

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 08-2020

Adopted May 19, 2020

CONDITIONALLY AUTHORIZING A SEVENTH AMENDMENT TO THE MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT WITH FOCIL-MB, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND ADOPTING ENVIRONMENTAL FINDINGS PURSUANT TO THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; MISSION BAY SOUTH REDEVELOPMENT PROJECT AREA

- WHEREAS, On September 17, 1998, the former Redevelopment Agency of the City and County of San Francisco (“Redevelopment Agency”) approved, by Resolution No. 190-98, the Redevelopment Plan for the Mission Bay South Redevelopment Project (“Redevelopment Plan”). The Redevelopment Agency also conditionally authorized, by Resolution No. 193-98, the execution of the Mission Bay South Owner Participation Agreement (“South OPA”) and related documents with Catellus Development Corporation, a Delaware corporation (“Catellus”). On November 2, 1998, the San Francisco Board of Supervisors (“Board of Supervisors”), adopted, by Ordinance No. 335-98, the Redevelopment Plan; and,
- WHEREAS, FOCIL-MB, LLC, (“FOCIL-MB”), a subsidiary of Farallon Capital Management, LLC, assumed all of Catellus’ obligations under the South OPA, as well as all responsibilities under the related public improvement agreements and land transfer agreements with the City and County of San Francisco (“City”). FOCIL-MB is bound by all terms of the South OPA and related agreements, including the requirements of the affordable housing program, equal opportunity program, and design review process; and,
- WHEREAS, On February 1, 2012, state law dissolved the Redevelopment Agency and required the transfer of certain of its assets and obligations to the Successor Agency to the Redevelopment Agency (“Successor Agency”), commonly known as the Office of Community Investment and Infrastructure (“OCII”) (Cal. Health & Safety Code §§ 34170 *et seq.*, “Redevelopment Dissolution Law”). On June 27, 2012, the Redevelopment Dissolution Law was amended to clarify that successor agencies are separate public entities from the city or county that had originally established a redevelopment agency; and,
- WHEREAS, On October 2, 2012 the Board of Supervisors of the City, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12 (the “Implementing Ordinance”), which Implementing Ordinance was signed by the Mayor on October 4, 2012, and which, among other matters: (a) acknowledged and confirmed that the Successor Agency is a separate legal entity from the City, and (b) established this Successor Agency Commission (“Commission”) and delegated to it the authority to (i) act in place of the Redevelopment Commission to, among other matters, implement, modify, enforce and complete the Redevelopment Agency’s enforceable obligations, (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, including, without limitation, the authority to exercise land use, development, and design approval, consistent

with applicable enforceable obligations, and (iii) take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and any other action that this Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations; and,

WHEREAS, The Board of Supervisors' delegation to this Commission includes the authority to grant approvals under specified land use controls for the Mission Bay Project consistent with the approved Redevelopment Plan and enforceable obligations, including amending an existing obligation as allowed by the Redevelopment Dissolution Law; and,

WHEREAS, Redevelopment Dissolution Law required creation of an oversight board to the successor agency and provided that with approval from its oversight board and the State Department of Finance ("DOF"), a successor agency may continue to implement "enforceable obligations" such as existing contracts, bonds and leases, that were executed prior to the suspension of redevelopment agencies' activities. On January 24, 2014, DOF finally and conclusively determined, among other things, that the South OPA is an enforceable obligation pursuant to Health and Safety Code Section 34177.5(i); and,

WHEREAS, Redevelopment Dissolution Law authorizes an oversight board, subject to review by DOF, to amend an enforceable obligation, if "it finds that amendments . . . would be in the best interests of the taxing entities." Health and Safety Code Section 34181(e); and,

WHEREAS, Mission Bay South Blocks 29-32 is an 11-acre site bounded by Warriors Way on the north, Third Street on the west, 16th Street on the south, and by the future planned realigned Terry A. Francois Boulevard on the east; and,

WHEREAS, Relevant portions of Mission Bay South Blocks 29-32 are currently owned by GSW Arena LLC and GSW ECOP 3P Retail LLC, affiliates of Golden State Warriors, LLC, which owns and operates the Golden State Warriors National Basketball Association team; GSW Arena LLC and GSW ECOP 3P Retail LLC are bound by the terms of the South OPA pursuant to the terms of certain Assignment, Assumption and Release Agreements; and,

WHEREAS, The Successor Agency has prepared a proposed seventh amendment to the South OPA ("OPA Amendment") in conjunction with an amendment to the Redevelopment Plan to allow a mixture of hotel and residential use on Blocks 29-30 and to increase the total Leasable square footage of retail permitted on Blocks 29-32, and also in conjunction with an amendment to the Design for Development for the Mission Bay South Project Area ("D for D Amendment") that would change certain standards related to height, bulk, tower separation, number and location of towers, and rooftop requirements with respect to Blocks 29-32; and,

WHEREAS, The proposed OPA Amendment would provide for development on Blocks 29-30 of up to 230 hotel rooms and up to 21 residential dwelling units, as principally permitted uses, and provide for a corresponding increase in the total number of hotels, hotel rooms, and residential dwelling units the South OPA permits in the Redevelopment Plan Project Area ("Plan Area"). The OPA Amendment would also increase the limitation on the total Leasable square footage of retail permitted on Blocks 29-32 in the Plan Area by 65,000 square feet, including approximately 54,000 Leasable square feet of previously approved retail uses on Blocks 29-32

currently excluded from the calculation of total retail square footage in the Plan Area through various exemptions. Residential and hotel development on Blocks 29-30 would be required to pay an impact fee to fund affordable housing, as well as comply with certain requirements related to small business hiring and local hiring and fund certain open space maintenance costs; and,

