

Attachment 12B

**Army EDC Deed**

[See attached]

RECORDING REQUESTED BY  
FIRST AMERICAN TITLE

RECORDING AT THE  
REQUEST OF  
FIRST AMERICAN TITLE  
WHEN RECORDED RETURN TO:

Oakland Base Reuse Authority  
700 Murmansk Street, Suite 3  
Oakland, California 94607-5009  
ATTN: Aliza Gallo, Executive Director

DEED NO. DACA05-9-03-567



2003466370 08/08/2003 11:56 AM  
OFFICIAL RECORDS OF ALAMEDA COUNTY  
PATRICK O'CONNELL  
RECORDING FEE: 0.00



135 PGS

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NO

RECORDER STAMP

159883

EXEMPT FROM RECORDING FEE PER GOVINT CODE

QUITCLAIM DEED FOR EXEMPT FROM TRANSFER TAX PER  
NO-COST ECONOMIC DEVELOPMENT CONVEYANCE PARCEL  
COUNTY OF ALAMEDA, CALIFORNIA RPT CODE 11922

THIS DEED ("Deed"), made and executed as of August 7 2003 by the UNITED STATES OF AMERICA, acting by and through the SECRETARY OF THE ARMY, (hereinafter referred to as the "GRANTOR"), under and pursuant to the power and authority contained in the Defense Base Closure and Realignment Act of 1990, as amended (Public Law No. 101-510, 10 U.S.C. §2687 note, hereinafter referred to as "BRAC Law"), and delivered to and accepted by the OAKLAND BASE REUSE AUTHORITY, created pursuant to a California Joint Powers Agreement among the City of Oakland, Alameda County and the Oakland Redevelopment Agency, and recognized as the designated Local Redevelopment Authority for the former Oakland Army Base, California, by the Office of Economic Adjustment on behalf of the Secretary of Defense (hereinafter referred to as the "GRANTEE").

WITNESSETH THAT:

WHEREAS, the Secretary of the Army may convey surplus property to the Local Redevelopment Authority at a closing military installation for economic development purposes pursuant to the power and authority provided by Section 2905(b)(4) of the BRAC Law and the implementing regulations of the Department of Defense (32 CFR Part 91); and

WHEREAS, the GRANTEE, by application, requested a no-cost economic development conveyance ("EDC") for portions of the former Oakland Army Base, California ("OARB") consistent with the reuse plan as prepared by the GRANTEE in conformance with BRAC Law; and

WHEREAS, the GRANTOR duly considered and made a final determination that the GRANTEE'S EDC application and reuse plan met the criteria of Section 2821 of the National Defense Authorization Act for Fiscal Year 2000, PL 106-65 (1999) and other applicable BRAC Laws for an EDC transfer of the applicable portions of the former OARB; and

WHEREAS, the GRANTOR and the GRANTEE have entered into a Memorandum of Agreement ("MOA") for Conveyance of Former Oakland Army Base Parcels Located in the City of Oakland, Alameda County, California, dated the 27th day of September, 2002, which sets forth the specific terms and conditions for conveying portions of the former OARB, comprising approximately 364 acres, as more particularly described in Exhibit A attached to this Deed (the "EDC Property" or the "Property"); and

WHEREAS, the California State Historic Preservation Officer has determined that a historic District exists at the former OARB, for which representatives of GRANTOR, GRANTEE, and the Port of Oakland have entered into a formal Memorandum of Agreement to recognize such District; and

WHEREAS, the GRANTOR desires to transfer the EDC Property to the GRANTEE by means of this Deed consistent with: (a) the terms of the MOA; (b) the requirements of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"; 42 U.S.C. 9620[h]), as amended; (c) the GRANTOR'S Finding of Suitability for Early Transfer ("FOSET"), dated April 2003 (d) the Environmental Services Cooperative Agreement ("ESCA") between the GRANTOR and the GRANTEE dated September 27, 2002 and the attachments thereto; (e) other Federal and State legal and policy requirements; (f) the GRANTOR'S post-transfer environmental remediation obligations; and (g) the provisions of this Deed;

NOW, THEREFORE, the GRANTOR, for good and valuable consideration does hereby grant, remise, release, and forever quitclaim to the GRANTEE, its successors and assigns, all such interest, rights, title, and claim as the GRANTOR has in and to the EDC Property, together with all buildings, facilities, roadways, fixtures and other improvements, including the electrical distribution system, natural gas system, sanitary sewer systems, storm drainage system, telephone system, other utility systems and steam generation infrastructure, located within the boundaries of the EDC Property and described in Exhibit B attached to this Deed, and all and singular appurtenances, hereditaments, tenements, remainders, issues, profits, rents, privileges and other rights belonging to or related to the EDC Property.

