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: _______________

THIRD AMENDMENT TO MISSION BAY SOUTH
OWNER PARTICIPATION AGREEMENT

Dated ____________, 2013

by and between

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

and

FOCIL-MB, LLC, a Delaware limited liability company
THIRD AMENDMENT TO MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT

This Third Amendment to the Mission Bay South Owner Participation Agreement (this “Third Amendment”), dated for reference purposes only as of ______________, 2013, 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”).

RECITALS

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

A. The 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 amended by a First Amendment to Mission Bay South Owner Participation Agreement (the "First OPA Amendment") dated as of February 17, 2004 and recorded March 3, 2004 as Document No. 2004H669955 in the Official Records, between Former Agency and Catellus Land and Development Corporation, a Delaware corporation ("CLDC"), successor in all of CDC's rights and obligations under the Original OPA, and 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. 2005I080843 in the Official Records, between Former Agency, CLDC, and the Owner, successor in interest to all of CLDC's rights and obligations under the Original OPA, as amended by the First OPA Amendment. The
Original OPA, as amended by the First OPA Amendment and the Second OPA Amendment, shall be referred to in this Third Amendment as the "South OPA". The capitalized terms used herein shall have the meaning set forth in the South OPA, unless otherwise specifically provided herein.

B. The Owner has sold certain real property identified in the Land Use Plan (Attachment A to the Original OPA) as “Block 1” to Block 1 Associates LLC, a Delaware limited liability company (“Block 1 Owner”). Block 1 Owner has submitted a Major Phase Application for Block 1 that would permit development of up to 350 residential units, a 250-room hotel, and up to 25,000 leasable square feet of retail uses (the “Block 1 Project”). The Block 1 Project requires, among other things, an amendment to the Mission Bay South Redevelopment Plan and amendments to the South OPA.

C. 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 34161 – 34168 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”) (together, AB 26 and AB 1484 are referred to as the “Redevelopment Dissolution Law”).

D. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets and obligations were transferred to the Successor Agency. Accordingly, the Successor
Agency assumed the obligations under the Mission Bay South Redevelopment Plan and the South OPA, which remain in effect.

E. 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)(1)(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.

F. In order to implement the Block 1 Project, the Owner and Successor Agency proposed an amendment to the Mission Bay South Redevelopment Plan. In accordance with those provisions of the Community Redevelopment Law, as amended by Redevelopment Dissolution Law, that authorize an amendment to a redevelopment plan, Cal. Health & Safety Code §§ 33450 et seq., the Board of Supervisors has approved an amendment to the Mission Bay South Redevelopment Plan by Ordinance No. ____-13 (______, 2013) to allow residential use on Block 1 as a permitted secondary use in addition to hotel and retail uses.

G. The Art Requirement set forth in Section 304.9 of the Mission Bay South Redevelopment Plan applies to hotel use, which is considered a commercial use.
H. The costs incurred by the Agency and the City Agencies in connection with the negotiation of the Block 1 Project and this Third Amendment and related documents, including, without limitation, the amendment to the Mission Bay South Redevelopment Plan, Major Phase, 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.

I. The Owner and the Successor Agency wish to enter into this Third Amendment to implement the amended Mission Bay South Redevelopment Plan, to permit the proposed residential use on Block 1 and to reflect the potential increase in the number of Residential Units contemplated to be developed in the South Plan Area. The Third Amendment fulfills the following objectives:

(i) The development of dwelling units on Block 1, in conjunction with a smaller hotel and retail uses, will fulfill the objectives of the Mission Bay South 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) Development of a 500-room hotel on Block 1 is infeasible in the current market, as discussed in the report prepared by PKF Consulting USA, dated May 14, 2013, for the Successor Agency, and Block 1 has remained undeveloped; allowing for residential use of Block 1 will support the full economic use of Block 1, including
development of a smaller hotel, and will accelerate the completion of development under the Mission Bay South Redevelopment Plan, the OPA and the related enforceable obligations;

(iii) Development of Block 1 for mixed-use residential, retail and hotel will generate more revenues from property taxes payable to the taxing entities, including the City and County of San Francisco, the San Francisco Unified School District, City College of San Francisco and the Bay Area Rapid Transit district, compared with the existing undeveloped conditions.