WHEREAS, By allowing for residential and hotel use, the OPA Amendment will support the full economic use of Blocks 29-30 and will accelerate the completion of development under the Redevelopment Plan, the South OPA and the related enforceable obligations. The change in permitted uses on Blocks 29-30 is expected to result in its development, which would generate more revenues from property taxes payable to the taxing entities, including the City and County of San Francisco, the Bay Area Rapid Transit District, the San Francisco Community College District, the San Francisco Unified School District, the San Francisco County Office of Education, as well as the State of California, compared with the existing conditions. The OPA Amendment does not propose any new capital expenditures by the Successor Agency or any change in the Successor Agency's overall method of financing the redevelopment of the Mission Bay South Project Area, and will accelerate the completion of development under the Redevelopment Plan and the South OPA; and,

WHEREAS, The OPA Amendment will benefit the taxing entities by increasing property tax revenues and accelerating the wind down of redevelopment affairs in the Plan Area; and,

WHEREAS, Successor Agency staff has reviewed the OPA Amendment, and finds it acceptable and recommends approval thereof; and,

WHEREAS, On January 9, 2020, the Mission Bay Citizens Advisory Committee considered the OPA Amendment and recommended approval of the OPA Amendment by the Successor Agency Commission; and,

WHEREAS, On May 19, 2020, the Commission adopted Resolution No. 05-2020, by which the Commission determined that the Final Subsequent Environmental Impact Report ("FSEIR") (therein defined), together with further analysis provided in Addendum No. 1 remains adequate, accurate, and objective and in compliance with the California Environmental Quality Act (California Public Resources Code Sections 21000 et seq., "CEQA") and the CEQA Guidelines (14 California Code of Regulations Sections 15000 et seq.), for purposes of evaluating the potential environmental impact of the OPA Amendment; and,

WHEREAS, The environmental effects of the OPA Amendment have been analyzed in the environmental documents as described in Commission Resolution No. 05-2020. Copies of the environmental documents are on file with the Commission Secretary; and,

WHEREAS, Successor Agency staff has reviewed the OPA Amendment, and finds it acceptable and recommends approval thereof; now, therefore be it:

RESOLVED, That the Commission hereby finds that for purposes of compliance with CEQA, the OPA Amendment is included in the actions identified in Resolution No. 05-2020 adopted concurrently with this Resolution; and, be it further

RESOLVED, That in Resolution No. 05-2020, the Commission adopted findings that various actions, including the OPA Amendment, were in compliance with CEQA. Said

findings, which are on file with the Commission Secretary, are in furtherance of the actions contemplated in this Resolution and are made part of this Resolution by reference herein; and, be it further

RESOLVED, That the Commission approves the OPA Amendment, substantially in the form lodged with the Commission Secretary, subject to the following conditions:

1. The Seventh Amendment to the Mission Bay South Owner Participation Agreement is conditioned on the final approval of the third amendment of the Redevelopment Plan by all legally required bodies.
2. The Seventh Amendment to the Mission Bay South Owner Participation Agreement is conditioned on the final approval by the Oversight Board and California Department of Finance.

I hereby certify that the foregoing resolution was adopted by the Successor Agency Commission at its meeting of May 19, 2020.



Commission Secretary

Exhibit A: Seventh Amendment to the Mission Bay South Owner Participation Agreement

Free Recording Pursuant to
Government Code Section 27383 at the
Request of the Successor Agency to the
Redevelopment Agency of the City and
County of San Francisco
RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director

(SPACE ABOVE THIS LINE FOR
RECORDER'S USE ONLY)

**SEVENTH AMENDMENT TO
MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT
(BLOCKS 29-32)**

Dated [_____, 2020]

by and among

**THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO**

and

FOCIL-MB, LLC

**SEVENTH AMENDMENT TO MISSION BAY SOUTH OWNER PARTICIPATION
AGREEMENT (BLOCKS 29-32)**

This Seventh Amendment to the Mission Bay South Owner Participation Agreement (this “**Seventh Amendment**”), dated for reference purposes only as of [_____, 2020], is by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body organized and existing under the laws of the State of California (the “**Successor Agency**”), commonly known as the Office of Community Investment and Infrastructure, and FOCIL-MB, LLC, a Delaware limited liability company (the “**Owner**”). As used in this Amendment, “**City**” means the City and County of San Francisco, a charter city and county. All initially capitalized terms used herein shall have the meanings set forth in the South OPA (as defined below), unless otherwise specifically provided herein.

RECITALS

This Seventh Amendment is made with reference to the following facts and circumstances:

A. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”) adopted the Redevelopment Plan for the Mission Bay South Redevelopment Project on November 2, 1998 by Ordinance No. 335-98 (“**Redevelopment Plan**”) and amended the Redevelopment Plan on July 9, 2013 by Ordinance No. 143-13 and on March 6, 2018 by Ordinance 032-18. The Redevelopment Plan establishes land use controls for the Mission Bay South Project Area (“**South Plan Area**”).