TO HAVE AND TO HOLD the Property unto the GRANTEE and its successors and assigns forever, provided that this Deed is made and accepted upon each of the following notices, covenants, restrictions, and conditions which shall be binding upon and enforceable against the GRANTOR and the GRANTEE, its successors and assigns, in perpetuity, as follows:

**I. EXCLUSIONS AND RESERVATIONS:**

This conveyance is made subject to the following EXCLUSIONS and RESERVATIONS:

A. The Property is taken by the GRANTEE subject to the valid and existing outstanding liens, licenses, leases, easements, and other encumbrances made for the purpose of

roads, streets, utility systems, rights-of-way, pipelines, and/or covenants, exceptions, interests, liens, reservations, and agreements, in each case as expressly set forth in this Deed or as properly recorded in accordance with applicable law.

B. The GRANTOR reserves a right of access to any and all portions of the Property for purposes of environmental investigation, remediation, or other corrective actions of environmental conditions that existed during the Army's occupancy, which are found to be necessary under applicable law after the date of the conveyance of the Property subject to the terms and conditions set forth below in Section III.B.5.

C. The GRANTOR reserves a right-of-entry and non-exclusive easement over all paved roads within the EDC Property conveyed by this Deed for the purpose of ingress and egress by the GRANTOR, its successors, assigns, permittees, contractors, or lessees of or to the property retained by the GRANTOR known as the Reserve Enclave and as more particularly described in Exhibit C attached to this Deed. The GRANTEE, its successors, assigns, permittees, or lessees may occupy and use any part of the reserved ingress and egress easement areas not actually required by the GRANTOR for the purpose of full and safe ingress and egress by the GRANTOR, so long as such occupancy and use by the GRANTEE does not compromise the ability of the GRANTOR to use the easement for its intended purposes, as set forth herein. The easement reserved by the GRANTOR shall be for the specific use described and may not be construed to include the further right to authorize any other use within the easement unless approved in writing by the then fee holder of the land subject to the easement. This easement shall terminate at such time as the property retained by the GRANTOR described in Exhibit C is conveyed to the GRANTEE, the City of Oakland acting by and through its Board of Port Commissioners (the "Port"), or their respective successors or assigns. In the event the property described in Exhibit C is conveyed to an entity other than GRANTEE, the Port, or their respective successors or assigns, the easement for access shall not expire.

D. The GRANTOR, on behalf of the United States Department of the Navy ("Navy") and its successors and assigns, reserves unto the United States of America, its successors and assigns, an assignable easement to construct, operate, inspect, maintain, repair, remove and replace overhead and underground electric lines, poles, conduits, and appurtenant facilities and equipment (the "Line") over, under and within that certain area described in the attached Exhibit A and shown on Exhibit D (hereinafter referred to as the "Reservation Area"), together with rights of ingress and egress by public street, or other means of access as designated by GRANTEE, subject to the following conditions:

The above easement shall remain in effect until September 30, 2008, or until an agreement is reached between the GRANTEE and the Navy, whichever date is later. By this language the GRANTEE and the Navy intend that if September 30, 2008 comes without further agreement between the parties, this reservation shall remain in effect until agreement is reached to supercede this reservation. Termination, removal of the Line, and restoration of the Reservation Area shall be determined by further agreement between the Navy and the GRANTEE. In the

event the Line is abandoned by the Navy for a period of two (2) consecutive years, then this easement and its rights shall be terminated.

The GRANTEE, without cost to the Navy, may relocate the Line and any related facilities at any time, and shall give written notice of such relocation to the Navy. The Navy shall reasonably cooperate in any such relocation, which shall be conducted without unreasonable interruption of service provided by the Line. In the event of such relocation and replacement, GRANTEE shall convey a substitute easement to the Navy, at no cost, and ownership of the replacement line shall rest with the Navy or its successors or assigns; and

The Navy shall comply with all applicable laws and shall maintain the Line and all related facilities in good condition and repair. If any action of the Navy's employees or agents in the exercise of rights under this easement results in damage to the Reservation Area, the Navy shall, in its sole discretion, either repair such damage or make an appropriate settlement with the GRANTEE. The Department of the Navy will be liable only to the extent provided by the Federal Tort Claims Act. In no event shall such repair or settlement exceed the fair market value of the fee title to the real property of the Reservation Area at the time immediately preceding such damage. The GRANTEE may enter the Reservation Area and use it for any purposes not inconsistent with this reservation; and

That any transfer of the easement by assignment, operating agreement or otherwise must include language that the transferee agrees to comply with and be bound by the terms and conditions of this reservation; and

Use of the reservation is at the Navy's sole cost and risk. The Navy's liability under this clause is subject to the availability of appropriations for such payment, and nothing contained in this easement reservation may be considered as implying that Congress will at a later date appropriate funds sufficient to meet deficiencies. The provisions of this clause are without prejudice to any rights the GRANTEE may have to make a claim under applicable laws for any damages other than those provided for herein.

The term "Navy" includes the Department of the Navy, its successors and assigns.

E. The GRANTOR hereby conveys to the GRANTEE its rights and obligations under the following previously unrecorded easements and/or licenses attached hereto as Exhibit E:

1. Department of Army Easement No. SFRE (s) 499, dated January 25, 1954 and Supplementals 1 through 4;
2. Department of Army Easement No. SFRE-(s)-630, dated June 17, 1955;

3. Department of Army Easement No. SFRE-(s)-729, dated February 25, 1957;
4. Department of Army Easement No. DA-04-167-Eng-2830, dated June 15, 1964; and
5. Department of Army Easement No. DACA05-2-70-1, dated January 8, 1970.