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

J. The parties acknowledge that Owner has assigned its rights and obligations with respect to Block 1 Owner, pursuant to the terms of that certain Assignment and Assumption Agreement, dated May 17, 2012, approved by the Successor Agency. The Parties acknowledge and agree that concurrent with execution hereof, Owner, Block 1 Associates and Successor Agency will enter into a First Amendment to Assignment and Assumption Agreement. Block 1 Owner will (i) agree to comply with all of the applicable terms and conditions of this Third Amendment, (ii) enter into a card check agreement governing any hotel developed on Block 1; and (iii) comply with the Successor Agency's Small Business Enterprise Policy, as adopted by Agency Resolution No. 82-2009 (July 27, 2009) ("SBE Policy"). The Third Amendment is a material change to the South OPA, and thus triggers the applicability of the SBE Policy. The First Amendment to Assignment and Assumption Agreement, under terms and conditions set forth therein, will release Owner from the obligations in the Third Amendment, with the
exception of the SBE Policy. Notwithstanding the foregoing, nothing herein shall affect the existing rights and obligations of other transferees of property within the South Plan Area pursuant to previously approved Assignment and Assumption Agreements, or their respective contractors and subcontractors.

K. 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 [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 I, this Third Amendment meets this standard for amendment of an enforceable obligation.

L. The Oversight Board, consistent with its authority under AB 26 to approve amendments to agreements between the dissolved redevelopment agency and private parties where it finds that amendments or early termination would be in the best interests of the taxing entities, after holding a duly noticed public hearing in accordance with Redevelopment Law Section 33452, by Resolution No.__________, determined that an amendment to the South OPA that would permit residential use of Block 1 as a secondary use and an increase in residential density in the Plan Area is in the best interests of the taxing entities.

M. Under Redevelopment Dissolution Law, the California Department of Finance (“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 ______________, 2013, the Successor Agency provided a copy of Oversight Board Resolution No. ____________ 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 on Owner Property, specifically “3,043” units of housing, including “1,935” Market Rate Residential Units, and referring to the Owner Property, such phrases shall be deemed to be amended to refer to “up to 3,393” wherever the number “3,043” appears and “up to 2,285” wherever the number “1,935” appears. The South OPA will also be amended, when the specific number of total Residential Units to be developed on Owner Property or Market Rate Residential Units are referenced, to include the following phrase: “Up to 350 of the total number of Market Rate Residential Units constructed by the Owner will be limited to Block 1, and the total 350 Market Rate Residential Units on Block 1 will only be allowed if the 500-room hotel is reduced to a maximum of 250 guest rooms and the total amount of Block 1 retail does not exceed 25,000 leasable square feet. The total number of Market Rate Residential Units allowed to be constructed on Block 1 will be reduced by the number of Owner Affordable Housing Units constructed by the Owner on Block 1 pursuant to Section 4.5 of Attachment C (Mission Bay South Housing Program) to this South OPA. In no event shall the total number of Market Rate Residential Units and Owner Affordable Housing Units constructed
by the Owner on Block 1 exceed 350.” Where the phrase “approximately” precedes any number identified in this Paragraph 1, that word shall be retained.

2. **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 hotel guest rooms to be developed on Owner Property, specifically “500” guest rooms, such phrases shall be deemed to be amended to refer to “up to 500” guest rooms, wherever the number “500” appears.

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 the total leasable square footage of retail uses, which may include City-serving, local-serving, and entertainment retail to be developed on Owner and Agency Property, specifically “230,000” or “260,000” leasable square feet for the total retail in the South Plan Area, including “50,000” leasable square feet on Block 1, such phrases shall be deemed to be amended to refer to “up to 230,000” or “up to 260,000” leasable square feet, wherever the numbers “230,000” or “260,000” appear, and “up to 50,000” leasable square feet, wherever the number “50,000” appears related to Block 1.