B. The former Redevelopment Agency of the City and County of San Francisco (the “**Former Agency**”) and Catellus Development Corporation, a Delaware corporation (“**CDC**”), entered into that certain Mission Bay South Owner Participation Agreement dated as of November 16, 1998 (the “**Original OPA**”) and recorded December 3, 1998 as Document No. 98-G477258-00 in the Official Records of San Francisco County (the “**Official Records**”), which was subsequently amended by (i) a First Amendment to Mission Bay South Owner Participation Agreement (the “**First OPA Amendment**”) dated as of February 17, 2004 and

recorded March 4, 2004 as Document No. 04-H669955-00 in the Official Records, (ii) a Second Amendment to Mission Bay South Owner Participation Agreement (the “**Second OPA Amendment**”) dated as of November 1, 2005 and recorded November 30, 2005 as Document No. 2005-I080843 in the Official Records, (iii) a Third Amendment to Mission Bay South Owner Participation Agreement (the “**Third OPA Amendment**”) dated as of May 21, 2013 and recorded December 9, 2013 as Document No. 13-J802261-00 in the Official Records, (iv) a Fourth Amendment to Mission Bay South Owner Participation Agreement (the “**Fourth OPA Amendment**”) dated as of June 4, 2013 and recorded December 9, 2013 as Document No. 13-J802262-00 in the Official Records, (v) a Fifth Amendment to Mission Bay South Owner Participation Agreement (the “**Fifth OPA Amendment**”) dated as of April 29, 2014 and recorded August 15, 2014 as Document No. 2014-J927657 in the Official Records, and (vi) a Sixth Amendment to Mission Bay South Owner Participation Agreement (the “**Sixth OPA Amendment**”) dated as of July 26, 2018 and recorded August 13, 2018 as Document No. 2018-K654772-00 in the Official Records. The Original OPA, as amended by the First OPA Amendment, Second OPA Amendment, Third OPA Amendment, Fourth OPA Amendment, Fifth OPA Amendment, and Sixth OPA Amendment shall be referred to in this Seventh Amendment as the “**South OPA**”.

C. CDC’s rights, interests and obligations under the South OPA were transferred (i) to Catellus Operating Limited Partnership, as the successor by merger to CDC, then (ii) to Catellus Land and Development Corporation through an assignment and assumption agreement, and (iii) ultimately to Owner, through an assignment and assumption agreement.

D. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“**AB 26**”), codified in relevant part in California’s Health and Safety Code Sections 34170 et seq. and upheld by the California Supreme Court in *California Redevelopment Assoc. v. Matosantos*, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26,

Statutes of 2011-12) (“**AB 1484**”), which among other things, provide that a successor agency is a separate public entity from the public agency that provides for its governance. (AB 26 and AB 1484, as amended from time to time, are primarily codified in California Health and Safety Code Sections 34170 et seq., and are referred to as the “**Redevelopment Dissolution Law**”).

E. Subsequent to the adoption of AB 1484, on October 2, 2012, the Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12, which was signed by the Mayor on October 4, 2012, and which, among other matters, delegated to the Successor Agency Commission, commonly known as the Commission on Community Investment and Infrastructure (“**Commission**”), the authority, consistent with the Redevelopment Dissolution Law, to (i) act in the place of the Former Agency Commission to, among other matters, implement, modify, enforce and complete the Former Agency’s enforceable obligations, except for material changes to obligations to provide affordable housing, which require Board of Supervisors’ approval; (ii) approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, consistent with the applicable enforceable obligations; and (iii) take any actions that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and other action that the Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations.

F. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than housing assets) and obligations were transferred to the Successor Agency. Some of the Former Agency’s housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development.

G. Under the Redevelopment Dissolution Law, a successor agency has the continuing obligation, subject to certain review by an oversight board and the State of California’s Department of Finance (“**DOF**”), to implement “enforceable obligations” which were in place prior to the suspension of such redevelopment agency’s activities on June 28, 2011, the date that AB 26 was approved. The Redevelopment Dissolution Law defines

“enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy” (Cal. Health & Safety Code § 34171(d)(l)(e)), as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The South OPA meets the definition of “enforceable obligations” under the Redevelopment Dissolution Law.

H. The Board of Supervisors’ delegation to the Commission includes authority to approve and amend all contracts and actions relating to assets transferred to the Successor Agency, including the South OPA, subject to approval by the Oversight Board of the City and County of San Francisco (the “**Oversight Board**”) and review by DOF, as allowed under the Redevelopment Dissolution Law.

I. Through a series of assignment, assumption and release agreements entered into in connection with the conveyances of Blocks 29-32, the Owner has assigned certain of its rights and obligations under the South OPA with respect to Blocks 29-32 to GSW ARENA LLC, a Delaware limited liability company (“**Hotel Project Owner**”) and GSW ECOP 3P Retail LLC, a Delaware limited liability company, who are the current owners of certain portions of Mission Bay South Blocks 29-32, including that certain parcel described in **Exhibit A** attached hereto (the “**Hotel Parcel**”) owned by Hotel Project Owner. Hotel Project Owner was assigned certain rights and obligations under the South OPA with respect to Blocks 29-32 in that certain Assignment, Assumption and Release Agreement dated as of October 9, 2015 and recorded on October 9, 2015 as Document No 2015 K143295 in the Official Records.

