

**AGENDA**  
**REGULAR MEETING OF THE BOARD OF DIRECTORS**  
**HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC.**

**DATE:** December 21, 2022

**TIME:** 3:00 PM

**PLACE:** Join Zoom Meeting  
<https://us02web.zoom.us/j/6917934402>

Meeting ID: 691 793 4402  
One tap mobile  
(669) 900-9128, 6917934402# US

**1. Call to Order Regular Session and Roll Call**

**2. Public Comment**

*Note: This portion of the Agenda allows the public to speak to the Board on the various issues not itemized on this Agenda. A member of the public may also request that a matter appearing on the Consent Calendar be pulled and discussed separately. Pursuant to the Brown Act, the Board may not take action on any item that does not appear on the Agenda. Each speaker is limited to speak for a period of three (3) minutes regarding each item on the Agenda. Each speaker is limited to speak for a period of three (3) minutes during the PUBLIC COMMENT portion of the Agenda regarding items of special interest to the public not appearing on the Agenda that are within the subject matter jurisdiction of the Board of Directors. The three (3) minute time limit may not be transferred to other speakers. The three (3) minute time limit for each speaker may be extended by the President of the Board or the Presiding Member of the Board. The three (3) minute time limit for each speaker may be enforced by the President of the Board or the Presiding Member of the Board.*

**3. Consent Calendar**

- a) Adopt Minutes for September 21, 2022 Regular Board Meeting

**4. Non-Agenda**

**5. Unfinished Business**

- a) Update on New Market Tax Credit Loan Termination Timeline, Process, Preliminary Cost

**6. New Business**

- a) Exercise of Option to Assign the Purchase and Sale of APN# 401-031-083 to the Humboldt Bay Harbor, Recreation and Conservation District

*Recommendation:* Staff recommends the board receive a report and

**Agenda for December 21, 2022 Regular Board Meeting**

1. Approve the assignment of the Purchase and Sale Agreement from the Humboldt Bay Development Association (HBDA) to the Humboldt Bay Harbor District (HBHD).
2. Direct Staff to implement the Earnest Money Funding Agreement.
3. Direct Staff to execute the Addendum to the Agreement for the Purchase and Sale of Real Property.
4. Authorize the Executive Director to sign and the District's Attorney to draft all other documents as may be necessary to complete the transaction and close escrow under the terms outlined in the agreements.

*Summary:* In preparation for the Development of the Humboldt Bay Offshore Wind and Heavy Lift Marine Terminal, HBDA entered into a Purchase and Sale Agreement to acquire approximately 35 acres of Coastal Dependent Lands for the development of the Heavy Lift Terminal. The HBDA and the District also entered into the Earnest Money Funding Agreement where the District agreed to participate, initiate the transaction, and open the escrow. Pursuant to Section 8.5 of the Purchase Agreement, HBDA intends to assign its rights under the agreement to the District so it may complete the acquisition.

**7. Communications and Reports**

- a) Executive Director's Report
- b) Staff Reports
- c) Board Reports

**8. Adjournment**

**DRAFT MINUTES  
REGULAR MEETING OF THE BOARD OF DIRECTORS  
HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC.**

**September 21, 2022**

**PRESENT:**

Dale Unea  
Richard Marks  
Patrick Higgins

**ABSENT:**

Leroy Zerlang (arrived at 3:05 PM)

The Meeting of the Board of Directors was called to order at 3:00 PM

**PUBLIC COMMENT:** None

**CONSENT CALENDAR**

**a) Adopt Minutes for August 17, 2022 Regular Board Meeting**

DIRECTOR HIGGINS MOVED TO APPROVE THE CONSENT CALENDAR.

DIRECTOR UNEA SECONDED.

ROLL CALL VOTE WAS CALLED, MOTION CARRIED.

AYES: HIGGINS, MARKS, UNEA

NOES: NONE

ABSENT: ZERLANG

ABSTAIN: NONE

**NON-AGENDA:** None

**UNFINISHED BUSINESS**

**a) Restructure of Rental Agreement at RMT II**

Presented by District Staff.

The Board discussed the item.

Item was opened to public comment; no one commented.

Discussion only, no formal action was taken.

**b) Update on Samoa Peninsula Current and Long-Range Development Opportunities and the County's Enhanced Infrastructure Finance District**

Presented by Executive Director.

The Board discussed the item.

Item was opened to public comment; no one commented.

Discussion only, no formal action was taken.

- c) **Update on New Market Tax Credit Loan Termination Timeline, Process, Preliminary Cost**  
Presented by District Staff.  
The Board discussed the item.  
Item was opened to public comment; no one commented.  
Discussion only, no formal action was taken.

**NEW BUSINESS**

- a) **Consider Approval of an Agreement for Administrative Services with Humboldt Bay Harbor, Recreation and Conservation District for FY 2022/2023**

Item presented by District Staff.  
The Board Discussed the item.  
Item was opened to public comment, no one commented.  
DIRECTOR ZERLANG MOVED TO APPROVE AN AGREEMENT FOR ADMINISTRATIVE SERVICES WITH THE HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTICT FOR FISCAL YEAR 2022/2023.  
DIRECTOR HIGGINS SECONDED.  
ROLL CALL VOTE WAS CALLED, MOTION CARRIED WITHOUT DISSENT.  
AYES: HIGGINS, MARKS, UNEA, ZERLANG  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

- b) **Consider Adopting A Master Resolution and Authorization for Depository Accounts and Treasury Management Services from PNC Bank**

Item presented by District Staff.  
The Board Discussed the item.  
Item was opened to public comment, no one commented.  
DIRECTOR ZERLANG MOVED TO ADOPT A MASTER RESOLUTION AND AUTHORIZATION FOR DEPOSITORY ACCOUNTS AND TREASURY MANAGEMENT SERVICES FROM PNC BANK.  
DIRECTOR UNEA SECONDED.  
ROLL CALL VOTE WAS CALLED, MOTION CARRIED WITHOUT DISSENT.  
AYES: HIGGINS, MARKS, UNEA, ZERLANG  
NOES: NONE  
ABSENT: NONE  
ABSTAIN: NONE

**COMMUNICATIONS AND REPORTS**

- a) Executive Director’s Report  
Executive Director presented Executive Director’s report.
- b) Staff Reports
- c) Board Reports  
Board members reported on recent activities.

**FUTURE AGENDA ITEMS**

- a) Evaluate Humboldt Bay Development Association financials and see if there is a way to contribute to the Samoa Peninsula Fire District

The meeting was adjourned at 3:50 PM

APPROVED BY:

RECORDED BY:

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Patrick Higgins  
Secretary  
Humboldt Bay Development Association

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Mindy Hiley  
Director of Administrative Services  
Humboldt Bay Harbor District

**STAFF REPORT**  
**HUMBOLDT BAY DEVELOPMENT ASSOCIATION MEETING**  
**December 21, 2022**

**TO:** Development Association Board Members

**FROM:** Larry Oetker, Executive Director

**DATE:** December 12, 2022

**TITLE: Exercise of Option to Assign the Purchase and Sale of APN# 401-031-083 to the Humboldt Bay Harbor, Recreation and Conservation District**

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**STAFF RECOMMENDATION:** Staff recommends the board receive a report and

1. Approve the assignment of the Purchase and Sale Agreement from the Humboldt Bay Development Association (HBDA) to the Humboldt Bay Harbor District (HBHD).
2. Direct Staff to implement the Earnest Money Funding Agreement.
3. Direct Staff to execute the Addendum to the Agreement for the Purchase and Sale of Real Property.
4. Authorize the Executive Director to sign and the District's Attorney to draft all other documents as may be necessary to complete the transaction and close escrow under the terms outlined in the agreements.