4. **Size and Configuration of Hotel Site.** The South OPA is hereby amended to include a new section 3.2(d) as follows:

   3.2(d) In the event Block 1, as illustrated by the parcel identified as the “Block 1 Hotel Parcel” shown on the Parcel Map attached hereto as Attachment A-1, which comprises the Hotel land use district, is subdivided to create more than a single parcel for hotel and residential development, the minimum lot size
for the subdivided parcel designated for hotel use shall be of a size and configuration suitable for the construction of a 250–guest room hotel (“Hotel Site”). The final size and configuration of the Hotel Site will be determined as part of a Major Phase for the entire Block 1. As part of a Major Phase for Block 1, the Owner or Block 1 Owner, shall provide adequate documentation, as determined by the Successor Agency, to support a finding that the final size and configuration of the Hotel Site is suitable for a 250-guest room hotel. To the extent that this documentation is relevant to the Executive Director’s determination of secondary use findings under Section 302 of the Mission Bay South Redevelopment Plan, the Executive Director may rely on that documentation in those findings.

5. Redevelopment Land Use Map. Attachment A (Redevelopment Land Use Map) of the South OPA is amended and replaced by Attachment A-1 attached hereto so that the label of “Hotel” in the legend reads as follows:

HOTEL (Mixed use including Hotel, Residential and Retail)

6. Scope of Development. Section 1.B.1 of Attachment B (Scope of Development) is hereby amended and restated to read as follows:

1. B.1. Up to approximately 2,285 market-rate Dwelling Units as defined in the Mission Bay South Redevelopment Plan, 350 of which shall be allocated only to Block 1 and to no other area in South Plan Area as shown on Attachment A-1 as allowed under Section 1.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. As provided in Section 302 of the Mission Bay South Redevelopment Plan, as amended, residential use on Block 1 is permitted as a secondary use upon a determination by the Executive Director that the use “makes a positive contribution to the character of the Plan Area, based on a finding of consistency with the following criterion [sic]: the secondary use, at the size and intensity contemplated and at the proposed location will provide a development that is necessary or desirable for, and compatible with, the neighborhood or the community.”

7. **Scope of Development Section 1.B.2.** Section 1.B.2 of the Scope of Development is hereby amended and restated to read as follows:

   1. B.2. Up to approximately 230,000 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 20,700 Leasable square feet of City-serving retail, and up to 50,000 Leasable square feet of entertainment or Local-serving retail on Block 1.

8. **Scope of Development Section 1.B.3.** Section 1.B.3 of the Scope of Development is hereby amended to read as follows:

   1. B.3. On Block 1, an up to 500 room hotel and associated facilities such as retail, banquet and conference rooms with up to 50,000 Leasable square feet of retail or an up to 250 room hotel and facilities such as banquet and conference rooms and associated facilities, with up to 25,000 Leasable square feet of retail and up to 350 Dwelling Units, which may include Owner Affordable Housing Units.
9. Affordable Housing Requirement. Attachment C (Mission Bay South Housing Program) is hereby amended to include a new Section 4.5 under Owner Housing Program as follows:

4.5 Block 1 Affordable Housing Requirement

(a) Imposition of Block 1 Affordable Housing Requirement. Notwithstanding anything else in this Housing Program or the OPA, the only affordable housing requirement applicable to development of Residential Units within Block 1 shall be as set forth in this Section 4.5. The Successor Agency shall require as a condition of approval for any project within Block 1 that includes Residential Units (“Block 1 Residential Project”) that Owner comply with the following conditions (“Block 1 Affordable Housing Requirement”):

(i) any residential apartment (rental) building on Block 1 (“Market Rate Rental Project”) will provide a minimum of fifteen percent (15%) of the total number of on-site Residential Units as affordable housing units (“For-Rent Owner Affordable Housing Units”). The For-Rent Owner Affordable Housing Units shall not satisfy any Agency Obligations nor account against the Agency’s affordable obligations under this OPA; or