J. On November 3, 2015 pursuant to Resolution No. 71-2015 and Resolution No. 72-2015 the Commission approved the Major Phase and Basic Concept / Schematic Design application and proposed amendments to the Mission Bay South Design for Development for Blocks 29-32. On the same date, the Successor Agency Executive Director executed a Secondary Use Authorization for the Event Center. On November 5, 2015, the City’s Planning Commission pursuant to Motion No. 19502 approved the design for two buildings with a total of

approximately 577,000 gross square feet of office use, approximately 54,000 square feet of retail space, and up to 546 off-street parking spaces. Together, these approvals authorized Hotel Project Owner to construct an event center and mixed-use development, including office, retail, open space and an underground parking structure, on Blocks 29-32. Construction of this project was completed in August of 2019.

K. Hotel Project Owner currently leases the Hotel Parcel to GSW HOTEL LLC, a Delaware limited liability company (the “**Hotel Project Lessee**”), an affiliate of Hotel Project Owner. Hotel Project Lessee intends to construct a mixed-use building on the Hotel Parcel that may contain hotel rooms, Residential Units, and retail uses. The building may contain as few as 129 or as many as 230 hotel rooms, and as few as zero (0) or as many as 21 Residential Units, or any combination thereof, provided that the total Gross Floor Area (as defined in the Design for Development for the Mission Bay South Project Area (the “**Design for Development**”), as of the date of this Seventh Amendment) of hotel rooms and Residential Units combined may not exceed approximately 215,000 square feet of Gross Floor Area. In addition, the building may also contain up to approximately 12,000 Leasable square feet of retail uses. In connection therewith, Owner and Successor Agency intend to increase the total Leasable square footage of retail uses in the South OPA by 65,000 Leasable square feet to account for retail areas previously approved for Blocks 29-32, but which were excluded from the total retail Leasable square footage amount in the South OPA through various exemptions, and to account for various new and updated retail areas on Blocks 29-32 (all of the foregoing, collectively, the “**Hotel Project**”). The Hotel Project requires, among other things, an amendment to the Redevelopment Plan, the Design for Development, a Major Phase amendment, and an amendment to the South OPA.

L. The Owner and Successor Agency wish to enter into this Seventh Amendment to the South OPA to implement an amendment to the Redevelopment Plan that the Board of Supervisors approved, by Ordinance No. [____-20] ([_____, 2020]), to allow hotel and residential use on Blocks 29-30 as a permitted use in addition to retail uses, to allocate up to 21 Dwelling Units (as defined in the Redevelopment Plan) to Blocks 29-30, increase the number of

hotels permitted in the South Plan Area, increase the number of hotel rooms permitted in the South Plan Area, and increase the amount of Leasable square feet of retail uses allowed in the South Plan Area and allocate such increase to Blocks 29-32.

M. The costs incurred by the Successor Agency and the City Agencies in connection with the negotiation of the Hotel Project and this Seventh Amendment and related documents, including, without limitation, the amendment to the Redevelopment Plan, the amendment to the Design for Development, a Major Phase amendment, and environmental review documentation to comply with the California Environmental Quality Act, shall be deemed, under Article 6 of the South OPA, to be Agency Costs.

N. The Owner and the Successor Agency wish to enter into this Seventh Amendment to implement the amended Redevelopment Plan, to permit the proposed hotel and residential use on Blocks 29-30, and to reflect the increase in the number of Residential Units, hotels, hotel rooms, and the total Leasable square footage of retail uses contemplated to be developed in the South Plan Area (the “**Additional Development**”). The Redevelopment Plan for the South Plan Area did not previously include this Additional Development, which will require the application of Development Fees or Exactions to mitigate its impacts. The Additional Development described herein is an addition to the development described in the Redevelopment Plan and South OPA immediately prior to the most recent Redevelopment Plan amendment and this Seventh Amendment, and the Additional Development described herein does not reduce the allocation of Residential Units, hotels, hotel rooms or Leasable square footage of retail uses to any areas in the South Plan Area. In addition to those Development Fees or Exactions already authorized under Section 304.9 of the Redevelopment Plan, this Seventh Amendment establishes the Block 29-30 Affordable Housing Fee and the Block 29-30 Hotel Impact Fee (as defined below) applicable to the development of Residential Units, hotel uses, and retail uses within Blocks 29-30.

O. The Seventh Amendment fulfills the following objectives:

(i) The development of a hotel and Residential Units on Blocks 29-30, in conjunction with retail uses, will fulfill the objectives of the Redevelopment Plan, including providing flexibility in the development of the South Plan Area to respond readily and appropriately to market conditions, providing opportunities for participation by owners in the redevelopment of their properties, strengthening the economic base of the South Plan Area and the community by strengthening retail and other commercial functions in the South Plan Area, and achieving these objectives in the most expeditious manner feasible;

(ii) Allowing for hotel and residential use of Blocks 29-30 will support the full economic use of Blocks 29-30, and will accelerate the completion of development under the Redevelopment Plan, the South OPA and the related enforceable obligations;

(iii) Development of Blocks 29-30 for mixed-use hotel, residential and retail will generate more revenue from property taxes payable to the taxing entities, including the City, the San Francisco Unified School District, City College of San Francisco and the Bay Area Rapid Transit district, compared with the existing undeveloped conditions; and

(iv) Providing fees to fund affordable housing and the maintenance of open space in the South Plan Area assists the Successor Agency in fulfilling its enforceable obligations.