**SUMMARY:** In preparation for the Development of the Humboldt Bay Offshore Wind and Heavy Lift Marine Terminal, HBDA entered into a Purchase and Sale Agreement to acquire approximately 35 acres of Coastal Dependent Lands for the development of the Heavy Lift Terminal. The HBDA and the District also entered into the Earnest Money Funding Agreement where the District agreed to participate, initiate the transaction, and open the escrow. Pursuant to Section 8.5 of the Purchase Agreement, HBDA intends to assign its rights under the agreement to the District so it may complete the acquisition.

**DISCUSSION:** To facilitate the acquisition and to provide for the ability to finance the purchase of real property, the District is uniquely qualified to accept loan funds from the US EPA Brownfield Revolving Loan Fund, granted to and managed by the County of Humboldt. Loans from this fund are at a 0% rate of interest and are made to parties who are qualified and willing to undertake such clean-ups. As the parties wish to enter into such a financing agreement it is necessary for the District to accept the assignment of the Purchase Agreement to complete the purchase of these lands. The District has been in talks with both the County of Humboldt and the US EPA Region 9 Brownfields team, and in a cooperative conclusion has determined this to be a viable and preferred financing option.

**Attachments:**

- A) Agreement for the Purchase and Sale of Real Property
- B) Addendum to Agreement for the Purchase and Sale of Real Property
- C) Earnest Money Funding Agreement and Grant of Assignment and Purchase Option

## AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY

This Agreement is entered into as of May 27, 2022 (the "Effective Date"), by and between Samoa Pacific Group LLC, whose address is 5251 Ericson Way, Arcata, California 95521 (the "Seller") and Humboldt Bay Development Association, a California nonprofit public benefit corporation, whose address is 601 Startare Drive, Eureka, California 95501, Attention: Larry Oetker or its permitted assign (the "Buyer"). Buyer and Seller are at times herein collectively referred to as the "Parties."

### RECITALS

**A. Whereas:** Seller is the owner of certain land located near the Town of Samoa, Humboldt County, State of California, generally described as Humboldt APN 401-031-083 and particularly described as lot 135, as shown on Tract Map 665, recorded on August 18, 2021, in Book 25 of Maps, pages 127-141, in the Office of Recorder for the County of Humboldt, State of California (the "Real Property").

**B. Whereas:** Seller agrees to sell the Real Property to Buyer and Buyer agrees to purchase the Real Property from Seller, on the terms and conditions set forth in this Agreement;

**NOW, THEREFORE**, in consideration of the covenants and agreements contained herein, the Parties hereto agree as follows:

#### Article 1. Purchase Price.

**Section 1.1. Amount and Terms of Payment.** The Purchase Price for the Real Property is three million dollars (\$3,000,000.00), payable by Buyer to Seller as follows:

**1.1.1.** The cash sum of fifty thousand dollars (\$50,000.00) shall be deposited into escrow with the Escrow Holder identified below, within ten (10) Days of execution hereof.

**1.1.2.** The balance of the Purchase Price, to wit, two million nine hundred and fifty thousand dollars (\$2,950,000.00), shall be deposited in Escrow by Buyer sufficiently prior to the Closing Date, defined below, to allow for its delivery to Seller upon Closing.

**Section 1.2. Consequences of Buyer Default.** If Buyer defaults in the performance of this Agreement, the deposit described in Paragraph 1.1.1 shall be forfeited by Buyer as provided in the hereafter Liquidated Damages provision, which shall be Seller's sole and only remedy.

**Section 1.3. Independent Contract Consideration.** Of the deposit under Section 1.1.1, one thousand dollars (\$1,000.00) shall be independent consideration ("Independent Contract Consideration") for Seller's execution of this Agreement to sell the Property to Buyer hereunder, including, without limitation, the grant to Buyer of the right to conduct its due diligence investigation of the Property and the grant to Buyer of



the right to terminate this Agreement in connection with any such due diligence investigation or provision herein. If Escrow Closes, the Independent Contract Consideration will be applied to the Purchase Price but under any other circumstance where Escrow fails to Close or any termination of this Agreement, including following any Default by Seller, the Independent Contract Consideration will nevertheless be paid by Escrow Holder to Seller, all other provisions hereof to the contrary notwithstanding.

## **Article 2. Escrow.**

**Section 2.1. Opening of Escrow.** An escrow (the "Escrow") will be opened with Humboldt Land Title, a division of Fidelity National Title Company of CA, a California corporation (the "Escrow Holder"), whose address is 1034 Sixth Street, Eureka, California 95501. Escrow shall be opened within seven (7) Days after the Effective Date. Written escrow instructions in strict accordance with the terms of this Agreement shall be prepared by the Escrow Holder and the instructions shall be signed by the Parties and delivered to the Escrow Holder within forty (40) Days of the Effective Date. Buyer and Seller shall also deposit with the Escrow Holder all instruments, documents, and other items identified in the escrow instructions, herein or reasonably required by the Escrow Holder for Closing the sale on the Closing Date specified below.

**Section 2.2. The Closing and Closing Date.** The Escrow shall be closed on the date the grant deed to the Real Property is recorded in conformance with the conditions of this Agreement (the "Closing" or the "Close of Escrow"). The Close of Escrow must occur no later than March 1, 2023 (the "Closing Date"), unless the Closing Date is extended pursuant to the terms of this Agreement (an "Extended Closing Date") or a separate written agreement between the Buyer and Seller.

**Section 2.3. Extended Closing Date.** For a fee of ten thousand dollars (\$10,000.00) for each Extended Closing Date, with each fee being paid directly to Seller in advance of the last day of the then existing Closing Date, Buyer will join Seller in a separate written agreement instructing Escrow Holder to extend the then Closing Date for thirty (30) additional Days. Buyer's right to purchase an Extended Closing Date is limited to three (3) such extensions. The fee paid is only to compensate Seller for the delay in the Closing Date and such fee is not a credit against the Purchase Price or any other amount owed by Buyer to Seller.

**Section 2.4. Prorations.** The following shall be prorated between Seller and Buyer on the basis of a 30-day month as of the Closing Date: as existing, all current real property taxes and special assessments, rents, and premiums on any insurance policies that are transferred to Buyer.

**Section 2.5. Closing Costs.** Buyer shall each pay all costs of title insurance, the recording fees, the escrow fees and any other fee or cost incurred by the Escrow Holder for the transaction under this Agreement.