(ii) any residential condominium (for-sale) building on Block 1 (“Market Rate For-Sale Project”) will pay an affordable housing in-lieu fee to fund affordable housing development within the South Plan Area
(“Block 1 Affordable Housing Fee”) in accordance with this Third OPA Amendment, and the following shall apply:

(1) the applicable percentage for the Block 1 Affordable Housing Fee shall be 20% of the total number of Residential Units constructed in such Market Rate For-Sale Project; and

(2) the Block 1 Affordable Housing Fee shall be calculated based on the affordable housing fee schedule produced by the City for its Inclusionary Affordable Housing Program (Planning Code, Article 4, Section 415 or successor program) in effect at the time payment is due, as such fee schedule may be amended from time to time; and

(3) the Block 1 Affordable Housing Fee shall be paid to the Successor Agency prior to issuance of the first construction document for the applicable Market Rate For-Sale Project.

(b) Comparability with Market Rate Dwelling Units. The For-Rent Owner Affordable Housing Units shall be substantially equivalent in size, location, amenities and quality to reflect the mix of unit sizes and room configurations of the market rate residential units in a Market Rate Rental Project, with a goal of comparability in square footage and interior features. The interior features of the For-Rent Owner Affordable Housing Units need not be the same as or equivalent to those in market rate residential units, as long as they are of good quality and are consistent with the then-current standards for new housing. The For-Rent Owner Affordable Housing Units shall be dispersed throughout the
Market Rate Rental Project in a unit type mix that is representative of the market rate dwelling units.

(c) Completion of Dwelling Units. For-Rent Owner Affordable Housing Units shall be constructed, completed and ready for occupancy no later than the market rate dwelling units.

(d) Affordability Requirements. The For-Rent Owner Affordable Housing Units shall be restricted to low-income households earning up to sixty percent (60%) of the area median income, as adjusted only for household size (“AMI”), with the maximum rent that may be charged any tenant occupying an For-Rent Owner Affordable Housing Unit not exceeding thirty percent (30%) of sixty percent (60%) of AMI, as adjusted only for household size as set forth in California Code of Regulations (CCR), title 25, Section 6932, as amended from time to time, as of the first date of tenancy (“Maximum Annual Rent”).

In the event that a For-Rent Owner Affordable Housing Unit is converted to an ownership unit (“For-Sale Owner Affordable Housing Unit”), existing tenants will be offered a right of first refusal to purchase the For-Sale Owner Affordable Housing Unit. For any units that are occupied, the maximum purchase price shall be set at the level of affordability that is the higher of sixty percent (60%) of AMI, as adjusted only for household size as set forth in California Code of Regulations (CCR), Title 25, Section 6932, as amended from time to time, or the actual income level of the existing tenant, as of the date of the close of escrow, assuming an annual payment for all housing costs of thirty-three percent (33%) of
the combined household annual net income, a five percent (5%) down payment, and available financing ("Maximum Purchase Price"). The Maximum Purchase Price of any For-Rent Owner Affordable Housing Unit that is vacant or whose tenant does not exercise the right of first refusal to purchase the unit will be set at 110% of AMI, as adjusted only for household size as set forth in California Code of Regulations (CCR), Title 25, Section 6932, as amended from time to time. Conversion of any For-Rent Owner Affordable Housing Units to For For-Sale Owner Affordable Housing Unit will be subject to all requirements in a recorded Declaration of For-Sale Restrictions related to conversion substantially in the form of Exhibit K to the Mission Bay South Housing Program, Declaration of For-Sale Site Restrictions (Attachment 1 to this Third Amendment) including, but not limited to: Notice of Conversion to Agency and Rights of Existing Tenants (Notice of Conversion; Right of First Refusal); and Incentive Programs (including Downpayment Assistance and Moving Assistance). Additionally all terms and conditions of the sale shall conform to the Agency’s Limited Equity Ownership Program (Attachment 2 to this Third Amendment), which may be amended from time to time.

