set forth in the second Recital.

"Effective Date" has the meaning set forth in the Preamble.

"EIR" has the meaning set forth in the sixth Recital.

"EIS" has the meaning set forth in the fifth Recital.

"Entitlements" means all land use approvals and entitlements, including all conditions of approval and CEQA mitigation measures legally required by the Authority, City or any other Regulatory Authority as a condition to the subdivision of the Navy Real Property and development of the Navy Real Property in accordance with the DDA.

"Environmental Reports" means the documents included in the CERCLA administrative record for Treasure Island and Environmental Baseline Surveys (EBSs), FOSTs, FOSETs, and any Environmental Services Cooperative Agreements, which documents include Toxic Substances Control Act 15 U.S.C. §2601 et seq. documents, radiological materials documents, petroleum corrective action program documents, any lead-based paint and asbestos surveys relating to the improvements on the Property and any regulatory order or consent agreement, and any supporting documents specifically referenced therein.

"Excess Land Appreciation Structure" has the meaning set forth in Section 5.6.4.

"Excluded Personal Property" has the meaning set forth in Section 3.1.3.

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

"Exempt Transferee" has the meaning set forth in Section 3.8.7.

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

"Final IRR" has the meaning set forth in Section 4.3.7.1.

"First Tier Participation" has the meaning set forth in Section 4.3.1.

"First Tier Payment" has the meaning set forth in Section 4.3.2.

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

"FOST Parcel" has the meaning set forth in the fourth Recital.

"FSSR" has the meaning set forth in Section 3.7.1.2.

"GAAP" has the meaning set forth in Section 4.3.6.

"Government" means the United States of America.

"Government Real Property" means the real property owned by the United States of America which includes real property under the jurisdiction, custody or control of the United States Coast Guard, the United States Department of Labor, and the Federal Highway Administration, and specifically excludes the real property, easements, rights of access or other interests under the jurisdiction, custody, or control of the Navy as specified in Section 3.1.1; and (ii) real property owned by the State of California Department of Transportation.

"Gross Revenues" means, for any period, all cash revenues received by the Developer from any source whatsoever, and whether collected through or outside of escrow in connection with all or any part of the Project, in each case for such period, which shall include, the gross proceeds of sale or transfer of the Lots or any portion thereof, rents or other payments paid to Developer as the master landlord under any ground lease or as a property manager under an interim management agreement with the Authority for existing facilities and open space,; proceeds from the first sale of ground leases or refinancing intended to capitalize ground value; any damage recoveries, insurance payments or condemnation proceeds payable to the Developer with respect to the Project to the extent not otherwise used for repair or reconstruction of the Property, all revenues derived from agreements to which the Developer is a party pursuant to which the Developer participates in the proceeds of the operation or sale of any portion of the Property sold to a Vertical Builder, the proceeds of and proceeds from any assessment or special tax districts formed for purposes of providing funds for costs associated with the Project, and amounts paid to Developer from tax increment financing or other public financing, and grants and tax credits to reimburse Developer for infrastructure or other qualifying costs. Gross Revenues shall specifically exclude the proceeds of any capital contributed to the Developer by its partners or members or the proceeds of any loan made to the Developer.

"Guidelines for Residential Auction Lot Selection" has the meaning set forth in Section 5.5.3.

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

"Hazardous Substance" means (A) any substance designated pursuant to section 1321(b)(2)(A) of title 33, (B) any element, compound, mixture, solution, or substance designated

pursuant to section 9602 of title 42, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 1317(a) of title 33, (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator of the Environmental Protection Agency has taken action pursuant to section 2606 of title 15. The term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

"Historic District" means that certain real property described in Exhibit B-8, including those buildings commonly known as Quarters 10 and Building 267.

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

"Illustrative Land Use Plan" means the Illustrative Land Use Plan attached hereto as Exhibit Z and described in the second Recital.

"Infrastructure Financing District" means an Infrastructure Financing District formed in accordance with the Infrastructure Financing District Act (California Government Code Section 53395 et seq.), as amended from time to time.

"Initial Consideration" has the meaning set forth in Section 4.1.