The parties hereto (the “**Parties**”) have entered into this Seventh Amendment to memorialize their understanding and commitments concerning the matters generally described above.

P. The Parties acknowledge and agree that concurrent with the execution hereof, Owner, Hotel Project Owner, and Successor Agency will enter into an Assignment, Assumption and Release Agreement whereby Hotel Project Owner will agree to comply with all the applicable terms and conditions of this Seventh Amendment. Such Assignment Assumption and

Release Agreement, under terms and conditions set forth therein, will release Owner from the obligations in the Seventh Amendment.

Q. Under Redevelopment Dissolution Law, the Oversight Board has the authority to “approve any amendments to [any contracts between the dissolved redevelopment agency and any private parties] if [the Oversight Board] finds that amendments . . . would be in the best interests of the taxing entities.” Cal. Health & Safety Code § 34181(e). For the reasons stated above in Recital O, this Seventh Amendment meets this standard for amendment of an enforceable obligation.

R. The Oversight Board, consistent with its authority under the Redevelopment Dissolution Law, determined that an amendment to the South OPA that would permit hotel and residential use on Blocks 29-30 as principal uses and would increase residential density, the number of hotels, the total number of hotel rooms, and the total Leasable square feet of retail uses in the South Plan Area, and make other conforming changes, is in the best interests of the taxing entities.

S. Under Redevelopment Dissolution Law, DOF must receive notice and information about all Oversight Board actions, which do not take effect until DOF has either not requested review within five days of the notice or requested review and approved the action within 40 days of its review request. On [_____, 2020], the Successor Agency provided a copy of Oversight Board Resolution No. [__-2020] to DOF, which did not object to the amendment to the South OPA within the statutory time period for its review, or which approved the amendment to the South OPA within the statutory time period of the Successor Agency’s review request.

AGREEMENT

Accordingly, for good and valuable consideration, the receipt, amount and sufficiency of which is hereby acknowledged, the Owner and the Successor Agency agree as follows:

1. Maximum Number of Market Rate Residential Units. Wherever the South OPA (as amended and including without limitation any attachment thereto) makes reference to the

number of Residential Units to be developed in the South Plan Area, specifically “up to 3,393” units of housing, including “up to 2,285” market-rate units, and referring to the Owner’s property, such phrases shall be deemed to be amended to refer to “3,414” wherever the number “3,393” appears and “2,306” wherever the number “2,285” appears. The South OPA will also be amended, when the specific number of total Residential Units or market-rate Residential Units to be developed on the Owner’s property is referenced, to include the following phrase: “Up to 21 of the total number of market-rate Residential Units will be limited to Blocks 29-30. In no event shall the total number of market-rate Residential Units on Blocks 29-30 exceed 21.” Where the phrase “approximately” or “up to” precedes any number identified in this Section 1, that word or words shall be retained.

2. Number of Hotels and Maximum Number of Hotel Guest Rooms. Wherever the South OPA (as amended and including without limitation any attachment thereto) makes reference to the number of hotels or the number of hotel guest rooms to be developed on the Owner’s property, specifically “a hotel,” “an up to 500 room hotel,” “an up to 250 room hotel” or “up to 500” hotel guest rooms, such phrases shall be deemed to be amended to include the following phrase: “Notwithstanding anything herein to the contrary, in addition, a hotel with up to 230 guest rooms may be constructed on Blocks 29-30. In no event shall the total number of hotel guest rooms on Blocks 29-30 exceed 230.”
3. Maximum Amount of Leasable Square Footage of Retail Uses. Wherever the South OPA (as amended and including without limitation any attachment thereto) makes reference to “up to approximately 230,000 square feet of Leasable area of city serving retail, local serving retail and entertainment retail uses”, or some such similar phrase, such phrases shall be deemed to be amended to refer to “up to approximately 295,000 square feet of Leasable area of city serving retail, local serving retail and entertainment retail uses, of which 65,000 Leasable square feet of city serving retail will be limited to Blocks 29-32.”

Wherever the South OPA (as amended and including without limitation any attachment thereto) makes reference to “approximately up to 260,000 Leasable square feet of retail, commercial and entertainment uses”, or some such similar phrase, such phrases shall be deemed to be amended to refer to “up to approximately 325,000 Leasable square feet of retail, commercial and entertainment uses, of which 65,000 Leasable square feet of city serving retail will be limited to Blocks 29-32.” Where the phrase “approximately” or “up to” precedes any number identified in this Section 3, that word or words shall be retained.

4. Open Space Maintenance. Section 4.3 of the South OPA is amended to include the following new subsection 4.3.1:

“4.3.1 Park P22 Maintenance. Owner shall record, or have recorded, a declaration of restrictions requiring the Owner to pay the P22 Maintenance Amount (as defined below) to Successor Agency, or its designee, annually during the period beginning as of the date when Park P22 (as defined in Exhibit 8 to Attachment D to the South OPA) is operational and open to the public, and ending as of the date when either (i) Park P22 ceases to operate or (ii) both the Hotel Project and the event center on Blocks 29-32 as shown in the Land Use Plan (the “Event Center”) cease to operate, for the maintenance of Park P22 to defray certain additional ordinary, day-to-day maintenance, repair and replacement costs caused by use of Park P22 by guests of the Event Center and Hotel Project on Blocks 29-32 (such effects are referred to herein as “Park Impacts”). Notwithstanding anything else herein, the P22 Maintenance Amount shall begin to accrue as of the date when Park P22 is operational and open to the public as described herein, but shall not be due and payable to Successor Agency until the date when both (i) Park P22 is operational and open to the public and (ii) the First Construction Document (as defined in Article 4, Section 401 of the San Francisco Planning Code as of the date of this Seventh Amendment) for the Hotel Project has been issued.

