

APPENDIX E-2
PURCHASE, SALE AND DEVELOPMENT CONTRACT
by and between

SECRETARY OF THE AIR FORCE, as Seller
And
[NAME OF DEVELOPER], as Developer
Dated _____, 2002.

Los Angeles Air Force Base, California

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THIS PURCHASE, SALE AND DEVELOPMENT CONTRACT including all Exhibits thereto, (this "Agreement") is made and entered into as of _____, 2002, by and between **THE UNITED STATES OF AMERICA represented by THE SECRETARY OF THE AIR FORCE** (the "Secretary"), and **[NAME OF DEVELOPER]**, a _____ (the "Developer"). The Secretary and the Developer may be referred to jointly as the "Parties," and each separately as a "Party."

RECITALS

WHEREAS, pursuant to the Solicitation and the Selected Proposal, the Developer has agreed to become obligated to provide, or to design and construct, the Systems Acquisition Management Support (SAMS) complex, for the use of Space and Missiles Systems Center, Los Angeles Air Force Base, California; and

WHEREAS, in accordance with and in furtherance of the Solicitation and the Selected Proposal, the Secretary and the Developer hereby agree that, subject to the terms and conditions and for the consideration set forth below, the Secretary shall convey and the Developer shall purchase the Land, including the Personal Property situated thereon;

NOW, THEREFORE, in consideration of the above recitals and other good and valuable consideration, the receipt and sufficiency of which is acknowledged by both Parties, the Parties hereby agree as follows:

1. Definitions. The terms defined in this Section 1 and in the Recitals (except as otherwise expressly defined in this Agreement or unless the context otherwise requires) for all purposes of this Agreement shall have the respective meanings specified in this Section 1 and the Recitals.

"Act" means the 2001 Defense Authorization Act, 106 Pub. Law 398, 114 Stat. 1654, Title XXVIII, Subtitle D, Section 2861, Land Conveyance, Los Angeles Air Force Base.

"Applicable Laws" means all federal, state, and local (city, county and otherwise) laws, rules, regulations, orders, ordinances, and other governmental standards and requirements which may be applicable to the Developer, the Land, including the structures thereon, and the Improvements, and/or any person located at or near the Land during the term of this Agreement whether presently in force or enacted after the Effective Date.

"Authorized Representative" means with respect to all parties under this Agreement, an officer, a principal, an agent or other person who is authorized to act on behalf of and whose actions are binding upon that party. As of the date of execution of this Agreement, the primary Authorized Representative of the Developer is _____; and of the Secretary is _____. Any party may designate additional or substitute persons to act as an Authorized Representative on its behalf at any time by a written notice to the other parties.

"Business Day" means any day other than (i) a Saturday, (ii) a Sunday, or (iii) a day on which the federal government is generally closed by statute, regulation or executive order.

"Closing" is as defined in Section 4.

"Closing Date" is as defined in Section 4.

"Effective Date" means _____, 2002.

"Improvements" means, collectively, buildings or other facilities currently existing or to be constructed on the Land.

"Installation" means Los Angeles Air Force Base, California.

"Land" means collectively, those parcels described in Exhibit D to this Agreement.

"Land Records" means the Registrar-Recorder/County Clerk, Real Estate Records for the County of Los Angeles, California

"Leased Premises" is as defined in the Real Estate Building Lease.

"Newly Constructed Improvements" means the Systems Acquisition Management (SAMS) complex as newly constructed by the Developer in accordance with the terms and conditions of this Agreement.

"Parcel" means as applicable, each individual tract of the Land as described in Exhibit D to this Agreement.

"Project" means Systems Acquisition Management (SAMS) complex which either is already in existence or is to be designed and constructed for the use of Space and Missiles Systems Center, Los Angeles Air Force Base, California, in accordance with the Solicitation and Exhibit I.

"Personal Property" means all those facilities, fixtures and improvements that are mutually agreed to by the parties to be fixtures in any building on the Land, as described in Exhibit D.

"Quitclaim Deed" means a deed executed and delivered by the Secretary to convey the Land, which shall be substantially in the form attached to this Agreement as Exhibit H.

"Selected Proposal" means collectively the proposal submitted by or on behalf of the Developer and selected by the Secretary as the winning proposal in response to the Solicitation, together with the Final Plans, the final construction schedule and the Construction Management Plan approved by the Air Force, and including any approved amendments, modifications, and/or supplements attached hereto as Exhibit I.