**Section 2.6. Vesting of Title.** At the Closing, title shall be vested in Buyer, unless Buyer shall advise the Escrow Holder before the Closing of a different manner in which title shall vest and, in which case, vesting shall be as directed.



**Section 2.7. Delivery of Possession.** The delivery of possession of the Real Property, free and clear of all uses and occupancies except those approved in writing by Buyer, shall occur immediately following the Closing, except that Seller may have up to one hundred and eighty (180) Days following the Closing to remove any vehicles, soils and other stockpiles from the Real Property.

**Article 3. Condition of Title to Real Property.**

**Section 3.1. Condition of Title.** Title to the Real Property shall be conveyed to Buyer by use of Escrow Holder's standard form of Grant Deed, free and clear of all exceptions to title except for (a) liens securing Real Property taxes and assessments (which constitute liens not yet due and payable); and (b) such other exceptions shown on a Preliminary Report of Title (the "Preliminary Report") issued by Escrow Holder which are approved by Buyer. All exceptions allowed and permitted pursuant to this Section are referred to as the "Permitted Exceptions." Escrow Holder shall furnish Buyer with a copy of the Preliminary Report, together with a copy of all recorded exceptions to title no later than thirty (30) Days from the date of the Opening of the Escrow. Buyer, at its sole election, shall have ten (10) Days thereafter within which to give Notice to Seller and Escrow Holder of Buyer's disapproval of any exceptions set forth in the Preliminary Report (the "Disapproved Exceptions"). In the event of Buyer's Notice of Disapproved Exceptions, Seller, at its sole election, shall have ten (10) Days after Buyer's Notice of Disapproved Exceptions within which to give Notice to Buyer and Escrow Holder of Seller's agreement to eliminate or otherwise remedy the Disapproved Exceptions, together with a description of the proposed method of remediation to occur within the thirty (30) Days following said Notice, or such longer period as the Buyer and Seller may agree to in writing.

Should Seller elect to remedy Disapproved Exceptions, upon completion within the appropriate time period, Seller shall give Buyer and Escrow Holder Notice of the action taken and Buyer shall have five (5) Days thereafter to give Notice to Seller and Escrow Holder of its reasonable disapproval of the remediation and Buyer's election to terminate this Agreement as if remediation had not been attempted.

If Seller does not give timely Notice of its agreement to eliminate or otherwise remedy Disapproved Exceptions, at Buyer's sole option, Buyer may elect to proceed to Closing notwithstanding or elect to terminate this Agreement in which case and all sums and documents deposited in Escrow shall be returned to the Parties who respectively deposited the same and Buyer and Seller shall each pay one-half ( $\frac{1}{2}$ ) of the Escrow costs. Failure of Buyer to provide written Disapproved Exceptions within the above time period shall be deemed to be approval making any such exceptions Permitted Exceptions and to the extent there are some Disapproved Exceptions, all other exceptions shall be deemed Permitted Exceptions.

Provided, however, all obligations represented by deeds of trust or other similar monetary liens disclosed on the Preliminary Report shall be automatically deemed to be Disapproved Exceptions by Buyer and Buyer and Seller shall be deemed to have agreed to allow Seller to remedy said exceptions by payment at Closing.



Prior to the End of the Due Diligence Period, Buyer shall determine if those matters disclosed under Section 3.03 are satisfactory.

**Section 4.2. Extended Contingencies Period Benefitting Buyer.** The Buyer shall have one hundred and twenty (120) Days from the Effective Date (the "Extended Contingency Period") in Buyer's discretion to waive or deem satisfied the following Contingency matters:

**4.2.1.** To seek and obtain a financing commitment for this transaction on terms and conditions acceptable to Buyer. Buyer shall act diligently and in good faith to obtain such financing commitment within the Extended Contingency Period.

**4.2.2.** To the extent as it may be required by law, for Buyer to complete compliance with the California Environmental Quality Act.

**Section 4.3. Notice of Failure of a Contingency.** If Buyer believes that there has been a failure of any Contingency before the End of the Due Diligence Period, or, as applicable, the Extended Contingency Period, Buyer's sole remedy shall be to timely give Notice thereof to Seller and Escrow Holder, including a good faith of description of the facts or events substantiating such Notice, and terminate this Agreement. In such event, Seller shall have no obligation to remedy any Contingency which Buyer disapproves but may elect to do so prior to the Closing Date. If this Agreement terminates as a result of the failure of a Contingency, all sums (including the Deposit, less the Independent Contract Consideration) and documents deposited in Escrow shall be returned to the Parties who deposited the same and Buyer and Seller shall each pay one-half (1/2) of the Escrow Holder's costs incurred to that point.

**Section 4.4. Failure to Give Notice.** If Buyer fails to give Notice to Seller of its disapproval of any Contingency before the end of the Due Diligence Period, or, as applicable, the Extended Contingency Period, it shall conclusively be deemed that Buyer has waived all such Contingencies and such Contingencies shall conclusively be deemed satisfied.

**Section 4.5. Passage of the Extended Contingency Period Without a Notice of Failure of a Contingency.** After the passage of the Extended Contingency Period without Buyer giving Notice of a failure of a Contingency, Escrow Holder shall promptly release the deposit under Section 1.1.1 hereof to Seller.

## **Article 5. Seller's Covenants, Representations and Warranties.**

**Section 5.1. Legal Status.** Seller is a limited liability company that is duly organized, validly existing and in good standing under the laws of the State of California, and has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby

**Section 5.2. Right to Proceed.** Neither the entering into this Agreement nor the performance of any of Seller's obligations under this Agreement will violate the terms of any agreement or instrument to which Seller is a party.



**Section 5.3. Eminent Domain.** Seller has not actually received any formal Notice of any pending widening, modification or realignment of any street or highway contiguous to the Real Property or any existing or proposed eminent domain proceeding which would result in a taking of all or any part of the Real Property.

**Section 5.4. Breach of Agreements.** Seller has not received any notice that any of the easements, covenants, conditions, restrictions or agreements to which the Real Property is subject interferes with or is breached by the use or operation of the Real Property as presently used and operated or as used and operated in the past three (3) years.

**Section 5.5. Litigation.** Seller has not received any notice of any litigation or arbitration proceedings which do or will affect any aspect of the Real Property or Seller's ability to perform its obligations under this Agreement. In addition, within the last three (3) years Seller has not been threatened in writing with any litigation or arbitration by a third party which would affect any aspect of the Real Property or Seller's ability to perform its obligations under this Agreement.

**Section 5.6. Violation of Law.** Seller has not received any notice of any presently uncured violation of any law, ordinance, rule or regulation (including, but not limited to, those relating to zoning, building, fire, health and safety) of any governmental, or quasi-governmental authority bearing on the construction, operation, ownership or use of the Real Property.

**Section 5.7. Governmental Agreements.** There are not any commitments to, or written agreements with, any governmental or quasi-governmental authority or agency materially affecting the Real Property which have not been heretofore disclosed by Seller to Buyer in writing.