(a) The “P22 Maintenance Amount” shall equal \$175,000.00 during the first calendar year that Park P22 is operational and open to the public (such calendar year the “Inaugural Year”) and shall be adjusted annually to reflect annual changes in the average Consumer Price Index for All Urban Consumers (CPI-U) for the San Francisco-Oakland-Hayward, CA statistical area (all items, index base period 1982-84=100), provided that such adjustment is not more than 4% nor less than 2% per annum. With respect to the initial time period beginning as of the date when Park P22 is operational and open to the public through the immediately following December 31st (the “Initial Partial Year”), the P22 Maintenance Amount shall be an amount equal to \$175,000.00 multiplied by a fraction, the numerator of which is the number of days in the Initial Partial Year and the denominator of which is 365.

(b) At least two years after Park P22 has been operational and open to the public, either the Owner or the Successor Agency may, by written notice to the other party, request a reevaluation of the amount of the P22 Maintenance Amount based on actual Park Impacts. To assess actual Park Impacts, the Successor Agency shall consider objective and independent methodology agreed to by the Successor Agency and Owner (the “Park Impact Methodology”). If the parties cannot agree on the Park Impact Methodology, either party may invoke a mutually-agreeable, neutral third-party process to establish the Park Impact Methodology. In the event that there is no mutual agreement on a third-party process, the Successor Agency Commission, or its successor, shall approve, at a public hearing, the Park Impact Methodology. Neither Successor Agency nor Owner may request to reevaluate the P22 Maintenance Amount more frequently than once every five years after the initial reevaluation. The Successor Agency shall reasonably approve the revised P22 Maintenance Amount based on the Park Impact Methodology used to evaluate actual Park Impacts, and for each successive calendar year the P22 Maintenance Amount accruing to Successor Agency shall equal such revised P22 Maintenance Amount, adjusted annually to reflect annual changes in the average CPI-U

for the San Francisco-Oakland-Hayward, CA statistical area (all items, index base period 1982-84=100), provided that such adjustment is not more than 4% nor less than 2% per annum.”

5. Redevelopment Land Use Plan Map. The Mission Bay Land Use Plan – South map contained in Attachment A (Mission Bay South Land Use Plan and Legal Description) of the South OPA is amended and replaced by **Exhibit B** attached hereto so that the label of “Commercial Industrial / Retail” in the legend reads as follows:

COMMERCIAL INDUSTRIAL / RETAIL (including Hotel and Residential on Blocks 29-30)

6. Scope of Development Section I.B.1. The first sentence of Section I.B.1 of Attachment B (“**Scope of Development**”) of the South OPA is hereby amended to read as follows:

“I.B.1. Up to approximately 2,306 market-rate Dwelling Units as defined in the Mission Bay South Redevelopment Plan, 21 of which shall be allocated only to Blocks 29-30 and to no other area in the South Plan Area as shown on Attachment A as allowed under Section I.B.11, and 350 of which shall be allocated only to Block 1 and to no other area in the South Plan Area as shown on Attachment A as allowed under Section I.B.3; provided, however, that Owner may elect to construct additional units that the Successor Agency would otherwise be permitted to construct pursuant to the terms and conditions of Section 3.4.3(b) of the South OPA.”

7. Scope of Development Section I.B.2. Section I.B.2 of the Scope of Development is hereby amended and restated to read as follows:

“I.B.2. Up to approximately 295,000 Leasable square feet of retail uses as defined in the Redevelopment Plan. The allowable retail space includes: up to 159,300 Leasable square feet of local-serving retail, up to 85,700 Leasable square feet of City-serving retail (of which, approximately 65,000 Leasable square feet will be located on Blocks 29-32), and up to 50,000 Leasable square feet of entertainment or local-serving retail on Block 1.”

8. Scope of Development Section I.B.11. A new Section I.B.11 will be added to the Scope of Development as follows:

“I.B.11. On Blocks 29-30, a mixed-use building that may contain hotel rooms (and associated facilities such as banquet and conference rooms and retail uses), Dwelling Units, and retail uses. The building may contain as few as 129 or as many as 230 hotel rooms, and as few as zero (0) or as many as 21 Dwelling Units, or any combination thereof, provided that the total Gross Floor Area (as defined in the Design for Development) of hotel rooms and Dwelling Units combined may not exceed approximately 215,000 square feet of Gross Floor Area. In addition, the building may also contain up to approximately 12,000 Leasable square feet of retail uses.”

9. Height and Density Limit. Attachment C (“**Mission Bay South Housing Program**”) of the South OPA is hereby amended to change the second sentence in Section 4.2 under “Owner Housing Program” to read as follows:

“Development of Residential Units may be provided above commercial, parking, local-serving retail and urban entertainment uses, and on Blocks 29-30, in addition to the aforementioned uses, above City-serving retail and hotel uses.”

10. Affordable Housing Requirement. The Mission Bay South Housing Program is hereby amended to include a new Section 4.7 under “Owner Housing Program” to read as follows:

“4.7 Block 29-30 Affordable Housing Fee and Block 29-30 Hotel Impact Fee.