"Real Estate Building Lease" means that certain Lease of the SAMS complex, made by and between the Secretary, as lessee and the Developer, as lessor, with respect to the Leased Premises, which shall be substantially in the form attached to this Agreement as Exhibit E.

"Real Estate Ground Lease" means that certain Lease of Property, dated as of even date herewith, made by and between the Secretary, as lessor and the Developer, as lessee, with respect to the Leased Premises, which shall be substantially in the form attached to this Agreement as Exhibit F.

"Solicitation" means United States Department of the Air Force Request for proposal for the SAMS complex including any and all amendments.

"Termination and Release of Lease" means a termination and release executed and delivered by the Secretary and the Developer to evidence termination of the Building and/or Ground Lease with respect to all or a portion of the Land, which shall be substantially in the form attached to this Agreement as Exhibit G.

2. Obligation to Sell and Obligation to Purchase. The Secretary agrees to sell and transfer to the Developer, and the Developer agrees to purchase and accept from the Secretary, upon the terms and conditions set forth in this Agreement, all of the Secretary's right, title and interest in and to the Land and the Personal Property situated thereon.

3. Consideration.

a. As consideration for the conveyance of the Land, the Developer shall provide, or shall design and construct, the SAMS complex in accordance with the Selected Proposal and the terms and conditions set forth in this Agreement, and in particular Exhibit A and B, but also including all Exhibits hereto. Said complex must comply with the seismic and safety design standards for Los Angeles County, California, in effect at the time the Secretary takes possession of the facility.

b. **Lease of Building as Additional Consideration.** As additional consideration for the construction of the SAMS complex, the Secretary and the Developer shall enter into a Real Estate Building Lease (the "Building Lease"). The lease shall be for a term of XX years (or as otherwise agreed, not to exceed 10 years) unless sooner terminated in accordance with its terms. In order to evidence a termination of the Building Lease, the Parties shall execute a Termination and Release of Lease. A Termination and Release of Building Lease shall be recorded at the Developer's expense in the Land Records.

c. **Lease of Land Prior to Closing; Termination of Ground Lease.** Pending the conveyance of the Land in accordance with terms and conditions of this Agreement, the Secretary and the Developer shall enter into a Real Estate Ground Lease (the "Ground Lease") as additional consideration for the construction of the SAMS complex. The Ground Lease shall be for a term of XX years (or as otherwise agreed) unless sooner terminated in accordance with its terms, including that the Ground Lease shall be terminated with respect to a Parcel upon the conveyance of such Parcel to the Developer under this Agreement. In order to evidence a termination of the Ground Lease upon the conveyance of a Parcel, the Parties shall execute a Termination and Release of Lease. A Termination and Release of Ground Lease shall be recorded at the Developer's expense in the Land Records concurrently with the recordation of the Quitclaim Deed with respect to the applicable Parcel.

4. Time and Place of Closing. Subject to the terms and conditions set forth in this Agreement, the closing of the purchase and sale of each Parcel (the "Closing") shall take place within ninety (90) days following the satisfaction of the conditions set forth in Section 11 with respect to such Parcel, on a date mutually acceptable to the Parties (the "Closing Date"); provided, however, that the Secretary may agree to extend any Closing Date to a later date upon the reasonable written request of the Developer.

5. Survey. The exact acreage and legal description of real property to be conveyed shall be determined by a survey per ALTA (American Land and Title Association) Extended Coverage Form B, or satisfactory to the Secretary. The cost of the survey shall be borne by the recipient of the property. To assist the Developer in accomplishing said survey, the Air Force will provide a preliminary survey accomplished by the Army Corp of Engineers.