**Section 5.8. Hazardous Materials.** To Seller's actual knowledge, (a) no Claim of Environmental Liability relating to the conditions at or on the Real Property is pending or threatened by any governmental agency or other third-party; (b) Seller has not received any written notice under any applicable Environmental Regulations concerning the Real Property and which notice relates to any substance that, as of the date hereof, is a Hazardous Material; (c) there is no proceeding against Seller, or any pending investigation or inquiry with respect to Seller, by any federal, state or local court, tribunal, administrative agency, department, commission, board or other authority or instrumentality with respect to the presence on the Real Property of any material which is a Hazardous Material, or the migration thereof from or to other property; (d) the Real Property has not been used, and until the Closing will not be used, for the generation, treatment, storage or disposal of any Hazardous Material, and there has been no migration or other transport of any Hazardous Material from any location off-site to the Real Property, during the period in which Seller has owned the Real Property or prior to that time; and (e) there are no Hazardous Materials in, on or under the Real Property. In addition, to the best of Seller's knowledge, but without any specific investigation therefore, there are no Hazardous Materials in any way relating to all or any portion of the Real Property or the area surrounding the Real Property.



For purpose of this section:

(i) "Claim of Environmental Liability" shall mean any and all claims, liabilities, obligations, losses or damages in connection with the Real Property suffered or incurred as a result of (A) any suit, action, legal or administrative proceeding, or demand asserted or threatened by any third-party, including any governmental agency or authority, arising under any federal, state or local Environmental Regulation; (B) requirements imposed by any federal, state or local Environmental Regulations, including all costs of remediation or costs otherwise incurred in complying with applicable laws and regulations; and (C) any and all judgments, court costs, legal fees, and other costs of discovery and defense associated with (A) or (B) above;

(ii) "Environmental Regulations" shall mean all applicable statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans, authorizations, and similar items, of all governmental agencies, departments, commissions, boards, bureaus or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial and administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment, including, without limitation: (a) all requirements, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, releases or threatened releases of Hazardous Materials, whether solid, liquid or gaseous in nature, into the air, surface water, groundwater or land, or relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials, whether solid, liquid or gaseous in nature; and (b) all requirements pertaining to the protection of the health and safety of employees or the public.

(iii) "Hazardous Materials" shall mean (a) any flammable, explosive or radioactive materials, hazardous wastes, toxic substances or related materials including, without limitation, substances defined as "hazardous substances," "hazardous materials," "toxic substances" or "solid waste" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Toxic Substances Control Act, 15 U.S.C., Section 2601 et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. Section 6901 et seq.; and in the regulations adopted and publications promulgated pursuant to said laws; (b) those substances listed in the United States Department of Transportation Table (49 C.F.R. Part 172.101 and amendments thereto) or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 C.F.R. Part 302 and amendments thereto); (c) those substances defined as "hazardous wastes," "hazardous substances" or "toxic substances" in any similar federal, state or local laws or in the regulations adopted and publications promulgated pursuant to any of the foregoing laws or which otherwise are regulated by any governmental authority, agency, department, commission, board or instrumentality of the United States of America, the State of California or any political subdivision thereof, (d) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic



**Section 3.2. Policy of Title Insurance.** Title to the Real Property shall be evidenced by the commitment of the Escrow Holder to issue at the Closing a standard California Land Title Association policy of title insurance with liability in the amount of the Purchase Price showing title to the Real Property vested as designated by Buyer subject only to the Permitted Exceptions.

**Section 3.3. Information About the Real Property.** No later than thirty (30) Days before the End of the Due Diligence Period, Seller shall disclose and provide to Buyer all information known to Seller which may be reasonably necessary to evaluate the condition or desirability of the Real Property, other than matters that would be obvious and apparent to the Buyer from a limited inspection of the Real Property.

**Section 3.4. Exclusion/Limitation of Representations and Warranties.** Subject to the exception of Section 3.3, the Real Property is purchased on an "As Is Where Is" basis and no implied representations or warranties are intended or made in connection with such transfer. Except for those specifically set forth in this Agreement, no statements or promises of any kind have been made by Seller or any person on Seller's behalf to Buyer or any person on Buyer's behalf to induce Buyer to sign this Agreement. Buyer acknowledges that at the Closing that Buyer will have had a reasonable opportunity to make and has made an independent investigation of all aspects of the Real Property that it deemed appropriate.

#### **Article 4. Contingencies.**

**Section 4.1. Contingencies to Benefit Buyer.** Buyer's obligation to purchase the Real Property is subject to the following contingencies described in the following sub Sections (the "Contingencies"). The Contingencies are for the sole benefit of Buyer and, except as provided hereafter for certain matters under the Extended Contingencies Period, may be waived or deemed satisfied in Buyer's discretion prior to the end of the Due Diligence Period. The end of the due diligence period is ninety (90) Days from the Effective Date (the "End of the Due Diligence Period").

**4.1.1. Buyer's Inspection and Examination of the Physical Condition and Suitability of the Real Property.** Prior to the End of the Due Diligence Period, Buyer shall have access to the Real Property at reasonable times and shall have the right to conduct, at Buyer's expense, soil tests, engineering feasibility studies, environmental investigations and such other studies and inspections with respect to the Real Property as Buyer may desire to determine the suitability of the Property for Buyer's intended use(s). Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, liability, injury or expense, arising out of or in any way related to damage to the Real Property, injury to or death of persons, or the assertion of lien claims resulting from the Buyer's inspection and examination rights. The Buyer's exercise of inspection hereunder shall not unreasonably interfere with Seller's possession. Buyer shall give Seller Notice of the intention to enter and a description of the planned activities two (2) Days before the date of the planned entry.

**4.1.2. Buyer's Approval of All Matters Disclosed under Section 3.03.**



or dangerous waste, substance or material, all as amended; (e) petroleum or any by-products thereof; (f) any radioactive material, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sections 2011 et seq., as amended, and in the regulations adopted and publications promulgated pursuant to said law; (g) asbestos in any form or condition; and (h) polychlorinated biphenyls.

**Section 5.9. No Change in Operations.** Until the Closing, the Real Property will continue to be operated in substantially the same manner as on the date of this Agreement.

**Section 5.10. No Broker.** Seller has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement and shall hold Buyer harmless from and against, any commission or finder's fee payable to any broker or any other party who may claim to have been entitled to any fee or commission through the Seller as a result of the transaction contemplated by this Agreement.

**Section 5.11. No Change in Physical Condition.** Seller will not alter the physical condition of the Real Property from and after the date of this Agreement, reasonable wear and tear excepted.