(a) Imposition of Block 29-30 Affordable Housing Fee.

Notwithstanding anything else in this Housing Program or the South OPA, the only affordable housing requirements applicable to development of Residential Units within Blocks 29-30 shall be as set forth in this Section 4.7. The Successor Agency shall require as a condition of approval for any project containing Residential Units on Blocks 29-30 (“**Block 29-30 Residential Project**”) that Owner shall comply with Section 415 of the Planning Code, except that Owner may elect as an alternative to complying with Section

415 to instead pay an affordable housing in-lieu fee to the Successor Agency to fund affordable housing development within the South Plan Area (“**Block 29-30 Affordable Housing Fee**”), in accordance with the following conditions:

(i) the Block 29-30 Affordable Housing Fee shall be calculated based on the fee schedule produced by the City for its Inclusionary Affordable Housing Program (Planning Code Article 4, Section 415.5 or successor program) in effect at the time payment is due, as such fee schedule may be amended from time to time, per net new gross square foot of residential use (as “gross square feet of use” is defined in Planning Code Article 4, Section 401 as of the date of this Seventh Amendment) to be constructed in the Block 29-30 Residential Project, applied to 30% of the gross square feet of such use within the Block 29-30 Residential Project, regardless of the total number of Residential Units to be constructed; and

(ii) the Owner shall pay the Block 29-30 Affordable Housing Fee to the Successor Agency prior to issuance of the First Construction Document (as defined in Article 4, Section 401 of the Planning Code as of the date of this Seventh Amendment) for the Block 29-30 Residential Project, which funds shall be used by the Successor Agency to fund affordable housing development in the South Plan Area.

(b) Imposition of Block 29-30 Hotel Impact Fee. Notwithstanding anything else in this Housing Program or the South OPA, the only affordable housing requirements applicable to development of hotel and retail uses within Blocks 29-30 shall be as set forth in this Section 4.7. The Successor Agency shall require as a condition of approval for any project containing hotel or retail uses on Blocks 29-30 (“**Block 29-30 Hotel Project**”) that Owner will pay an affordable housing in-lieu fee to the Successor Agency to fund affordable housing development within the South Plan Area (“**Block 29-30 Hotel Impact Fee**”) in accordance with the following conditions:

(i) the Block 29-30 Hotel Impact Fee shall be calculated based on the fee schedule produced by the City for its Jobs-Housing Linkage Program (Planning Code Article 4, Section 413.5 or successor program) in effect at the time payment is due, as such fee schedule may be amended from time to time, per net new gross square foot of hotel or retail use (as “gross square feet of use” is defined in the Planning Code, Article 4, Section 401 as of the date of this Seventh Amendment) to be constructed in the Block 29-30 Hotel Project; and

(ii) the Owner shall pay the Block 29-30 Hotel Impact Fee to the Successor Agency prior to issuance of the First Construction Document (as defined in Article 4, Section 401 of the Planning Code as of the date of this Seventh Amendment) for the Block 29-30 Hotel Project, which funds shall be used by the Successor Agency to fund affordable housing development in the South Plan Area.”

11. Design Review and Document Approval Procedure. Section III(A) of Attachment G (“**Mission Bay South Design Review and Document Approval Procedure**”) of the South OPA is amended to include the following after the last sentence of such Section III(A): “In addition to any applicable Design Standards set forth in the Mission Bay South Design for Development, hotel and residential development on Blocks 29-30 will be governed by the Commercial Industrial Guidelines set forth in the Mission Bay South Design for Development, including but not limited to requirements related to Block Development, Street Frontage, Building Height and Form, and Architectural Details, except that retail uses associated with such hotel and residential uses are also permitted to be governed by the Retail Guidelines set forth the in the Mission Bay South Design for Development.”
12. Small Business Enterprise Policy. Owner agrees to comply with the Successor Agency’s Small Business Enterprise Policy, as adopted by Commission Resolution No. 43-2015 (July 7, 2015) in the construction of the Hotel Project on the Hotel Parcel, including all

tenant improvements constructed by the Hotel Project Owner or Hotel Project Lessee within the Hotel Project on the Hotel Parcel, but excluding all tenant improvements related to Residential Units.

13. General Provisions.

13.1 South OPA in Full Force and Effect. Except as otherwise amended hereby and as previously revised to reflect various non-material changes, all terms, covenants, conditions and provisions of the South OPA shall remain in full force and effect.

13.2 Successors and Assigns. This Seventh Amendment is binding upon and will inure to the benefit of the successors and assigns of the Former Agency, Successor Agency, and the Owner, subject to the limitations set forth in the South OPA.

13.3 Recitals. The Recitals in this Seventh Amendment are included for convenience of reference only and are not intended to create or imply covenants under this Seventh Amendment. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Seventh Amendment, the terms and conditions of this Seventh Amendment shall control.

13.4 Counterparts. This Seventh Amendment may be executed in any number of counterparts, all of which together shall constitute the original agreement hereof.

IN WITNESS WHEREOF, the Successor Agency has caused this Seventh Amendment to be duly executed on its behalf and the Owner has signed or caused this Seventh Amendment to be signed by duly authorized persons, all as of the day first above written.