6. Title.

a. Title to the Land to be conveyed under this Agreement at Closing shall be fee simple, good, marketable and the Land shall be free and clear of all liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions, other than the following "Permitted Exceptions":

(1) any and all other liens, encumbrances, easements, reservations, limitations, covenants, conditions and restrictions on the Land arising on or after the Effective Date;

(2) the requirements of any federal, state or municipal laws, ordinances, rules and regulations;

(3) the matters set forth in Exhibit C;

(4) any leases as may be executed by or on behalf of the Developer on or after the Effective Date;

(5) such other items as are agreed to by the Developer and the Secretary in writing; and

(6) any matter of public record.

b. Developer has obtained and reviewed a title report or title insurance commitment from a title insurance company, title attorney or other party satisfactory to Developer. Other than as expressly set forth in the applicable Quitclaim Deed, the Secretary makes no representations or warranties about the quality of title to any Parcel and the Secretary shall have no obligations under any circumstance to cure any exceptions to title or other title objections. By its execution of this Agreement, (i) Developer is deemed to have waived any title exceptions or title objections which are (or would be) disclosed by any such title report or title insurance commitment, (ii) Developer is deemed to have conclusively accepted any such title exceptions or objections, and (iii) Developer agrees to accept each Parcel subject to any such title exceptions or objections and proceed to Closing as provided in this Agreement.

7. Condition of Land; Environmental Matters.

a. The Developer shall purchase the Land in its "AS IS," "WHERE IS" condition without any representation or warranty by the Secretary concerning the Land's condition and without obligation on the part of the Secretary to make any alterations, repairs or additions, except as may be otherwise expressly set forth in this Agreement. The Secretary shall not be liable for any latent or patent defects in the Land to the extent mandated by applicable laws. The Developer acknowledges that the Secretary has made no representation or warranty concerning the condition and state of repair of the Land nor any agreement or promise to alter, improve, adapt, or repair the Land, except as may be otherwise expressly set forth in this Agreement.

b. The Developer shall comply with all laws, regulations and ordinances applicable to its operations on the Land which have been or shall be issued by the United States Environmental Protection Agency, or any other federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The Developer shall be responsible for obtaining at its cost and expense any environmental permits required for its operations on the Land, independent of any existing permits. Disposal of any toxic or hazardous materials generated in connection with the operations of the Land by the Developer or its tenants or transferees shall be in compliance with all applicable laws and regulations.

c. The Developer shall indemnify, save, and hold harmless the Secretary from any claims for damages, response or other costs, expenses, liabilities, fines, or penalties resulting in any way from releases, discharges, emissions, spills, storage, handling, disposal, or any other acts or omissions by the Developer, its officers, agents, employees, contractors, subcontractors or any sublessees or licensees, or the invitees of any of them, giving rise to Secretary liability, civil or criminal, or responsibility under federal, state or local environmental laws. This Condition shall survive the expiration or termination of this Agreement, and the Developer's obligations hereunder shall apply whenever the Secretary incurs costs or liabilities of the types described in this Section.

8. Due Diligence.

a. Right of Entry and Inspections. The Developer, its employees, agents and independent contractors, shall perform such surveying, inspecting, mapping, conducting soils, percolation, geological, groundwater, wastewater and other physical engineering, environmental, and other investigations and studies, performing economic and marketing feasibility and other studies, obtaining appraisals, and such other work and investigations, as it shall deem necessary, prior to Closing. Prior to Closing, the Developer, its employees, agents and independent contractors may further perform inspection and testing of any improvements to the Property including, but not limited to, buildings, equipment, fixtures, the Personal Property or any other personal property associated with the Property. The Developer and its agents or representatives shall (a) not unreasonably disturb the Property; (b) not damage any part of the Property or any part of the Property or any personal property owned or held by Air Force; (c) not injure or otherwise cause bodily harm to Air Force agents, contractors and employees; (d) maintain general liability insurance in terms and amounts to cover any accident arising in connection with the presence of the Developer, its agents and representatives on the Property; (e) restore the

surface of the land to the condition it was found before any such inspections were undertaken; and (f) conduct its work at all times in strict compliance with security procedures on the base. The Developer indemnifies and holds the Air Force harmless from any and all liens and expenses arising out of the Developer's tests or studies during the Inspection Period.

b. **Delivery of Documents.** The AF shall deliver to the Developer for review all documents, letters, correspondence, communication and instruments pertaining to the Property without limitation. Documents may include those portions of the most recent Environmental Base Line Survey (hereinafter referred to as the "EBS"), which pertain to the Property, and any relevant analyses as required by statutes, which pertain to the Property.

c. **Approvals and Consents.** The Developer shall be responsible for fulfilling, at its own cost and expense, any applicable state and federal requirements including, without limitation, the acquisition of all licenses, governmental permits, environmental permits and all other approvals and consents as may be required by the Developer for its intended development and use of the Property. The AF shall reasonably cooperate with the Developer and all governmental officials in obtaining the aforementioned approvals.