**Section 5.12. Unforeseen Events.** If, prior to the Closing, new events have occurred which were beyond the control of Seller and which render any previously true representation or warranty untrue, Seller shall, within three (3) Days thereafter, disclose those matters by Notice to Buyer. Buyer shall have ten (10) Days after the earlier of (a) such disclosure; or (b) Buyer's independent discovery that such representation or warranty has become untrue, to elect, in its sole and absolute discretion, and as its sole remedy, by Notice to Seller within said ten (10) Day period, whether to purchase the Real Property or terminate this Agreement. If Buyer elects to terminate this Agreement pursuant to this Section, Escrow shall immediately terminate upon Seller's receipt of Buyer's Notice of election to terminate this Agreement and all sums and documents deposited in Escrow shall be returned to the Parties who deposited the same and Seller and Buyer shall each pay one-half (½) of Escrow costs. If Buyer fails to notify Seller and Escrow Holder of its election to terminate this Agreement within said ten (10) Day time period provided above, Buyer shall be deemed to have accepted the modified representations and warranties and elected to purchase the Real Property.

**Section 5.13. No Implied Warranties.** Other than those express representations and warranties contained in this Agreement, Seller makes no warranty or representation, express or implied, including but not limited to, implied warranties of merchantability and fitness for a particular purpose.

**Section 5.14. All Representations and Warranties Only Contained Herein.** This Agreement shall constitute the only representations or warranties made by Seller.

**Section 5.15. No Easements or Other Rights Not of Record.** Seller warrants that Seller has no knowledge of any easements, mineral rights or other rights to use or cross the Real Property that are not of record.



**Section 5.16. Seller's Knowledge.** Any representations and warranties made to the knowledge of Seller or on the basis of Seller's actual knowledge in this Article 5 shall mean and refer to the to the present, actual cognitive awareness (not constructive, imputed or implied) of Daniel Johnson who Seller party represents is the person most knowledgeable about the Property, but without any duty on his part to investigate or make inquiry of any other person whatsoever. Nothing contained in this Section 5.16 shall impose any personal liability on the foregoing individual.

**Article 6. Buyer's Covenants, Representations and Warranties.**

**Section 6.1. No Broker.** Buyer has neither engaged nor dealt with any broker or finder in connection with the sale contemplated by this Agreement and shall hold Seller harmless from and against, any commission or finder's fee payable to any broker or any other party who may claim to have been entitled to any fee or commission through the Buyer as a result of the transaction contemplated by this Agreement.

**Section 6.2. Status of Buyer.** Buyer is a California nonprofit public benefit corporation and is duly organized, validly existing, authorized to do business in and in good standing under the laws of the State of California and has the power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

**Section 6.3. Buyer's Acknowledgment of As Is Condition.** Buyer has or will make its own investigation concerning the physical condition of the Real Property, condition of title or any other matter pertaining to the Real Property, and, other than the specific representations and warranties made by Seller in this Agreement, Buyer is not relying on any representations, warranties or inducements of Seller or any of Seller's representatives or agents with respect to the physical condition of the Real Property, condition of title to the Real Property, or any other matter pertaining to the Real Property. Accordingly, except for those specific representations and warranties of Seller set forth in this Agreement, Buyer is purchasing the Real Property and each and every aspect thereof in an "as-is" condition, and Seller makes no express or implied representation concerning (a) the status of title to the Real Property, (b) the current or future valuation of the Real Property, (c) the compliance of the Real Property in its current or future state with applicable laws or any violations thereof, including without limitation, those relating to access for the handicapped, environmental or zoning matters, or the ability to obtain a change in the zoning of the Real Property, (d) the nature and extent of any right-of-way, lease, lien, encumbrance, license or reservation, (e) the availability of any financing for the purchase, alteration or operation of the Real Property from any source, including, without limitation, any governmental authority or lender, (f) the current or future use of the Real Property, (g) the viability or financial condition of any tenant, and (h) the actual or projected value, income or operation expenses of the Real Property.

**Section 6.4. Buyer's Covenant to Assume All Claims of Environmental Liability.** Except where there has been a breach of Seller's Hazardous Materials representation made in Section 5.8 related thereto, as of and after the Closing Buyer agrees to be solely responsible for and to hold Seller harmless from any and all Claims of Environmental Liability, including all costs, judgments, legal fees, and other costs



otherwise incurred in complying with applicable laws and regulations. "Claims of Environmental Liability" shall mean any and all claims, suits, proceedings, liabilities, obligations, losses, or damages in connection with the presence or claimed presence of Hazardous Materials at or on the Real Property, brought or threatened by any governmental agency, the Buyer, directly or indirectly, or any other third party.

**Article 7. Covenants, Representations and Warranties - Survival of Closing.**

**Section 7.1. Survival.** All covenants, representations, warranties, conditions, agreements and obligations contained in or relating to this Agreement shall survive the Closing.

**Article 8. Miscellaneous Provisions.**

**Section 8.1. Loss, Destruction, and Condemnation.** The Parties agree that the following provisions shall govern the risk of loss:

**8.1.1.** If, before Seller transfers legal title or possession of the Real Property to Buyer, all or a material part of the Real Property is destroyed without fault of Buyer, or is taken by eminent domain by any person or entity, Buyer shall be entitled to recover any portion of the price that Buyer has paid, and Seller shall not have the right to enforce this Agreement. For these purposes, "material part of the Real Property" means an improvement or improvements on the Real Property that would cost two thousand dollars (\$2,000) or more to replace or to restore to the condition as of the date of execution of this Agreement.

**8.1.2.** If after Seller transfers legal title or possession of the Real Property to Buyer, all or any part of the Real Property is destroyed without fault of Seller, or is taken by eminent domain by any person or entity, Buyer is not relieved from Buyer's obligation under this Agreement to pay the full price for the Real Property, nor is Buyer entitled to recover any portion of the price Buyer has paid.

**8.1.3.** If damage, destruction, or condemnation occurs at any time before the Closing, and this loss is not covered by this Section, Buyer shall not have the right to terminate this Agreement, but shall be entitled to offset the cost of repair or replacement against the Purchase Price of the Real Property.

**Section 8.2. Liquidated Damages.** NOTWITHSTANDING ANY CONTRARY PROVISION CONTAINED HEREIN, IN THE EVENT THE SALE AS CONTEMPLATED HEREUNDER IS NOT CONSUMMATED BECAUSE OF A DEFAULT UNDER THIS AGREEMENT SOLELY ON THE PART OF BUYER, THE DEPOSIT (INCLUDING ALL INTEREST EARNED FROM THE INVESTMENT THEREOF) SHALL BE PAID TO AND RETAINED BY SELLER AS LIQUIDATED DAMAGES. THE PARTIES ACKNOWLEDGE THAT SELLER'S ACTUAL DAMAGES IN THE EVENT OF A DEFAULT BY BUYER WOULD BE EXTREMELY DIFFICULT OR IMPRACTICABLE TO DETERMINE. THEREFORE, BY PLACING THEIR INITIALS BELOW, THE PARTIES ACKNOWLEDGE THAT THE DEPOSIT (PLUS ANY INTEREST THEREON) HAS BEEN AGREED ON, AFTER CONSIDERATION, AS THE



PARTIES' REASONABLE ESTIMATE OF SELLER'S DAMAGES AND AS SELLER'S EXCLUSIVE REMEDY AGAINST BUYER IN THE EVENT OF A DEFAULT SOLELY ON THE PART OF BUYER. IN THE EVENT BUYER SHOULD CHALLENGE THE APPLICABILITY OR EFFICACY OF THIS PROVISION, OR IF THIS PROVISION SHOULD BE HELD TO BE VOID OR UNENFORCEABLE FOR ANY REASON, SELLER SHALL BE ENTITLED TO ANY AND ALL OTHER DAMAGES AND REMEDIES OTHERWISE PROVIDED AT LAW.