(e) **Declaration of Restrictions for Continued Affordability of For-Rent Owner Affordable Housing Units.** The For-Rent Owner Affordable Housing Units shall be subjected to a recorded Declaration of Restrictions in substantially the form of Exhibit J, to the Mission Bay South Housing Program, Declaration of Rental Restrictions (Attachment 3 to this Third Amendment), to ensure compliance with the Block 1 Affordable Housing Requirement for a continuous
period of seventy-five (75) years commencing upon Completion of Construction of the Block 1 Residential Project. As a condition precedent to the City's issuance of a Building Permit for the Block 1 Residential Project, the Owner shall record the Declaration of Restriction as a lien against Block 1 Residential Project, and at the time of such recordation, no matters then of record shall have priority over such Declaration, except Approved Title Exceptions as set forth in Exhibit B to the Mission Bay South Housing Program. Each Declaration of Restrictions shall automatically terminate and expire and be released and be of no further force and effect whatsoever upon the expiration of its term. Upon Owner's written request at any time thereafter, the Successor Agency, or its successors or assigns, shall provide a release of the Declaration of Restrictions in a form reasonably acceptable to Owner.

(f) **Affirmative Marketing.** The Owner's obligations with respect to the marketing and operation of all Owner Affordable Housing Units, including For-Rent Owner Affordable Housing Units and For-Sale Owner Affordable Housing Units are described in Exhibit L to the Mission Bay South Affordable Housing Program, Block 1 Owner Affordable Housing Marketing and Operations Guidelines (Attachment 4 to this Third Amendment). Requirements for the Owner Affordable Housing Units, include, but are not limited to, the rental rates of For-Rent Owner Affordable Housing Units, sales prices of For-Sale Owner Affordable Housing Units, tenant qualifications, reporting requirements; and a preference for Agency Certificate of Preference Holders under the Agency’s Property Owner and Occupant Preference Program (as reprinted September 11,
2008 and effective October 1, 2008 and on file with the clerk of the Board of Supervisors in File No. 080521).

10. **Mission Bay South Design Review and Document Approval Procedure.** Section III(A) of Attachment G (Mission Bay South Design Review and Document Approval Procedure) is amended to include the following: “In addition to any applicable Design Standards set forth in the Mission Bay South Design for Development, residential development on Block 1 will be governed by the Residential Guidelines set forth for Residential Districts in the Mission Bay South Design for Development, including but not limited to requirements related to Street Frontage, Building Height and Form, and Architectural Details, and that the Hotel Site development will be governed by the Hotel Guidelines set for the in the Mission Bay South Design for Development, including but not limited to Public Open Space, Street Frontage, Building Height and Form, and Architectural Details.”

11. **Costa-Hawkins Waiver.** The Costa-Hawkins waiver set forth in this Section 11 applies only to development on Block 1. Owner understands and agrees that the Costa-Hawkins Rental Housing Act (California Civil Code sections 1954.50 et seq.; the "Costa-Hawkins Act") does not and in no way shall limit or otherwise affect the restriction of rental charges for the For-Rent Owner Affordable Housing Units constructed by the Owner on Block 1 pursuant to Section 4.5 of Attachment C (Mission Bay South Housing Program) to this South OPA. This South OPA falls within an express exception to the Costa-Hawkins Act because the South OPA is a contract with a public entity in consideration for a direct financial contribution or other forms of assistance specified in Chapter 4.3 (commencing with section 65915) of Division 1 of Title 7 of the California Government Code. Accordingly, Owner, on behalf of itself and all of its successors and assigns, agrees not to challenge, and expressly waives, now and forever, any and
all rights to challenge, Owner’s obligations set forth in the Mission Bay South Housing Plan related to For-Rent Owner Affordable Housing Units, under the Costa-Hawkins Act, as the same may be amended or supplanted from time to time.

Owner shall include the following language, in substantially the following form, in any assignment or partial assignment of the South OPA with respect to Block 1 to subsequent developers:

"The Mission Bay South OPA (including the Housing Plan) implements the Community Redevelopment Law, Cal. Cal. Health & Safety Code §§ 33000 et seq. ("CRL"), as amended, and Successor Agency policies and includes regulatory concessions and significant public investment in the Project. The regulatory concessions and public investment include, without limitation, a direct financial contribution of net tax increment and other forms of public assistance specified under CRL. These public contributions result in identifiable, financially sufficient and actual cost reductions for the benefit of Owner. In light of the Successor Agency's authority under CRL, and in consideration of the direct financial contribution and other forms of public assistance described above, the parties understand and agree that the Costa-Hawkins Act does not and shall not apply to the For-Rent Owner Affordable Housing Units developed at the Block 1 Project under the South OPA."