9. Secretary's Representations. The Secretary represents that as of the Effective Date:

a. The Secretary has full power and authority to enter into and, subject to the conditions contained in this Agreement, to perform said terms and conditions, and this Agreement constitutes a legal, valid and binding obligation of the Secretary enforceable in accordance with its terms.

b. Subject to the conditions contained in this Agreement, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will violate any agreement to which the Secretary is a party or by which the Secretary is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Secretary is subject.

c. The above representations shall be deemed repeated at Closing and it shall be a condition to the Developer's obligation to close under this Agreement that such representations and warranties are true and complete in all material respects.

10. Developer's Representations and Warranties. The Developer represents and warrants that as of the Effective Date:

a. The Developer is a _____ which is duly organized, validly existing and in good standing under the laws of the State/Commonwealth of _____, and is qualified to transact business under the laws of the State of California, with full power and authority to enter into and to perform the terms and conditions of this Agreement, and this Agreement constitutes a legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally. The Developer has obtained all consents required under the Developer's organizational documents with respect to

the Developer's execution, delivery and performance of this Agreement including, without limitation, the consent of the Developer's partners/members.

b. _____, _____ of the Developer, has the full right, power and authority to execute this Agreement on behalf of the Developer and, subject to the conditions contained in this Agreement, to execute the documents required under this Agreement on behalf of the Developer. _____ has obtained all consents required under the Developer's organizational documents to execute, on behalf of the Developer, all documents required to be executed by the Developer under this Agreement.

c. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will violate any agreement to which the Developer is a party or by which the Developer is bound, or violate any statute or law or any judgment, decree, order, regulation or rule of any court or governmental agency to which the Developer is subject.

d. To the Developer's knowledge, there is no claim, action, proceeding or investigation pending or threatened against or involving the Developer, which questions or challenges the validity of this Agreement or any action taken or to be taken by the Developer pursuant to this Agreement or in connection with the transaction contemplated by this Agreement and the Developer knows of no valid basis for any such action, proceeding or investigation.

e. The above representations and warranties shall be deemed repeated at Closing and it shall be a condition to the Secretary's obligation to close under this Agreement that such representations and warranties are true and complete in all material respects.

11. Conditions Precedent to Conveyance of the Land. In addition to satisfaction of the conditions set forth elsewhere in this Agreement, the Secretary shall not be obligated to convey any of the Land to the Developer unless the following conditions have been satisfied as of the date of conveyance:

a. The Developer has complied with its obligations under and there is no uncured default, which exists with respect to this Agreement, any other agreements between the Developer and the Secretary, any construction and/or permanent loan financing relating to the Project and all other documents executed by the Developer in connection with the Project.

b. The Secretary has received evidence reasonably acceptable to the Secretary that the Developer has sufficient financing (debt and equity) to complete the Improvements, if any, which would remain to be completed after the deed conveyance of the applicable Parcel by the Secretary.

c. The Secretary has complied with Section 9620, Title 42 United States Code and other legal and policy requirements.

[Add additional conditions based on specifics of Selected Proposal here.]

12. Conditions Precedent to Acceptance of the Land. The Developer shall not be obligated to accept conveyance of the Land from the Secretary unless the Secretary has complied with its obligations under the Building and/or Ground Lease, this Agreement, any other agreements between the Developer and the Secretary.

13. Closing Requirements.

a. At Closing, the Secretary shall do the following:

(1) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.

(2) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel, if necessary.

(3) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Agreement and to permit the Secretary's conveyance to the Developer of the applicable Parcel.

b. At Closing, the Developer shall do the following:

(1) Execute and deliver a Quitclaim Deed with respect to the applicable Parcel.

(2) Execute and deliver a Termination and Release of Lease with respect to the applicable Parcel.

(3) Assume all duties, from and after the Closing Date, with respect to the ownership, operation and maintenance of the applicable Parcel as provided in this Agreement.

(4) Execute, acknowledge and deliver, as appropriate, all additional documents which may be reasonably necessary to carry out the provisions of this Agreement and to permit the Developer's acceptance of the applicable Parcel.