"Initial Consideration Term" has the meaning set forth in Section 4.1.

"Initial Closing" means the date on which the first conveyance of the FOST Parcel by Quitclaim Deed from the Navy to the Authority occurs in accordance with Article 3 hereof.

"Installment Payment" has the meaning set forth in Section 4.2.1.

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

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

"IRR Statement" has the meaning set forth in Section 4.3.2.

"JV Lots" has the meaning set forth in Section 5.3.

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

"Late Payment" has the meaning set forth in Section 4.3.4.

"LBP" has the meaning set forth in Section 17.3.

"LIFOC" has the meaning set forth in Section 3.8.1.

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

"Lots" means a building site to be prepared by Developer and conveyed for consideration to a third party or Developer affiliate pursuant to the terms of the DDA, including, without limitation, the Commercial Lots.

"Major Phase" means each Major Phase of development identified in the phasing plan attached to the DDA.

"Major Phase Decision Notice" has the meaning set forth in Section 5.7.1.

"Major Phase Decisions" has the meaning set forth in Section 5.6.

"Marina Developer" means Treasure Island Enterprises, LLC, its successors and assigns, or such other entity that is the master tenant and developer of the Treasure Island Marina.

"Marina Project" means the redevelopment and operation of the Treasure Island Marina in accordance with a Lease Disposition and Development Agreement and a Ground Lease between the Authority and the Marina Developer.

"Marina Property" means the property described in Exhibit F attached hereto which will be used for the Marina Project.

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

"Market Rate Lots" has the meaning set forth in Section 5.3.

"Market Rate Units" has the meaning set forth in Section 5.3.

"Multiple Conveyances" means a series of Partial Conveyances.

"Navy" has the meaning set forth in the Preamble.

"Navy Access Easements" has the meaning set forth in Section 7.1.1.2.

"Navy Closing Documents" has the meaning set forth in Section 8.2.

"Navy Office" has the meaning set forth in Section 13.1.

"Navy Office Agreement" has the meaning set forth in Section 13.1 and is attached as Exhibit K-2.

"Navy Personal Property" has the meaning set forth in Section 3.1.3.

"Navy Property" means, collectively, the Navy Personal Property and the Navy Real Property.

"Navy Real Property" means real property owned by the United States of America under the jurisdiction, custody, and control of the Navy as specified in Section 3.1.1, and specifically excludes the real property, easements, rights of access or other interests under the

jurisdiction, custody, and control of the United States Coast Guard, the United States Department of Labor, the Federal Highway Administration, and the California Department of Transportation.

"Navy Real Property Documents" has the meaning set forth in Section 12.1.

"Navy Reserved Access Easement" has the meaning set forth in Section 7.1.1.2.

"NEPA" has the meaning set forth in the fifth Recital.

"NEPA ROD" has the meaning set forth in the fifth Recital.

"Net Available Tax Increment Revenues" has the meaning set forth in Section 4.2.6.

"Net Cash Flow" means Gross Revenues received by the Developer from the Project less Development Costs paid by the Developer.

"Non-Assignable Easements" has the meaning set forth in Section 3.6.

"Non-Critical Commercial Lot" has the meaning set forth in Section 5.2.1.

"Non-Developer Critical Commercial Lot" has the meaning set forth in Section 5.2.2.

"Open Space Acres" means those portions of the Navy Real Property identified in the Illustrative Land Use Plan as 'Open Space' or 'Public Services, Civic, Institutional'.

"Option Notice" has the meaning set forth in Section 3.8.7.

"Option Property" has the meaning set forth in Section 3.8.7.

"Owner Property" has the meaning set forth in Section 7.1.1.3.3.

"Parcel" or **"Parcels"** has the meaning set forth in the fourth Recital.

"Partial Conveyance" means a conveyance by deed from the Navy to the Authority of any number of Parcels comprising less than the entire Navy Real Property.

"Party" or **"Parties"** has the meaning set forth in the Preamble.

"Performance Benchmark" has the meaning set forth in Section 4.2.2.