The Parties understand and agree that the Successor Agency would not be willing to enter into the South OPA, without the agreement and waivers as set forth in this Section 11.


12.1. **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.

12.2. **Successors and Assigns.** This Third Amendment is binding upon and will inure to the benefit of the successors and assigns of the Former Agency, Successor Agency, the Owner, and, as applicable, the City, subject to the limitations set forth in the South OPA.
12.3. **Recitals.** The Recitals in this Third Amendment are included for convenience of reference only and are not intended to create or imply covenants under this Third Amendment. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Third Amendment, the terms and conditions of this Third Amendment shall control.

12.4. **Counterparts.** This Third 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 Third Amendment to be duly executed on its behalf and the Owner has signed or caused this Third Amendment to be signed by duly authorized persons, all as of the day first above written.

Authorized by Successor Agency Resolution
No. ____-13, adopted __________, 2013

SUCCESSOR AGENCY
Successor Agency to the Redevelopment Agency of the City and County of San Francisco

By ___________________________
Tiffany J. Bohee
Executive Director

FOCIL-MB, LLC, a Delaware limited liability company

By: ___________________________

Name: ___________________________

Title: ___________________________

Approved as to Form:

DENNIS J. HERRERA,
City Attorney

By ___________________________

Heidi J. Gewertz
Deputy City Attorney
ATTACHMENT 1

EXHIBIT K

MISSION BAY SOUTH HOUSING PROGRAM
BLOCK 1 FOR-SALE RESTRICTIONS

(TO BE PROVIDED)
ATTACHMENT 2

AGENCY LIMITED EQUITY OWNERSHIP PROGRAM

(TO BE PROVIDED)
ATTACHMENT 3

EXHIBIT J

MISSION BAY SOUTH HOUSING PROGRAM
BLOCK 1 RENTAL RESTRICTIONS
EXHIBIT J
MISSION BAY SOUTH HOUSING PROGRAM
BLOCK 1 RENTAL RESTRICTIONS

Free Recording Requested 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

WHEN RECORDED, MAIL TO:
Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Ave., 5th Floor
San Francisco, CA 94103
Attention: ________________________________

(Space above this Line Reserved for Recorder’s Use)

Dated: ____________________________________

DECLARATION OF RENTAL RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS (“Declaration”) is made this _____ day of ____________, 2013, by [Insert the appropriate entity: FOCIL-MB, LLC, a Delaware corporation (“FOCIL”), or its agents, designees or successors; or insert name of a permitted Transferee under the South OPA or its agents, designees or successors; update the recitals] as declarant (the “Owner”), in favor of 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”), with reference to the following:

A. Owner is fee owner of record of that certain real property located in the City and County of San Francisco, State of California legally described in the attached Exhibit “A” (the “Property”), which is comprised of __________ acres. Owner intends to construct on the Property ________ For-Rent Residential Units.

B. The Property is within the South Plan Area in the Mission Bay South Redevelopment Plan Area in the City and County of San Francisco and is subject to the provisions of the Mission Bay South Redevelopment Plan adopted by the San Francisco Board of Supervisors on __________.
C. The 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 amended by a First Amendment to Mission Bay South Owner Participation Agreement (the "First OPA Amendment") dated as of February 17, 2004 and recorded March 3, 2004 as Document No. 2004H669955 in the Official Records, between Former Agency and Catellus Land and Development Corporation, a Delaware corporation ("CLDC"), successor in all of CDC's rights and obligations under the Original OPA, and 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. 2005I080843 in the Official Records, between Former Agency, CLDC, and FOCIL, successor in interest to all of CLDC's rights and obligations under the Original OPA, as amended by the First OPA Amendment and a Third amendment to Mission Bay South Owner Participation Agreement (the “Third OPA Amendment) dated as of ______ and recorded _______, as Document No. ______ in the Official Records, between Successor Agency and the FOCIL. The Original OPA, as amended by the First OPA Amendment, the Second OPA Amendment, and the Third OPA Amendment shall be referred to in this Declaration as the "South OPA".