14. Closing Costs.

a. The Developer shall pay all costs incurred in connection with the Closing, including, but not limited to, its own attorney's fees, the cost of title examination, title commitment and title insurance, the cost of any environmental examination, any city, county and state transfer taxes, any sales tax for property conveyed, any income taxes, and all recordation fees. The Secretary shall pay its own attorney's fees.

b. From and after the conveyance of a Parcel, the Developer shall bear any and all costs associated with the ownership, operation and maintenance of such Parcel and/or Improvements, including without limitation, the payment to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges which, at any time after such conveyance may be imposed on the Parcel and/or the Improvements.

15. Risk of Loss. From and after the conveyance of a Parcel, either by lease or in fee simple, (i) the Developer shall, in all circumstances and events and without prejudice to any other rights of the Secretary, bear all risk of loss or damage or destruction to such Parcel and related Improvements, including any building(s), improvements, fixtures or other property on such Parcel, arising from any causes whatsoever, with or without fault by the Secretary; and (ii) at a minimum, the Developer shall carry and maintain with respect to the Parcel and the related Improvements, at no expense to the Secretary, the insurance required pursuant to this Agreement. Neither the conveyance of any Parcel nor anything to contrary in this Agreement shall lessen, modify or otherwise affect the insurance requirements with respect to any portion of the Land which remains subject to the Building and/or Ground Lease.

16. Deposit Bid Bond.

a. The Developer shall ~~deposit~~ obtain a bid bond for the sum of TWO HUNDRED FIFTY THOUSAND (\$250,000) ~~as an earnest money deposit (the “Deposit”) with _____ (“Title Company”), located at _____, in immediately available funds to the Title Company upon Developer’s execution of this Agreement. Title Company shall deliver to the Air Force and the Developer a receipt for the Deposit.~~

b. Developer shall deliver a fully executed copy of this Agreement to ~~Title Company, which shall constitute an irrevocable joint instruction to Title Company, which may be modified only by the joint written consent of the Parties. The Parties shall, upon execution of this Agreement, deliver to Title Company confirming instructions regarding the deposit in the form set forth in Exhibit J~~ the contracting officer.

~~c. Title Company shall place the Deposit in an interest bearing account controlled by the Title Company with a major independent financial institution and drawing interest at a commercially available rate for immediately withdrawable funds as the Air Force shall reasonably approve. All such accrued interest shall be credited toward the consideration at Closing and in the event the deposit is retained by the Air Force, the entire account shall include any and all accrued interest. Upon successful completion of the Project, the circumstance upon which the Deposit will be returned to the Developer, developer shall likewise receive any and all accrued interest.~~

17. Resident Architect. The Air Force, or its agent (the “Resident Architect”) will monitor the site development work and all construction of the SAMS complex and associated improvements; approve the payment of construction draws; and confirm acceptance of the SAMS Complex upon completion. Prior to commencement of site development and construction of the SAMS Complex, the Resident Architect shall confirm in writing that the plans and specifications provide for the construction of the SAMS Complex in conformance with the requirements of the Design/Build Contract and that the SAMS Complex can be constructed as set forth in the Design/Build Contract.

18. Developer’s Default.

a. The following shall constitute defaults under this Agreement by the Developer:

(1) The Developer defaults in the performance of its obligations under this Agreement, or the Building and/or Ground Lease, and such default remains uncured following expiration of any applicable notice and cure period. If no cure period is otherwise provided, the Developer shall have thirty (30) days after delivery of written notice of default by the Secretary to the Developer. If, however, in the reasonable opinion of the Secretary, the time required to return to compliance exceeds the thirty (30) day period, the Developer shall not be deemed to be in default if within such thirty (30) day period the Developer shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Secretary.

(2) The Developer breaches any representation or warranty of the Developer contained this Agreement or the Building and/or Ground Lease and such breach has a material adverse impact on the Secretary.

b. Upon the occurrence of any default by the Developer, the Secretary may terminate this Agreement, without any cost or liability to the Secretary; provided, however, that the Secretary shall provide the Developer with at least sixty (60) days prior written notice of any such termination. In addition, the Secretary shall also be entitled to pursue any and all remedies available at law and/or in equity, including without limitation any and all remedies provided under this Agreement, and the Building and/or Ground Lease.

c. Reversion of Title to Secretary Subsequent to Conveyance.