## II. "AS IS"

The EDC Property is conveyed in an "As Is, Where Is" condition without any representation, warranty or guarantee by the GRANTOR as to quantity, quality, title, character, condition, size, or kind, or that the same is in condition or fit to be used for the purpose for which intended except as reflected in the Finding of Suitability for Early Transfer, and no claim for allowance or deduction upon such grounds will be considered. There is no obligation on the part of the GRANTOR to make any alterations, repairs, or additions, and said GRANTOR shall not be liable for any latent or patent defects in the EDC Property. This Section II shall not affect the GRANTOR'S responsibility under CERCLA or Section III herein.

## III. CERCLA NOTICE, REPRESENTATIONS, WARRANTIES AND COVENANTS

### A. Hazardous Substance Notice

Pursuant to CERCLA Section 120(h)(3), the GRANTOR hereby provides notice to the GRANTEE that hazardous substances were stored for one year or longer or were released or disposed on the Property prior to the conveyance of the Property to GRANTEE. The GRANTOR has made a complete search of its files and records. The name, date, description, location and quantity of hazardous substance stored for one year or more, or known to have been released or disposed of on the Property, and the remedial action taken, if any, are set forth in the FOSET Table 3, attached hereto as Exhibit F, and the Environmental Baseline Survey for transfer ("EBS-T"), also known as the Community Environmental Response Facilitation Act report, referenced in the FOSET. The remedial actions required to protect human health and the environment are set forth in the approved Remedial Action Plan ("RAP") and Risk Management Plan ("RMP") referenced in the Consent Agreement (as defined in Section III.C.1 of this Deed).

### B. Representations, Warranties and Covenants

1. Consistent with and pursuant to Section 120(h)(3) of CERCLA, as amended, 42 U.S.C. Section 9601 et seq., the FOSET, and the EBS-T, together with the RAP and RMP, collectively, set forth the environmental conditions of the Property. The FOSET sets forth the basis for the GRANTOR'S determination that the Property is suitable for transfer. The

GRANTEE is hereby made aware of the notifications contained in the EBS-T and the FOSET. The GRANTEE has inspected the Property and accepts the physical condition and current level of environmental hazards on the Property. Based on GRANTEE'S inspection and review of information provided by GRANTOR, GRANTEE believes that its intended use is consistent with protection of human health and the environment. The GRANTOR represents that the Property is environmentally suitable for transfer to GRANTEE, subject to GRANTOR'S obligations pursuant to CERCLA and GRANTEE'S obligations pursuant to the ESCA, for the purposes identified in the Final Reuse Plan dated July 31, 2002. GRANTEE, its successors and assigns, as consideration for the conveyance, agrees to release GRANTOR from any liability or responsibility for any claims arising out of or in any way predicated on release of any hazardous substance on the Property occurring after the conveyance, to the extent such hazardous substance was released by the GRANTEE, or its agents or contractors, after the conveyance.

2. All response actions after the date of conveyance that are necessary to protect human health and the environment shall be conducted by the GRANTOR, with respect to any hazardous substance remaining on the Property as a result of, storage, release, or disposal prior to the date of conveyance. The GRANTEE has assumed certain obligations of the GRANTOR for the environmental cleanup of the property pursuant to the ESCA.

3. The GRANTOR covenants that when all response actions necessary to protect human health and the environment with respect to any hazardous substance remaining on the Property on the date of this conveyance have been taken, GRANTOR shall execute and deliver to the GRANTEE an appropriate document containing a warranty that all such response actions have been taken. The making of the warranty shall be considered to satisfy the requirements of CERCLA 120(h)(3)(a)(ii)(I).

4. The GRANTOR covenants that the GRANTOR shall conduct any additional remedial action found to be necessary after the effective date of the warranty granted under Paragraph B.3 above, with regard to any hazardous substances remaining on the Property prior to the date of this conveyance. This covenant shall not apply to the extent that the person or entity to whom the Property is transferred is a potentially responsible party under CERCLA with respect to such hazardous substances.

5. GRANTEE covenants that the GRANTOR, its officers, agents, employees, contractors and subcontractors, in accordance with Section 120(h) of CERCLA, as amended, reserves a right of access, subject to the conditions below, to any and all portions of the Property (except for interior locations in buildings constructed following conveyance) for purposes of environmental investigation, remediation, or other corrective actions of environmental conditions that existed during the GRANTOR'S occupancy, which were found to be necessary under applicable law after the date of the conveyance of the Property. The GRANTOR and the GRANTEE agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities and GRANTEE'S or any lessee's or other authorized occupants' operations. Any inspection, monitoring, testing, sampling, survey, investigation, or other response or remedial action will, to the extent

practicable, be coordinated with representatives designated by GRANTEE. Pursuant to this reservation, the GRANTOR and its officers, agents, employees, contractors, subcontractors shall have the right (upon reasonable written notice to the GRANTEE or the then owner and any authorized occupant of the Property, except for in the case of imminent endangerment to human health and the environment) to enter upon the Property (except for interior locations of buildings constructed following conveyance), and perform surveys, drillings, test-pitting, borings, data and/or record compilation, and other activities necessary to environmental investigation, and to carry out remedial or removal actions as required or necessary under applicable law, including but not limited to installation of monitoring and extraction wells, and other treatment facilities. The GRANTEE and the GRANTOR agree to cooperate in good faith to minimize any conflict between necessary environmental investigation and remediation activities at the Property, and the operations and construction activities of the GRANTEE, or any authorized occupant, and their respective successors, assigns, lessees and contractors.