BUYER'S INITIALS UPB

SELLER'S INITIALS \_\_\_\_\_

**Section 8.3. Insurance.** Seller shall cancel all policies of insurance on the Real Property as of the Closing. Buyer shall be responsible for obtaining insurance on the Real Property as of the Closing.

**Section 8.4. Effective Date.** Notwithstanding anything to the contrary contained in this Agreement, the Parties intend that this Agreement shall be deemed effective, executed, and delivered for all purposes under this Agreement, and for the calculation of any statutory time periods based on the date an agreement between parties is effective, executed and delivered, as of the date set forth on the first page of this Agreement (the "Effective Date").

**Section 8.5. Assignment.** Buyer shall have the right to assign its rights but not its duties under this Agreement to a third party at its election upon notice to Seller.

**Section 8.6. Binding on Successors and Assigns.** Each and all of the provisions hereof shall be binding on and inure to the benefit of the Parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

**Section 8.7. Notices.** All notices and demands ("Notices") shall be given in writing by personal service or by registered or certified mail, postage prepaid or by Federal Express, United Parcel Service or other overnight delivery service, charges prepaid or charged to the sender's account and return receipt requested, sent to the recipient's address stated herein. Notice shall be considered given when received or on the date appearing on the return receipt, but if the receipt is not returned within five (5) Days, then three (3) Days after mailed or two (2) Days after sent by Federal Express, United Parcel Service or other overnight delivery service, for overnight delivery. If any party gives Notice of a change of name or address, notices to that party shall thereafter be given as shown in that Notice.

**Section 8.8. Counting of Days.** Any reference to a number of Days herein is a reference to calendar days. If a party is required to complete the performance of an obligation under this Agreement by a date certain or within a fixed number of Days and such a date or last day is a Saturday, Sunday, or Federal bank holiday (collectively, a Nonbusiness Day), then the date for the completion of such performance will be the next succeeding day that is not a Nonbusiness Day.

**Section 8.9. Waiver by Accepting Varied Performance.** No waiver of any provision or consent to any action shall constitute a waiver of any other provision or



consent to any other action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver in the future except to the extent specifically set forth in writing. Any waiver given by a party shall be null and void if the party requesting such waiver has not provided a full and complete disclosure of all material facts relevant to the waiver requested.

**Section 8.10. Amendments and Modifications.** No amendments, modifications, or supplement to this Agreement shall be binding on any of the Parties unless it is in writing and signed by and delivered to the parties in interest at the time of the modification.

**Section 8.11. Entire Agreement.** This Agreement and all exhibits hereto, as well as agreements and other documents referred to in this Agreement, constitute the entire agreement between the Parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements or understandings between or among the Parties with regard to the subject matter hereof and thereof. There are no agreements, representations, or warranties between or among the Parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement.

**Section 8.12. Severability.** If any term or provision of this Agreement is determined to be illegal, unenforceable, or invalid in whole or in part for any reason, such illegal, unenforceable, or invalid provisions or part thereof shall be stricken from this Agreement, and such provision shall not affect the legality, enforceability, or validity of the remainder of this Agreement. If any provision or part thereof of this Agreement is stricken in accordance with the provisions of this section, then this stricken provision shall be replaced, to the extent possible, with a legal, enforceable, and valid provision that is as similar in tenor to the stricken provision as is legally possible.

However, if either party in good faith determines that the finding of illegality or unenforceability adversely affects the material consideration for its performance under this Agreement, then such party, at its option and by giving Notice to the other, may terminate this Agreement. In such event the Parties shall take such reasonable action to restore each party to the position it was in prior to the making of this Agreement.

**Section 8.13. Representation on Authority of Parties/Signatories.** Each person signing this Agreement represents and warrants that he or she is duly authorized and has legal capacity to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of the Agreement and the performance of such party's obligations hereunder have been duly authorized and that the Agreement is a valid and legal agreement binding on such party and enforceable in accordance with its terms.

**Section 8.14. Attorney Fees.** If any party to this Agreement shall bring any action, suit, counterclaim, appeal, arbitration, or mediation for any relief against any other, declaratory or otherwise, to enforce the terms hereof or to declare rights hereunder (collectively, an "Action"), the non-prevailing party or parties shall pay to the prevailing party or parties a reasonable sum for attorney fees and costs incurred in bringing and prosecuting such Action and/or enforcing any judgment, order, ruling, or



award (collectively, a "Decision") granted therein, all of which shall be deemed to have accrued on the commencement of such Action and shall be paid whether or not such Action is prosecuted to such Decision. The court or arbitrator may fix the amount of reasonable attorney fees and costs on the request of either party. For the purposes of this Section, attorney fees and costs shall include, without limitation, fees and costs incurred in the following: (1) post judgment motions and collection actions, (2) contempt proceedings, (3) garnishment, levy, and debtor and third party examinations, (4) discovery and (5) bankruptcy litigation.

**Section 8.15. Exhibits Incorporation by Reference.** Every exhibit, schedule, and other appendix attached to and referred to in this Agreement is incorporated in this Agreement by reference.

**Section 8.16. Recitals.** The recitals set forth at the beginning of this Agreement of any matters or facts shall be conclusive proof of the truthfulness thereof and the terms and conditions set forth in the recitals, if any, shall be deemed a part of the Agreement.

**Section 8.17. Best Efforts Clause.** Each party will use their best efforts to perform the obligations in the Agreement.

**Section 8.18. Time of the Essence.** Time is of the essence in respect to all provisions of this Agreement, including those provisions for which no definite time for performance is specified; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period provided for in this Agreement.

**Section 8.19. Cumulation of Remedies.** No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies at law or in equity.

**Section 8.20. Execution of Agreement.** This Agreement was executed voluntarily without any duress or undue influence on the part of or on behalf of the Parties hereto. The Parties acknowledge that they have read and understood this Agreement and its legal effect. Each party acknowledges having had a reasonable opportunity to obtain independent legal counsel for advice and representation in connection with this Agreement. Each party further acknowledges that it is not relying on representations or advice of and is not for the purposes of negotiation, execution, and delivery of this Agreement, a client of the legal counsel employed by any of the other parties to this Agreement.

**Section 8.21. Signatures, Counterparts and Use of Faxed or E-Mailed Signatures.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original. This Agreement shall not be effective until the execution and delivery between each of the Parties of at least one set of counterparts. Delivery of executed counterparts may occur by fax or e-mail or a similar process and shall be, upon such delivery, as binding as the delivery of the original signatures. The Parties authorize each other to detach and combine such signature pages and

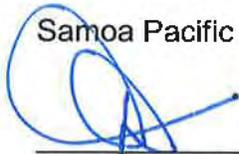


consolidate them into a single original. Any one of such completely executed counterparts shall be sufficient proof of this Agreement.