(1) IT IS THE INTENT OF THE PARTIES THAT THE CONVEYANCE OF THE LAND TO THE DEVELOPER SHALL BE MADE UPON, AND THAT THE QUITCLAIM DEED SHALL CONTAIN A CONDITION SUBSEQUENT TO THE EFFECT THAT IN THE EVENT OF ANY DEFAULT, FAILURE, VIOLATION, OR OTHER ACTION OR INACTION BY THE DEVELOPER AS SPECIFIED IN THIS AGREEMENT, WHICH IS NOT REMEDIED BY THE DEVELOPER (OR ANOTHER PARTY ON BEHALF OF THE DEVELOPER) TO THE SATISFACTION OF THE SECRETARY WITHIN THE PERIOD AND IN THE MANNER STATED IN THIS AGREEMENT, THE SECRETARY AT ITS OPTION MAY DECLARE A TERMINATION IN FAVOR OF THE SECRETARY OF THE TITLE, AND OF ALL THE RIGHTS AND INTERESTS IN AND TO THE LAND CONVEYED BY THE QUITCLAIM DEED TO THE DEVELOPER AND THAT SUCH TITLE AND ALL RIGHTS AND INTERESTS OF THE DEVELOPER, AND ANY ASSIGNS OR SUCCESSORS IN INTEREST TO AND IN THE LAND, SHALL REVERT TO THE SECRETARY.

(2) Any reversion of title to the Land in the Secretary pursuant to the provisions of this Agreement, the restrictive covenants and quitclaim deed shall include title to any and all improvements, which exist or have been constructed and/or are in the process of being constructed on the Land as of the date of such reversion.

(3) Within 15 days of written notice from the Secretary of such reversion of title, the Developer shall provide the Secretary with a deed to the Land or such portion of the Land which has reverted in the Secretary and any and all improvements located on the Land and shall execute and deliver all documents, provide all information and take or forbear from taking such action as may be reasonably necessary or appropriate to achieve the reversion of title. The Developer hereby irrevocably appoints the Secretary as the Developer's attorney-in-fact to execute and record on its behalf such deed and to execute such other documents and instruments on behalf of the Developer as the Secretary, in its sole judgment, shall deem necessary or desirable for the purposes of effectuating the reversion of title and such power shall be coupled with an interest and irrevocable; provided that such power shall be exercisable only if the Developer fails to deliver the required deed and other documents within 15 days of written notice from the Secretary.

d. Retention of, or Resale of Reacquired Land and Improvements; Disposition of Proceeds.

(1) Upon the reversion of title to any or all of the Land to the Secretary, the Secretary, in its sole discretion and at its sole option, shall have the right to retain title and ownership of any Land so reacquired, or shall have the right, but not the obligation, to use good faith efforts to resell any or all of the Land and the Improvements in such manner as the Secretary shall deem appropriate; provided, however, if any Land and the Improvements in which title has reverted in the Secretary are subject to a mortgage which has been approved by the Secretary in accordance with this Agreement or the Building and/or Ground Lease, and the Secretary makes a decision to sell or lease the Land and Improvements, selection of the Developer, lessee or other transferee shall be subject to the consent of the holder of such approved mortgage, which consent shall not be unreasonably withheld.

(2) Upon any such resale or lease of the Land and Improvements, the proceeds of such shall be applied in the following order of priority:

(a) First, to reimburse the Secretary on its own behalf for all costs and expenses incurred by the Secretary, in connection with the recapture, management and resale of the Land and the Improvements; all taxes, assessments, and water and sewer charges with respect to the Land; any payments made or necessary to be made to discharge any encumbrances or liens (including the lien of any mortgage approved by the Secretary) existing on the Land at the time of reversion of title in the Secretary or to discharge or prevent from attaching or being made any subsequent encumbrances or liens due to obligations, defaults, or acts of the Developer, its successors or transferees; any expenditures made or obligations incurred with respect to the making or completion of the Improvements on the Land; any amounts otherwise owing the Secretary by the Developer, its successors or transferees.

(b) Second, to reimburse the holder of any approved mortgage for sums advanced to the Developer under its mortgage pursuant including all sums advanced and outstanding interest thereon and to reimburse any applicable expenses connected with

this Agreement, but only in those cases where the Land is sold free and clear of the lien of such approved mortgages.