6. The GRANTOR covenants that upon completion of any removal action, remediation action, or other activity that removes the risk giving rise to any restriction on future use or any limitation of activities contained in the Environmental Restrictions set forth in Section III.C.1 herein, a deed or lease for the Property, or in any other document relating to the Property, the GRANTOR, without any payment of funds by the United States, agrees to cooperate with the GRANTEE, its successors or assigns, in any application, permit, easement or other effort to obtain approval from appropriate Federal, state or local authorities, including the Department of Toxic Substances Control ("DTSC") pursuant to the RAP, RMP and Consent Agreement, to remove any such restriction or limitation, which the GRANTEE, its successors or assigns, shall seek to remove or eliminate. GRANTOR shall not unreasonably withhold consent to the removal of any restriction or limitation of activities that DTSC approves for removal as set forth above and in conformance with the RAP, RMP and Consent Agreement and the remedy implementation requirements of CERCLA.

7. The GRANTOR recognizes its obligation to hold harmless, defend, and indemnify the GRANTEE and any successor, assignee, transferee, lender, lessee or authorized occupant of the GRANTEE or its successors and assigns, as required and limited by Section 330 of the National Defense Authorization Act of 1993, as amended (Pub. L. No. 102-484), and to otherwise meet its obligations under Federal law.

8. The covenant deferral granted under the POSET shall not diminish, increase, or affect in any manner any rights or obligations of the GRANTOR under CERCLA as provided in CERCLA section 120(h)(3)(C)(iv) with respect to the Property.

9. In consideration of the funds available under the ESCA, whereby GRANTEE performs environmental response services, and the transfer of the Property, GRANTEE agrees that it shall, upon the conveyance of the Property, regardless of possible termination of the ESCA, indemnify GRANTOR for:

(a) Any response cost claims for any environmental conditions for which GRANTEE is responsible under the ESCA, including hazardous substances, pollutants and contaminants, petroleum, and petroleum derivatives. GRANTEE'S indemnification obligation shall exist with respect to all Known and Unknown Conditions on the Property, as defined in the ESCA, including remediation of Building 1 contamination and all costs associated with correction of a failure of any remedy implemented by the GRANTEE.

(b) all personal injury or property damage claims to the extent caused by the acts or omissions of GRANTEE or its contractors in the course of performing the environmental response services for which the GRANTEE is responsible under the ESCA;

(c) all natural resource damages to the extent caused by or contributed to by the actions of GRANTEE;

(d) all costs associated with or arising from any negligent acts or omissions or willful misconduct of the GRANTEE, in the course of performing the environmental response services or implementing the remediation actions required under the Consent Agreement;

(e) regulatory oversight costs for any remedy implemented by the GRANTEE to the extent the GRANTEE is responsible for such costs in accordance with the terms of the ESCA; provided, however that regulatory oversight costs for remedy implementation (as provided for under the Consent Agreement) are to be paid by the GRANTOR as provided for under the Defense-State Memorandum of Agreement ("DSMOA").

(f) all costs associated with additional remediation required on or within the Property after GRANTEE achieves regulatory closure for which GRANTEE is responsible under the ESCA, except for those associated with Army-Retained Conditions, as defined in the ESCA;

(g) all costs associated with additional remediation required on or within the Property, as a result of a change in land use from that anticipated at the time of the execution of the ESCA.

C. Notice of State Covenant to Restrict Use of Property

1. Environmental Restrictions. The Property is subject to the land use restrictions ("Restrictions") referenced in Section 3.6 of the Consent Agreement Between the Oakland Base Reuse Authority, City of Oakland acting by and through the Oakland Redevelopment Agency and the State of California Environmental Protection Agency, Department of Toxic Substances Control Concerning Oakland Army Base, Oakland, California,

dated September 27, 2002 as modified and superceded May 19, 2003 (the "Consent Agreement") and set forth in Exhibit D of the Consent Agreement, the *Covenant to Restrict Use of Property*, which is required to be recorded by the GRANTEE concurrently with the transfer of the Property by GRANTOR to GRANTEE. The Restrictions require or prohibit the following future uses of the Property (absent express written approval from DTSC):

(a) Sensitive land uses, including but not limited to, residential housing, schools, day-care facilities, hospitals and hospices are prohibited.

(b) The construction of groundwater wells and extraction of groundwater from new and existing wells for all purposes are prohibited.