**Section 8.22.** Access to Property. Following the expiration of the Due Diligence Period and until this Agreement is terminated or Closing occurs, Buyer shall have reasonable access to the Real Property at reasonable times for the purpose of conducting non-invasive studies or planning for reason relating to Buyer's future development of the Real Property following Closing. Buyer shall give Seller Notice of the intention to enter and a description of the planned activities two (2) Days before the date of the planned entry. Buyer shall hold and save Seller harmless from and against any and all loss, cost, damage, liability, injury or expense, arising out of or in any way related to damage to the Real Property, injury to or death of persons, or the assertion of lien claims resulting from the Buyer's access on the Real Property.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the date set forth in the first paragraph of this Agreement.

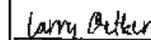
Samoa Pacific Group LLC,



by: Daniel Johnson

Humboldt Bay Development  
Association:

DocuSigned by:



by: Larry Oetker



05/27/2022  
14 of 14

## **ADDENDUM TO AGREEMENT FOR THE PURCHASE AND SALE OF REAL PROPERTY**

As of September \_\_, 2022, Samoa Pacific Group LLC, as the Seller, and Humboldt Bay Development Association, as the Buyer, under that certain Agreement for the Purchase and Sale of Real Property, made as of May 27, 2022 between Buyer and Seller (the "Agreement"), enter into this modifying Addendum to Agreement for the Purchase and Sale of Real Property (the "Addendum"). A copy of the Agreement is attached to this Addendum as Exhibit A and it is made a part hereof by this reference.

Under the Agreement, Seller, as the owner of the Real Property, agreed to sell it to the Buyer under the terms and conditions stated therein. The Buyer and Seller now enter into this Addendum to provide Buyer with an alternative method of paying the Purchase Price (the "Option"), as set forth below.

**1. The USEPA Brownfield Loan.** On or about May 10, 2014, Seller and the County of Humboldt (the "County") as the recipient of a "Brownfields Cleanup Revolving Loan Fund" from the United States Environmental Protection Agency for the purpose of the cleanup of Brownfields sites by making low interest loans to parties willing to undertake such cleanup, entered into that certain "County of Humboldt Brownfields Cleanup Revolving Loan Fund Loan Agreement" (the "Brownfields Loan"). The Brownfields Loan was secured by certain real property owned by Seller, which is generally know as the Town of Samoa, which was more particularly described in that deed of trust dated May 6, 2014 and which was recorded on May 30, 2014 as Recording No. 2014-009496 in the records of the Humboldt County Recorder (the "2014 Deed of Trust"). Seller qualified for and took an initial advance of \$950,000 under the 2014 Deed of Trust. Thereafter, as Seller proceeded to perform the cleanup in the Town of Samoa under the Brownfields Loan and qualified for further advances, the County advanced Seller additional funds and recorded notice of such advances under the 2014 Deed of Trust. On May 10, 2018, the County recorded notice of an additional advances of \$1,000,000 and \$370,000, in the records of the Humboldt County Recorder, with Recording No. 2018-008706, and 2018-008707. The Buyer and Seller believe it is possible for Seller to qualify for and draw additional funds under the Brownfields Loan.

**2. Transfer of the Brownfields 2014 Deed of Trust.** The County has informed Buyer and Seller that it is willing to transfer the 2014 Deed of Trust from the Town of Samoa to the Real Property, allow Buyer to assume the obligation of the debt owed thereunder, reconvey the Town of Samoa property and release Seller from the debt thereunder.

**3. Buyer's Option to Assume the Brownfields 2014 Deed of Trust.** Buyer is given option to pay up to all of the Purchase Price at Closing by the Transfer of the Brownfields 2014 Deed of Trust security from the Town of Samoa to the Real Property and the Buyer's assumption of the obligation owed thereunder, provided that the Town of Samoa security is reconveyed and Seller is released from any obligation thereunder (the "Option"). In order to exercise the Option, Buyer must give Seller irrevocable Notice of exercise of the Option on or before December 31, 2022 and all arrangements for the assumption must be concluded by the Closing Date (subject to the extension

provisions under the Agreement). In the event Buyer elects to exercise the Option, while Seller will cooperate, it will be Buyer's exclusive responsibility to make all arrangements with the County and Escrow Holder under the provisions of the Option and to assume all costs thereunder.

**4. Seller's Further Advances Under the 2014 Deed of Trust.** As available to it and after Buyer gives Notice of exercise of the Option, Seller must take available advances under the 2014 Deed of Trust, provided however, that with the further advances the obligation owed on the 2014 Deed of Trust at the time of Closing shall not exceed the Purchase Price.

**5. Credit Against the Purchase Price.** If Buyer timely exercises the Option, Buyer and Seller will agree, prior to the Closing, as to the amount of debt that Seller will be assuming under the 2014 Deed of Trust at the Closing and will jointly instruct the Escrow Holder as to amount of credit Buyer will receive against the Purchase Price therefore. At the Closing, if the amount of the debt assumed by Buyer under the 2014 Deed of Trust is less than the Purchase Price, Buyer will deposit ready funds into the Escrow equal to the difference between the debt assumed and the Purchase Price.

**6. Other Provisions of Agreement Unchanged.** Except as specifically modified in this Addendum, all other provisions of the Agreement remain unchanged.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Addendum as of the date set forth in the first paragraph hereof.

Samoa Pacific Group LLC:

Humboldt Bay Development Association:

\_\_\_\_\_  
by: Daniel Johnson

\_\_\_\_\_  
by: Larry Oetker

**EARNEST MONEY FUNDING AGREEMENT  
AND  
GRANT OF ASSIGNMENT AND PURCHASE OPTION**

THIS AGREEMENT (“Agreement”) is made effective as of August 17, 2022, by and between the HUMBOLDT BAY DEVELOPMENT ASSOCIATION, a non-profit public benefit corporation (“HBDA”) and the HUMBOLDT BAY HARBOR, RECREATION, AND CONSERVATION DISTRICT, a California special district (“District”). HBDA and the District may be referred to individually as a “Party” or collectively as the “Parties”.