(c) Third, the balance remaining, if any, to the Developer.

19. Secretary's Default.

a. The following shall constitute default under this Agreement by the Secretary:

(1) The Secretary defaults in the performance of its obligations under this Agreement, or the Building and/or Ground Lease, and such default remains uncured following expiration of any applicable notice and cure period.

(2) The Secretary breaches any representation of the Secretary contained in this Agreement, or the Building and/or Ground Lease and such breach has a material adverse impact on the Developer.

b. In the event of the AF's default hereunder for any reason, the Developer shall deliver written notice thereof to the Secretary or the designated authorized representative. If the AF does not cure such default within thirty (30) business days after receiving written notice thereof, the Developer shall be entitled to pursue all rights or remedies allowed to it at law or in equity, which remedies may be exercised cumulatively or separately, at the sole discretion of the Developer. If, however, in the reasonable opinion of the Developer, the time required to return to compliance exceeds the thirty (30) day period, the Secretary shall not be deemed to be in default if within thirty (30) day period the Secretary shall begin the actions necessary to bring it into compliance with the applicable documents in accordance with a compliance schedule agreed to by the Developer.

20. Termination. The termination of this Agreement shall not relieve any party of its obligation to perform any obligations which arose prior to the date of such termination, or which relate to events which occurred prior to such termination, including without limitation, the payment of any amounts due or the delivery of any documentation.

21. Notices. Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Developer or the Secretary, shall be sufficiently given and shall be deemed given on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below. The Developer and the Secretary may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Developer:

The Secretary:

with a copy to:

22. General Provisions.

a. **Successors Bound.** The provisions of this Agreement shall extend to, bind and inure to the benefit of the Parties and their respective personal representatives, heirs, successors and assigns, provided that the Developer shall be prohibited from assigning all or any part of its right, title and interest under this Agreement without the written prior consent of the Secretary.

b. **Time; Performance of Obligations.** With respect to all obligations of the Developer or the Secretary under this Agreement, time is of the essence. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is not a Business Day, in which case the period shall be deemed to run until the end of the next day which is a Business Day. Each party hereby covenants to keep and perform faithfully all of its covenants and undertakings contained in this Agreement.

c. **Brokers.** The Secretary and the Developer each represent and warrant to the other that no real estate agent, broker, finder or intermediary of any kind was involved in negotiating the transaction contemplated in this Agreement.

d. **Identification of Government Agencies, Statutes, Programs and Forms.** Any reference in this Agreement, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor or similar department, agency, statute, regulation, program or form.

e. **Titles and Captions.** All section or subsection titles or captions in this Agreement are for convenience only. They shall not be deemed part of this Agreement and in no way define, limit, extend or describe the scope or intent of any provisions of this Agreement.

f. **Pronouns and Plurals.** Whenever the context may require, any pronoun used in this Agreement shall include the corresponding masculine, feminine or neuter forms. The singular form of nouns, pronouns and verbs shall include the plural and vice versa.

g. **Further Action.** The parties shall execute and deliver all documents, provide all information and take or forbear from all such action as may be necessary or appropriate to achieve the purposes of this Agreement.

h. **Applicable Law.** This Agreement, and any associated Building and/or Ground Lease, shall be construed, and the rights and obligations of the Secretary, and the Developer under this Agreement shall be determined, in accordance with federal law. However, questions regarding title to the Land conveyed hereunder shall be construed in accordance with the laws of the State of California.

i. **Integration.** This Agreement constitutes the entire agreement among the parties pertaining to the subject matter of this Agreement, and supersedes all prior agreements and

understandings pertaining to this subject matter. No covenant, representation or condition not expressed in this Agreement shall affect or be deemed to interpret, change or restrict the express provisions of this Agreement. Any and all prior agreements, understandings or representations, including but not limited to the Business Points Memorandum (BPM), are hereby terminated and canceled in their entirety and are of no force and effect.

j. **Approvals.** Any approval or consent of the parties required for any matter under this Agreement shall be in writing and shall not be unreasonably withheld or delayed unless otherwise indicated in this Agreement.

k. **Exhibits.** All Exhibits to this Agreement are incorporated in this Agreement by reference.

l. **Conflicts.**

(a) The terms of this Agreement and the Building and/or Ground Lease are intended to be consistent and should be so construed. However, in the event of any ambiguity or inconsistency between the Building and/or Ground Lease, and this Agreement, this Agreement shall be controlling.