(c) Activities that disturb surface or subsurface soil, disturb existing soil covers, disturb or restrict access to groundwater monitoring wells, generate water in excavations, extract groundwater from excavations, or alter groundwater conditions are prohibited, except as conducted pursuant to the RAP and RMP.

(d) The GRANTEE and occupants are required to comply with the RAP and RMP, including the Risk Management Plan provisions for soil and groundwater management, maintenance of existing cover or construction of new cover, mitigation measures during earthwork, management of below grade structures, and construction dewatering.

(e) The GRANTEE is required to submit annual certification to DTSC attesting to compliance with the Covenant to Restrict Use of Property.

2. **Army Enforcement of Restrictions for the Property.** As a former owner/operator of the Property and a beneficiary of the Restrictions, the GRANTOR expressly reserves the right to require compliance with the Restrictions, as amended in conformance with the RAP, RMP and Consent Agreement, to ensure compliance with the remedy implementation requirements of CERCLA, following conveyance of the Property to GRANTEE. The GRANTOR shall provide GRANTEE with written notice of any alleged noncompliance with the Restrictions, and the GRANTOR and GRANTEE shall meet and confer, with DTSC, in order to assure ongoing compliance with applicable Restrictions. The GRANTOR also expressly reserves any and all of its rights under the law to enforce compliance with the Restrictions or enjoin use that is in violation of the Restrictions. The GRANTOR will not be liable for any costs that result from a violation of the restrictions where the violation is not caused by the GRANTOR.

#### D. Environmental Notifications and Covenants

GRANTOR hereby provides certain express notifications and covenants regarding certain environmental conditions that do or may exist as of the conveyance of the Property to GRANTEE (the "Conveyance Date"). Notifications and covenants provided below regarding

the structures and equipment, including Asbestos, Lead-Based Paints, and Equipment Containing Polychlorinated Biphenyls ("PCBs") apply only to buildings, fixtures and equipment which exist as of the Conveyance Date, and do not apply to buildings, fixtures and equipment which may be constructed or installed following the Conveyance Date.

1. Asbestos

(a) The GRANTEE is hereby informed and does acknowledge that friable and nonfriable asbestos or asbestos-containing material ("ACM") have been found on the Property, as described in the EBS-T and asbestos surveys referenced in the EBS-T. GRANTEE hereby acknowledges receipt of all documents described in this paragraph. To the best of GRANTOR'S knowledge, the asbestos and ACM on the Property do not currently pose a threat to human health or the environment.

(b) The GRANTEE covenants and agrees that its use and occupancy of the Property will be in compliance with all applicable laws relating to asbestos; and that the GRANTOR assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death which arise from exposure to asbestos or ACM that occur after the date of transfer to the GRANTEE, its successors or assigns, lessees, or to any other person, including members of the general public, arising from or incident to the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Property that occurs after the date of transfer to the GRANTEE, whether the GRANTEE, its successors or assigns have properly warned or failed to properly warn the individual(s) injured. GRANTEE agrees to be responsible for any future remediation of ACM found within buildings or structures on the Property, in compliance with applicable legal requirements. The GRANTEE agrees to provide the GRANTOR and regulators with a copy of all final reports pertaining to the remediation of any or all ACM found within buildings or structures on the Property.

(c) Unprotected or unregulated exposures to asbestos in product manufacturing, shipyard, and building construction workplaces have been associated with asbestos-related diseases. Both the Occupational Safety and Health Administration ("OSHA") and the EPA regulate asbestos because of the potential hazards associated with exposure to airborne asbestos fibers. Both OSHA and EPA have determined that such exposure increases the risk of asbestos-related diseases, which include certain cancers and which can result in disability or death.

(d) The GRANTEE acknowledges that it has inspected the Property as to its asbestos content and condition and any hazardous or environmental conditions relating thereto.

(e) No warranties, either express or implied, are given with regard to the condition of the Property, including, without limitation, whether the Property does or does not contain asbestos or is or is not safe for a particular purpose, except as expressly set forth in this

Deed. The failure of the GRANTEE to inspect, or to be fully informed as to the condition of all or any portion of the Property offered, will not constitute grounds for any claim or demand against the United States, with respect to any asbestos hazards or concerns.

(f) The GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs and attorneys' fees arising from (i) exposure to asbestos on any portion of the Property, provided that such exposure occurs after the conveyance of the Property to the GRANTEE or (ii) any future remediation or abatement of asbestos or the need therefor that occurs after the conveyance of the Property to GRANTEE. The GRANTEE'S obligation hereunder shall apply whenever the United States incurs costs or liabilities for actions giving rise to liability under this section.

(g) Upon the completion of demolition of ACM-containing buildings or asbestos abatement, and proper disposal of the waste generated therefrom, the GRANTEE, or its successors in interest or assigns may file a written application with the GRANTOR, acting through the U.S. Army Corps of Engineers, Sacramento District (or the successor thereto), and provide to the GRANTOR either a certification from the appropriate state environmental agency or a report by a certified or licensed asbestos inspector engaged by the applicant, confirming the abatement or removal of the friable asbestos from all or some portions of the Property, and proper disposal of the waste generated therefrom, in accordance with applicable laws. Upon compliance with the foregoing, GRANTEE may submit to GRANTOR an amendment to the Deed in recordable form deleting this Section III.D.1 from the Deed as to all or that portion of the Property that is covered by such certification or report. Consent to the deletion of this Section III.D.1 from the Deed shall not be unreasonably withheld by the GRANTOR, and this Deed amendment shall be issued by the GRANTOR to the applicant within a reasonable period of time after request by GRANTEE; provided however, that such amendment shall be at no cost to the GRANTOR.