**RECITALS**

The Parties enter into this Agreement in reference to the following Recitals of essential facts:

- A. The District was formed in 1970 to carry out its legislative purpose, which is for the acquisition, construction, maintenance, operation, development, and regulation of harbor works and improvements...for the development, operation, maintenance, control, regulation, and management of Humboldt Bay upon the tidelands and lands lying under the inland navigable waters of Humboldt Bay, for the promotion of national and international commerce, navigation, fisheries, and recreation thereon, and for the development and protection of the natural resources of the area;
- B. In or about 2016, the HBDA was incorporated a public benefit corporation to carry out its purpose, as set forth in its Articles of Incorporation, to “support and implement improvement in Samoa, California, and, in conjunction with other public agencies and nonprofit organizations, as appropriate, to promote the health and well-being of residents of Humboldt County through the environmental improvement and development of the Humboldt Bay Eco-Industrial Park Facilities;”
- C. In an effort to support and facilitate the District’s contemplated development of a heavy lift port in Humboldt Bay to support offshore, sustainable wind energy development, HBDA entered into an agreement with Samoa Pacific Group LLC in May 2022 (“Purchase Agreement”) to acquire the real property generally described as Humboldt APN 401-031-083 and particularly described as lot 135, as shown on Tract Map 665, recorded on August 18, 2021, in Book 25 of Maps, pages 127-141, in the Office of Recorder for the County of Humboldt, State of California (the “Real Property”);
- D. The Real Property is directly adjacent to the District’s existing property commonly referred to as Redwood Marine Terminal I, which fronts the Humboldt Bay;

- E. Pursuant to the terms of the Purchase Agreement, HBDA has the unqualified right to assign its rights under the Purchase Agreement upon notice to the seller thereunder;
- F. Pursuant to this Agreement, HBDA and the District desire to set forth the terms and conditions upon which the District may elect to take an assignment of the Purchase Agreement or purchase the Real Property, in either case upon its election.

**NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:**

**1. Grant of Option.** Subject to the terms and conditions of this Agreement, HBDA grants to the District an option, at the District's election, to:

(a) take and assignment of the Purchase Agreement and to, thereafter, purchase the Real Property upon and subject to all terms and conditions of the Purchase Agreement ("Assignment Option"); or

(b) purchase the Real Property from HBDA following HBDA's acquisition of the Real Property at the same purchase price as paid by HBDA under the Purchase Agreement ("Purchase Option").

The Assignment Option and the Purchase Option are collectively referred to as the "Option".

**2. Consideration for the Option.** In consideration for the Option, the District shall pay to HBDA the sum of fifty thousand dollars (\$50,000) ("Option Consideration") for HBDA to use at its earnest money deposit under the Purchase Agreement, provided:

(a) If the District exercises the Assignment Option, the Option Consideration shall be assigned by HBDA to the District and applied to the purchase price payable by the District pursuant to the Purchase Agreement.

(b) If the District exercises the Purchase Option, the Option Consideration shall be applied to the purchase price payable to HBDA.

(c) If the District fails to exercise the Option, and HBDA does not purchase the Real Property pursuant to the Purchase Agreement, HBDA shall pay to the District any portion of its deposit returned to HBDA from escrow up to the full amount of the Option Consideration.

(d) If the District fails to exercise the Option, and HBDA purchases the Real Property, the Option Consideration shall remain the property of HBDA.

**3. Further Consideration for the Option.** As additional consideration for the Option, the District shall, at its cost and expense, perform all necessary or desired due diligence under the Purchase Agreement, subject to the approval of HBDA.

**4. Exercise of Option.** Provided the District is not in default under this Agreement, the Option may be exercised by the District by delivering to HBDA written notice of the exercise (“Exercise Notice”), which shall state that the Option, as applicable, is exercised without condition or qualification, prior to the expiration of the following time periods:

(a) as to the Assignment Option, no later than ten (10) calendar days prior to the close of escrow under the Purchase Agreement;

(b) as to the Purchase Option, on or before five years following the close of escrow by HBDA under the Purchase Agreement.

**5. Purchase Agreement.** Upon the proper and timely exercise of the Purchase Option, the Parties shall execute a written purchase agreement containing the following materials terms, among other commercial reasonable and standard terms as would be typical of an agreement to purchase vacant land:

(a) **Purchase Price.** The Purchase Price shall be the same as stated in the Purchase Agreement plus applicable holding costs incurred by the HBDA.

(b) **Escrow.** Escrow shall be handled by Humboldt Land Title Company with no less than a 60-day escrow period;

(c) **Condition of Title.** The District’s review and approval of the condition of title;

(d) **CEQA and NEPA.** The District shall have the right to complete any required environmental review prior to closing;

(e) **Due Diligence.** The District shall have a limited right to conduct due diligence to determine if any material changes occurred to the Real Property following HBDA’s acquisition of the Real Property.

**6. Representations and Warranties.** Each Party makes the following representations and warranties to the other Party:

(a) The persons who have executed this Agreement have been authorized to do so by the Party on whose behalf the Party is signing. All documents to be delivered under this Agreement will be executed by an authorized person. Each Party has a good and legal right to enter into this Agreement and to perform all covenants of that Party contained in this Agreement.

(b) None of the warranties, representations, or statements made by any Party in this Agreement contain any untrue statements of material fact or omit a material fact necessary in order to make the statements not misleading. All representations and warranties of any Party shall be true on and as of the closing date with the same force as though made on and as of the closing date.

**7. No Default by HBDA.** HBDA shall exercise all reasonable diligence to ensure that it does not commit any act or omission that would constitute a default under the Purchase

Agreement. Further, in the event of HBDA's default, HBDA shall exercise diligence in curing the default during any applicable cure period.

**8. Duty to Cooperate and Keep Informed.** Each Party shall reasonably cooperate with the other Party in its performance under this Agreement and shall keep the other informed of any notices or material information received concerning the Real Property or that would affect the rights granted herein.

**9. Time of Essence.** Time is of the essence for this Agreement.

**10. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

**11. Amendment.** This Agreement may not be amended or altered except by a written instrument executed by the Parties.

**12. Partial Invalidity.** Any provision of this Agreement that is unenforceable or invalid or the inclusion of which would adversely affect the validity, legality, or enforceability of this Agreement shall be of no effect, but all the remaining provisions of this Agreement shall remain in full force.

**13. Exhibits.** All attached exhibits are incorporated in this Agreement by this reference.

**14. Integration.** This Agreement contains the entire agreement between the parties, and expressly supersedes all previous or contemporaneous agreements, understandings, representations, or statements between the Parties respecting the Option.

**15. Governing Law.** The validity, meaning, and effect of this Agreement shall be determined in accordance with California laws.

**16. Construction.** Section headings are solely for the convenience of the Parties and are not a part of and shall not be used to interpret this Agreement. The singular form shall include the plural and vice versa. This Agreement shall not be construed as if it had been prepared by one of the Parties, but rather as if both Parties have prepared it.

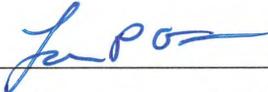
**17. Further Assurances.** Whenever requested by the other Party, each Party shall execute, acknowledge, and deliver all further conveyances, agreements, confirmations, satisfactions, releases, powers of attorney, instruments of further assurance, approvals, consents, and all further instruments and documents as may be necessary, expedient, or proper to complete any conveyances, transfers, sales, and agreements covered by this Agreement, and to do all other acts and to execute, acknowledge, and deliver all requested documents to carry out the intent and purpose of this Agreement.

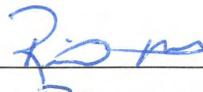
SIGNATURE PAGE FOLLOWS THIS PAGE

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

**FOR THE DISTRICT:**

**FOR HBDA:**

By:   
Name: Larry Oetker  
Its: Executive Director

By:   
Name: Richard Marks  
Its: Board President