(b) The terms of EXHIBIT A – SAMS Facility Requirements And Design Guide and EXHIBIT I – Developer’s Proposal for SAMS Project are intended to be consistent and should be so construed. However, in the event of any ambiguity or inconsistency between Exhibit A and Exhibit I, Exhibit A shall be controlling.

m. **Survival.** The obligations of the parties shall survive Closing and the delivery of a Quitclaim Deed with respect to any or all of the Land.

n. **Severability.** If any provision of this Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement of the Secretary contained herein shall for any reason be held to be in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Secretary to the full extent permitted by law.

o. **Multiple Counterparts.** This Agreement may be executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original. This Agreement shall be binding on all the parties notwithstanding that all the parties are not signatories to the same counterpart.

p. **Delay or Omission Not Waiver; Remedies Not Exclusive.** No delay or omission of a Party to exercise any right or remedy provided under this Agreement upon a default of the other party (except a delay or omission pursuant to a written waiver) shall impair any such right or remedy or constitute a waiver of or acquiescence in any such default. Every right and remedy given by this Agreement or by law to a Party may be exercised from time to time, and as often as may be deemed expedient by such Party. No remedy conferred in this Agreement or reserved to

the Secretary is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute.

q. **No Third Party Beneficiaries.** There shall be no third party beneficiaries of this Agreement. Specifically, none of the provisions of this Agreement shall be for the benefit of or enforceable by any creditors of the Developer.

r. **Amendment.** This Agreement shall be amended only by an instrument in writing executed by duly authorized representatives of the Parties.

s. **No Individual Liability.** No covenant or agreement contained in this Agreement shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Secretary, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Agreement, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

t. **Disputes**

1) The parties agree to use their best efforts to resolve any disputes that may arise without litigation, whether such dispute arises under or relates to the Agreement, including the construction provisions for the SAMS complex, or any lease entered into by the parties. If unassisted negotiations are unsuccessful, the parties will use Alternate Disputes Resolution (ADR) techniques in an attempt to resolve the dispute. Litigation will only be considered as a last resort when ADR is unsuccessful or has been documented by the party rejecting ADR to be inappropriate for resolving the dispute. If the ADR is not successful, the parties retain all their existing rights. In cases where the parties decide to use ADR, the parties will prepare and agree to a specific, written ADR agreement appropriate to the controversy before the ADR process begins. If either party rejects ADR, they shall provide a written explanation to the other party providing specific reasons for the rejection.

2) Unless specified differently in any related agreement, disputes that cannot be resolved using the ADR procedures of paragraph 1) be resolved as follows:

- a) Any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the _____ (appointed representative of the Department of the Air Force) who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Developer. The decision of the _____ (appointed representative of the Department of the Air Force) shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the Developer mails or otherwise furnishes to the _____ (SAF/IEI Installations and Environmental Directorate) a written appeal. The decision of the _____ (Air Force authorized representative) for the determination of such appeals shall be final and conclusive. This provision

shall not be pleaded in any suit involving a question of fact arising under this Agreement as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged: provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by this substantial evidence. In connection with any appeal proceeding under this clause, the Developer shall proceed diligently with the performance of this Agreement and in accordance with the decision of the _____ (appointed representative of the Air Force).

- b) This “Disputes” clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph a) above. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative or board on a question of law.
- c) Judicial Review. Either Party, after exhausting the administrative remedies specified in paragraph a) above, may pursue any remedy available to it under the law.

u. **Federal, State, and Local Taxes.** The Agreement price includes all applicable Federal, State, and local taxes and duties. No adjustment shall be made in the Agreement price under this clause. However, the Air Force shall, without liability, furnish evidence appropriate to establish exemption from any Federal, State, or local tax when the Agreement requests such evidence and a reasonable basis exists to sustain the exemption.

IN WITNESS WHEREOF, this Agreement has been duly executed by the Secretary and the Developer as of Effective Date.

[NAME OF DEVELOPER]

By: _____

Name: _____

Title: _____

THE SECRETARY OF THE AIR FORCE

By: _____

Name: _____

Title: _____