## 2. Lead Based Paint

(a) The GRANTEE and its successors and assigns are hereby informed and do acknowledge that all buildings on the Property, which were constructed or rehabilitated prior to 1978, are presumed to contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Every purchaser of any interest in Residential Real Property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in Residential Real Property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. "Residential Real

Property" means dwelling units, common areas, building exterior surfaces, and any surrounding land, including outbuildings, fences and play equipment affixed to the land, available for use by residents; and buildings visited regularly by the same child, six years of age or under, on at least two different days within any week, including day-care centers, preschools and kindergarten classrooms; but not including land used for agricultural, commercial, industrial, or other non-residential purposes, and not including paint on the pavement of parking lots, garages, or roadways.

(b) Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint or lead-based paint hazards, and the condition of painted surfaces, is contained in the EBS-T, which has been provided to the GRANTEE. All purchasers of Residential Real Property must also receive the federally approved pamphlet on lead poisoning prevention. Buildings constructed prior to 1978 are assumed to contain lead-based paint. Buildings constructed after 1977 are assumed to be free of lead-based paint. No other surveys or studies assessing the possible presence of lead-based paint in former or existing buildings on the Property were performed by the GRANTOR. The GRANTEE hereby acknowledges receipt of the information described in this Subparagraph.

(c) The GRANTEE acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of the Deed.

(d) The GRANTEE covenants and agrees that it shall not permit the occupancy or use of any buildings or structures on the Property as Residential Real Property, as defined in paragraph (a), above, without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of the Property where its use subsequent to sale is intended for residential habitation, the GRANTEE specifically agrees to perform, at its sole expense, the lead-based paint abatement equivalent to the requirements under Title X of the Housing and Community Development Act of 1992 (Residential Lead-Based Paint Hazard Reduction Act of 1992) (hereinafter Title X).

(e) Prior to the sale or use of any property which will be used as Residential Real Property which is not Residential Real Property at the time the Property is conveyed by GRANTOR to GRANTEE, the GRANTEE shall, after consideration of the guidelines and regulations established pursuant to Title X: (1) Perform a Risk Assessment if more than 12 months have elapsed since the date of the last Risk Assessment; (2) Comply with the joint HUD and EPA Disclosure Rule (24 CFR 35, Subpart H, 40 CFR 745, Subpart F), by disclosing to prospective purchasers the known presence of lead-based paint and/or lead-based paint hazards as determined by previous risk assessments; (3) Abate lead dust and lead-based paint hazards in pre-1960 Residential Real Property, in accordance with the procedures in 24 CFR 35; (4) Abate soil-lead hazards in pre-1978 Residential Real Property, in accordance with the procedures in 24 CFR 35; (5) Abate lead-soil hazards following demolition and redevelopment of structures in

areas that will be developed as Residential Real Property; (6) Comply with the EPA lead-based paint work standards when conducting lead-based paint activities (40 CFR 745, Subpart L); (7) Perform the activities described in this paragraph within 12 months of the date of the lead-based paint risk assessment and prior to occupancy or use of the Residential Real Property; and (8) Send a copy of the clearance documentation to the GRANTOR.

(f) In complying with these requirements, the GRANTEE covenants and agrees to be responsible for any abatement or remediation of lead-based paint or lead-based paint hazards on the Property found to be necessary as a result of the use of the Property as Residential Real Property after conveyance to the GRANTEE. The GRANTEE covenants and agrees to comply with solid or hazardous waste laws that may apply to any waste that may be generated during the course of lead-based paint abatement activities conducted by the GRANTEE.

(g) The GRANTEE further agrees to indemnify and hold harmless the GRANTOR, its officers, agents and employees, from and against all suits, claims, demands, or actions, liabilities, judgments, costs and attorneys' fees arising out of personal injury, death or property damage resulting from, related to, caused by or arising out of residential exposure or improper handling or disposal of lead-based paint or lead-based paint hazards related to the Property after the date of transfer.

(h) Upon the completion of the foregoing identification, abatement and disposal or demolition and disposal of lead-based paints on buildings and structures that exist as of the Property's transfer by GRANTOR to GRANTEE, the GRANTEE, or its successors in interest or assigns, may file a written application with the GRANTOR, acting through the U.S. Army Corps of Engineers, Sacramento District (or the successor thereto), and provide to the GRANTEE either a certification from the appropriate state environmental agency or a report by a certified or licensed lead-based paint inspector engaged by the applicant, confirming the abatement or removal of the lead-based paints from all or some portions of the Property, and proper disposal of the waste generated therefrom, in accordance with applicable laws. Upon compliance with the foregoing, GRANTEE may submit to GRANTOR an amendment to this Deed in recordable form deleting this Section III.D.2 from the Deed as to all or that portion of the Property that is covered by the certification or report. Consent to the deletion of this Section III.D.2 from the Deed shall not be unreasonably withheld by the GRANTOR, and this Deed amendment shall be issued by the GRANTOR to the applicant within a reasonable period of time after request by GRANTEE; provided however, that such amendment shall be at no cost to the GRANTOR.