"Permissible Financing Costs" means debt service and required reserves for Mello-Roos Bonds that are not withheld in such Mello-Roos Bonds issuances; and debt service and all other related financing costs, including, without limitation, bond issuance costs and fees, legal fees, and bond marketing costs, actually incurred and paid by Developer to pay for certain public facilities to be constructed on the Property, including a fire/police station and public parking

garages, to the extent financed using public finance vehicles such as certificates of participation or revenue bonds.

"Pre-Approved Arbiters List" has the meaning set forth in Section 27.3.1.

"Pre-Closing Parcel" means that parcel of Navy Real Property conveyed to the Authority in advance of the Initial Closing for general government, transportation and infrastructure purposes**.**

"Pre-Closing Parcel Consideration" means the value of the Pre-Closing Parcel established pursuant to Section 4.3.5.

"Pre-Closing Obligations" has the meaning set forth in Section 21.1.

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

"Product Types" has the meaning set forth in Section 5.5.2.

"Project" means the mixed use development more particularly described in the DDA, and expressly excludes the Marina Project.

"Property" means, collectively, the Government Real Property and the Navy Property.

"Qualified Appraiser Pool" has the meaning set forth in Section 5.4.1.

"Quarter" means a three-month period commencing on the first day of the Initial Closing and continuing until the Termination Date hereof.

"Quitclaim Deed(s)" means those certain recordable quitclaim deeds conveying the Navy's right, title, and interest to the Navy Real Property, the Easements, or the Pre-Closing Parcel to the Authority, in the forms attached hereto and made a part hereof as Exhibit D-1, Exhibit D-2, and Exhibit D-3.

"RACR" has the meaning set forth in Section 3.7.1.4.

"Redesign Budget" has the meaning set forth in Section 4.2.4.

"Redesign Costs" has the meaning set forth in Section 4.2.4.

"Redesign Plan" has the meaning set forth in Section 4.2.3.

"Redesign Trigger Event" has the meaning set forth in Section 4.2.3.

"Regulatory Authority" means any governmental agency having regulatory jurisdiction over the Property to issue any required authorization, approval or permit.

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

"Remainder Parcel" has the meaning set forth in the fourth Recital.

"Reporting Period" has the meaning set forth in Section 4.3.2.

"Re-Setting of the Minimum Bid Price" has the meaning set forth in Section 5.5.

"Residential Auction Lots" has the meaning set forth in Section 5.3.

"Reuse Plan" has the meaning set forth in the second Recital.

"Road Easement" has the meaning set forth in Section 7.1.1.1.

"SEBS" has the meaning set forth in the third Recital.

"Second Tier Participation" has the meaning set forth in Section 4.3.1.

"Second Tier Payment" has the meaning set forth in Section 4.3.3.

"Site 12 Development Parcel" has the meaning set forth in Section 4.2.2.

"Site 12 Performance Benchmark" has the meaning set forth in Section 4.2.2.1.

"Site 12 ROD" has the meaning set forth in Section 4.2.2.1.1.

"Site 12 ROD Notice" has the meaning set forth in Section 4.2.2.1.

"SHPO" has the meaning set forth in the seventh Recital.

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

"Subordinate Pledge" has the meaning set forth in Section 4.2.6.

"Sub-Phase" means each Sub-Phase of development as identified in the phasing plan attached as an exhibit to the DDA.

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

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

"Third Party Access Easement" has the meaning set forth in Section 7.1.1.2.

"Title Company" means such title insurance company as the Authority shall from time to time designate.

"Treasure Island" has the meaning set forth in the first Recital.

"Unperfected Easements" has the meaning set forth in Section 3.6.

"Utilities Agreement" has the meaning set forth in Section 9.1.

"Utility Easements" has the meaning set forth in Section 7.1.2.

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

"Vertical Builder" means the successor owner of a Lot pursuant to a transfer permitted under the DDA who is building Vertical Improvements.

"Vertical DDA" means a disposition and development agreement entered into among the Authority, Developer and a Vertical Builder in accordance with the DDA relating to the construction of Vertical Improvements.

"Vertical Improvements" means buildings and structures that are not part of the Horizontal Improvements constructed on Lots transferred to a Vertical Builder.

"Work Program" has the meaning set forth in Section 4.2.4.