Authorized by Successor Agency Resolution
No. [__-2020], adopted [_____, 2020]

SUCCESSOR AGENCY:

Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, a public body organized and
existing under the laws of the State of
California

By: _____
Name:
Title:

Approved as to Form:

By: _____
Name:
Title:

[Signatures continue on following page]

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
)ss
County of San Francisco)

On _____, before me, _____, a notary public in and for said State, personally appeared _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

OWNER:

FOCIL-MB, LLC,
a Delaware limited liability company

By: _____
Name:
Title:

EXHIBIT A
Hotel Parcel Legal Description

The land referred to is situated in the County of San Francisco, City of San Francisco, State of California, and is described as follows:

Lot 5 as shown on that certain Map entitled "Final Map 8593" (the "Map"), filed for record on December 9, 2016, in Book 131 of Condominium Maps at Pages 47 through 63 inclusive, Official Records.

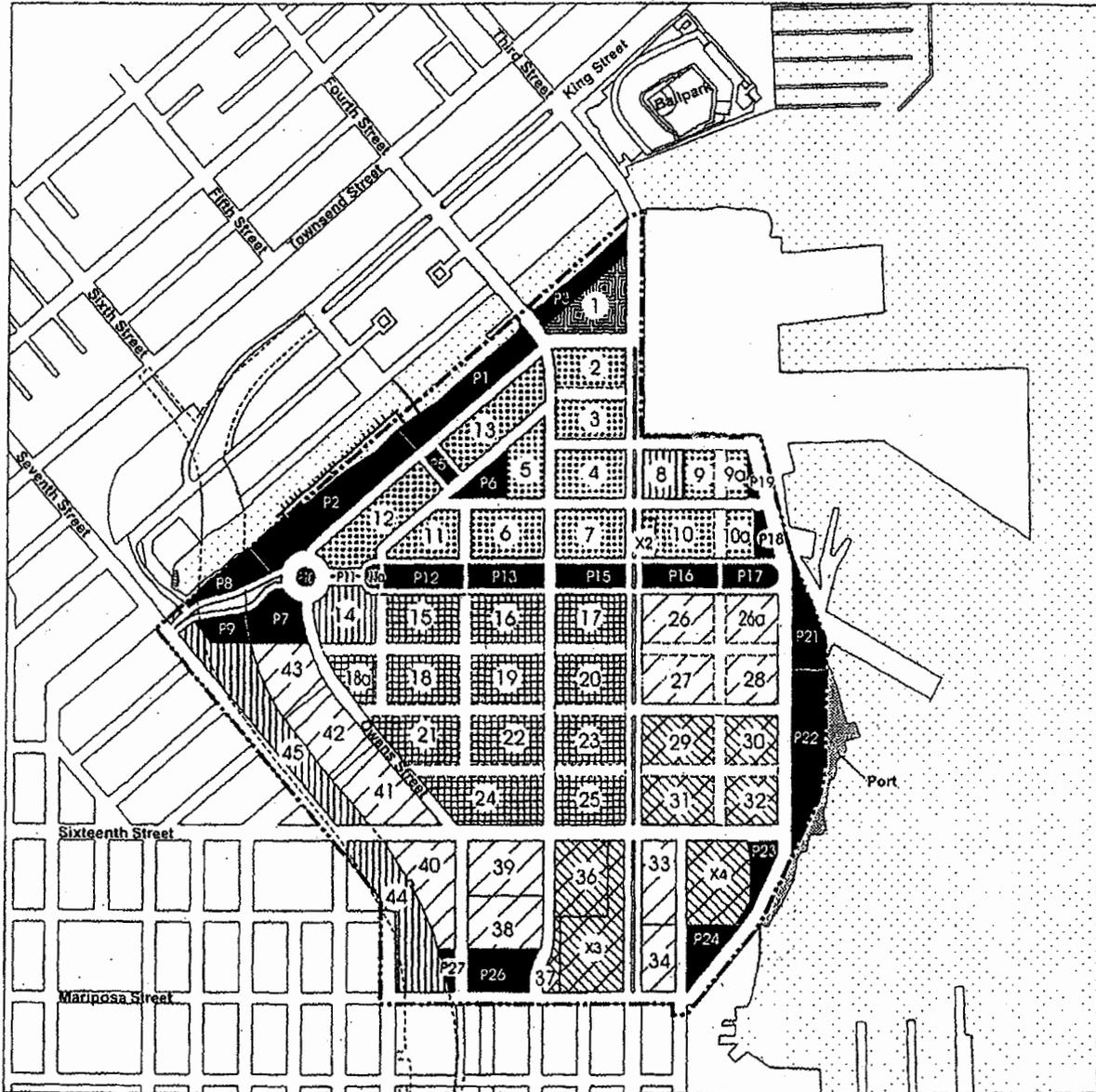
Excepting therefrom, those mineral rights reserved by the following documents, with no right of surface entry:

1. Document recorded March 31, 1987 in Reel E309, Image 1138, Official Records.
2. Document recorded July 19, 1999, Instrument No. 99-G622155, Official Records.
3. Document recorded October 29, 2004, Instrument No. 2004-H841650, Official Records.

APN: 8722-025

EXHIBIT B
Mission Bay Land Use Plan – South

(Attached)



MISSION BAY LAND USE PLAN - SOUTH

JOHNSON FAHN PARTNERS

SAN FRANCISCO, CALIFORNIA

CATELLUS DEVELOPMENT CORPORATION