### 3. Polychlorinated Biphenyls (PCB)-Containing Equipment

(a) GRANTEE is hereby informed that, based upon data resulting from Property-wide sampling and analysis of the subject equipment, equipment containing PCBs above current regulatory action levels exist on the Property as described in the EBS-T. The non-PCB and PCB-containing transformer equipment remaining on the Property is listed in the EBS-

T. Except as described in the EBS-T, PCB contamination or spills related to such equipment have been properly remediated prior to conveyance. The PCB-containing transformer equipment does not currently pose an unacceptable threat to human health or the environment.

(b) GRANTOR has furnished to GRANTEE all available information in its possession, and GRANTEE acknowledges receipt of the information provided to it by GRANTOR and described in the EBS-T, related to past PCB-containing equipment necessary for the continued compliance by GRANTEE with applicable laws and regulations related to the use and storage of PCBs or PCB containing equipment.

(c) GRANTEE covenants and agrees that, upon conveyance of the Property from GRANTOR to GRANTEE, GRANTEE'S possession, use, management or removal of any PCB-containing equipment will be in compliance with all applicable laws relating to PCBs and PCB-containing equipment. GRANTEE shall comply with the provisions of all Federal, state and local health and safety plan requirements in effect during the course of any future redevelopment efforts and/or environmental response actions on the Property.

(d) GRANTOR assumes no liability for the future remediation of PCB contamination from such equipment or damages for personal injury, illness, disability, or death to GRANTEE, its successors or assigns, or to any other person, including members of the general public, arising from or incident to the use, handling, management, disposition, or other activity occurring after the Property is conveyed by GRANTOR to GRANTEE, that results in exposure to PCBs or PCB containing equipment, whether or not GRANTEE has properly warned or failed to properly warn any such individual(s) injured.

(e) The GRANTEE, or its successors in interest or assigns, may file a written application with the GRANTOR, acting through the U.S. Army Corps of Engineers, Sacramento District (or the successor thereto), and provide to the GRANTOR either a certification from the appropriate state environmental agency or a report by a certified or licensed inspector engaged by the applicant, confirming the removal of the PCB-containing equipment from all or some portions of the Property, and proper disposal of the waste generated therefrom, in accordance with applicable laws. Upon compliance with the foregoing, GRANTEE may submit to GRANTOR an amendment to this Deed in recordable form deleting this Section III.D.3 from the Deed as to all or that portion of the Property covered by said certification or report. Consent to the deletion of this Section III.D.3 from the Deed shall not be unreasonably withheld by the GRANTOR, and this Deed amendment shall be issued by the GRANTOR to the applicant within a reasonable period of time after request by GRANTEE; provided however, that such amendment shall be at no cost to the GRANTOR.

4. Unexploded or Abandoned Ordnance, Chemical and Biological Warfare Agents, and Radiological Materials

Based on a review of installation historical data and the EBS-T, GRANTOR represents that there is no evidence of any radiological material, chemical or biological warfare agents, unexploded ordnance or abandoned ordnance located on or around the Property. In the event any such material, agents, or ordnance is ever discovered or suspected to reside on or around the Property, GRANTEE shall immediately notify the local police department and GRANTOR, and GRANTEE shall refrain from attempting to remove or dispose of any such material, agents, or ordnance. Notwithstanding any other provision of this or any other agreement between GRANTEE and GRANTOR, GRANTOR shall be solely liable and responsible for the safe, timely disposal of any radiological material, chemical or biological warfare agents, unexploded ordnance or abandoned ordnance discovered on or around the Property, in compliance with all applicable laws and regulations.

#### IV. ENFORCEMENT AND NOTICE REQUIREMENT

A. The provisions of this Deed benefit the governments of the United States of America, the State of California, acting on behalf of the public in general, the local government of the City of Oakland, the Oakland Base Reuse Authority, the Oakland Redevelopment Agency and the Port of Oakland, and the lands retained by the GRANTOR and, therefore, are enforceable, by resort to specific performance or legal process by the United States as to the GRANTEE, and by the GRANTEE, its successors and assigns, the State of California, the City of Oakland, the Oakland Redevelopment Agency and the Port of Oakland as to the GRANTOR. Enforcement of this Deed shall be at the discretion of the parties entitled to enforcement hereof, and any forbearance, delay or omission in the exercise of their rights under this Deed in the event of a breach of any term of this Deed, shall not be deemed to be a waiver by any such party of such term or of any subsequent breach of the same or any other terms, or of any of the rights of said parties under this Deed. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. The enforcement rights set forth in this Deed against the GRANTEE, or its successors and assigns, shall only apply with respect to the EDC Property conveyed herein and held by such GRANTEE, or its successor or assign, and only with respect to matters occurring during the period of time such GRANTEE, or its successors or assigns, owned or occupied such EDC Property or any portion thereof.

B. The GRANTEE, its successors or assigns, shall neither transfer the Property, nor any portion thereof, nor grant any interest, privilege, or license whatsoever in connection with the Property without the inclusion, to the extent applicable to the Property or any portion thereof, of the environmental protection provisions contained in Sections I, II, III, V, and VI of this Deed, either verbatim or by reference to this Deed. GRANTEE shall require the inclusion, to the extent applicable, of such environmental protection provisions in all further deeds, transfers, leases, or grant of any interest, privilege, or license, again either verbatim or by cross reference to this Deed.

C. The obligations imposed in this Paragraph upon the successors or assigns of GRANTEE shall only extend to the property conveyed to any such successor or assign.

**V. ENDANGERED SPECIES OR THREATENED SPECIES**

The GRANTEE, its successors and assigns shall comply with the requirements, if any, to protect and preserve endangered or threatened plants, species, or wildlife habitats that may exist at the Property in accordance with applicable law. All future proposed use potentially impacting threatened and endangered species designated under the federal Endangered Species Act, 16 U.S.C. §§ 1531 – 1544, must be coordinated with the United States Department of Fish and Wildlife Service to the extent required under applicable law.

**VI. AIR NAVIGATION RESTRICTION**

The Oakland International Airport is located approximately 10 miles from the former OARB. Accordingly, in coordination with the Federal Aviation Administration, the GRANTEE covenants and agrees, on behalf of it, its successors and assigns and every successor in interest to the Property, or any part thereof, that, when required by applicable law, there will be no construction or alteration unless a determination of no hazard to air navigation is issued by the Federal Aviation Administration in accordance with Title 14, Code of Federal Regulations, Part 77, entitled, Objects Affecting Navigable Airspace, or under the authority of the Federal Aviation Act of 1968, as amended.

**VII. NOTICE OF NON-DISCRIMINATION**

With respect to activities and employment practices related to the EDC Property, the GRANTEE covenants for itself, and its successors and assigns, that the GRANTEE, and such successors and assigns, shall not discriminate upon the basis of race, color, religion, sex, age, handicap, or national origin in the use, occupancy, sale or lease of the EDC Property in violation of the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); and the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794). The GRANTOR shall be deemed a beneficiary of this covenant without regard to whether the GRANTOR remains the owner of any land or interest in the locality of the EDC Property hereby conveyed by this Deed, and shall have the sole right to enforce this covenant in any court of competent jurisdiction.

**VIII. ANTI-DEFICIENCY ACT STATEMENT**

The GRANTOR'S obligation to pay or reimburse any money under this Deed is subject to the availability of appropriated funds to the Department of the Army, and nothing in this Deed shall be interpreted to require obligations or payments by the United States in violation of the Anti-Deficiency Act, P.L. 97-258.

**IX. GENERAL PROVISIONS**

A. **LIBERAL CONSTRUCTION.** Any general rule of construction to the contrary notwithstanding, this Deed shall be liberally construed to effectuate the purpose of this Deed and the policy and purpose of CERCLA. If any provision of this Deed is found to be ambiguous, an

interpretation consistent with the purpose of this Deed that would render the provision valid shall be favored over any interpretation that would render it invalid.

B. **SEVERABILITY.** If any provision of this Deed, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this Deed, or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

C. **NO FORFEITURE.** Nothing contained herein will result in a forfeiture or reversion of title in any respect.

D. **CAPTIONS.** The captions in this Deed have been inserted solely for convenience of reference and are not a part of this Deed and shall have no effect upon construction or interpretation.

E. **RIGHT TO PERFORM.** Any right which is exercisable by the GRANTEE, and its successors and assigns, to perform under this Deed may also be performed, in the event of default by the GRANTEE, or its successors and assigns, by a lender of the GRANTEE and its successors and assigns.

**X. THE CONDITIONS, RESTRICTIONS, AND COVENANTS**

The conditions, restrictions, and covenants set forth in this Deed are a binding servitude on the herein conveyed Property and will be deemed to run with the land in perpetuity, except as otherwise expressly provided in this Deed. To the extent expressly required in this Deed, restrictions, stipulations and covenants contained herein will be inserted by the GRANTEE verbatim or by express reference in any deed or other legal instrument by which it divests itself of either the fee simple title or any other lesser estate in the Property or any portion thereof. All rights and powers reserved to the GRANTOR, and all references in this Deed to the GRANTOR shall include its successors in interest. The GRANTOR may agree to waive, eliminate, or reduce the obligations contained in the covenants in accordance with the provisions of Section III, **PROVIDED, HOWEVER,** that the failure of the GRANTOR or its successors to insist in any one or more instances upon complete performance of any of the said conditions shall not be construed as a waiver or a relinquishment of the future performance of any such conditions, but the obligations of the GRANTEE, its successors and assigns, with respect to such future performance shall be continued in full force and effect.

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