D. The South OPA includes the Housing Program which is attached thereto as Attachment C (the “Housing Program”) concerning the development and use of the Property, which South OPA and Housing Program is on file with the Successor Agency as a public record and is incorporated herein by reference and which South OPA and Housing Program provides for the execution and recordation of this Declaration. This Declaration is being executed and recorded for the benefit of the Successor Agency in accordance with the Housing Program and to satisfy the conditions for provision of Owner Affordable Housing Units pursuant thereto.

NOW, THEREFORE, OWNER AGREES AND COVENANTS AS FOLLOWS:

1. RESTRICTED AFFORDABLE RESIDENTIAL UNITS.

   1.1 For-Rent Owner Affordable Housing Units. The occupancy of (____) For-Rent Owner Affordable Housing Units in the Residential Project located on the Property shall be restricted to housing for low income persons households at Affordable Rents.

   1.2 Term. Owner Affordable Housing Units shall remain available at Affordable Rent for a continuous period of seventy-five (75) years from the date of issuance of a Certificate of Occupancy for the Residential Project located on the Property, regardless of any termination of the South OPA. This Declaration shall automatically terminate and expire, without further action of Agency or Owner, and shall be released and be of no further force and effect whatsoever upon expiration of the above term.
2. **DEFINITIONS.**

All capitalized terms used in this Declaration which are not otherwise defined herein shall have the meanings given them in the South OPA, including the Housing Program which is Attachment C thereto. Terms defined in the South OPA or the Attachments thereto and also set forth in this Declaration are provided herein for convenience only.

2.1 **Affordable** means a monthly rental charge, including a utility allowance in an amount determined by the San Francisco Housing Authority, which does not exceed thirty percent (30%) of the Area Median Income permitted for the applicable type of Owner Affordable Housing Unit based upon Household Size.

2.2 **Area Median Income ("AMI")** means the median income for a household (based upon Household Size) as determined pursuant to Section 50093 of the California Health and Safety Code.

2.3 **Household Size** means the total number of bedrooms in an Owner Affordable Housing Unit plus one (1).

2.4 **Owner Affordable Housing Unit** means an Owner Affordable Housing Unit which is Affordable to households earning up to sixty percent (60%) of the Area Median Income.

2.5 **Rent or Rental Rate** means, for each Owner Affordable Housing Unit, the total of monthly payments for (a) use and occupancy of the Residential Unit and land and facilities associated therewith; (b) any separately charged fees or services assessed by the Owner which are required of all tenants, other than security deposits; (c) a reasonable allowance for utilities which are paid by the tenant, not including telephone service (see definition of Utility Allowance); and (d) any taxes or fees charged for use of the land and facilities other than the Owner.

2.6 **Utility Allowance** means, if the cost of utilities (except telephone) and other services for an Owner Affordable Housing Unit is the responsibility of the occupying household, an amount equal to the estimate made by the San Francisco Housing Authority or, if not available, the U.S. Department of Housing and Urban Development of the monthly costs of a reasonable consumption of such utilities and other services for the unit by an energy-conservative household of modest circumstances consistent with the requirements of safe, sanitary and healthful living environment.

3. **RENTAL RATES FOR OWNER AFFORDABLE HOUSING UNITS.**

3.1 **Initial Rents.** The Rental Rate for each For-Rent Owner Affordable Housing Unit shall be determined based upon Household Size for that Owner Affordable Housing Unit, and shall not exceed thirty percent (30%) of sixty percent (60%) of AMI, as adjusted solely for household size as forth in California Code of Regulations (CCR), title 25, Section 6932, as amended from time to time, as of the first date of tenancy (“Maximum Annual Rent”).
3.2 **Rent Increases.** The Rent for Owner Affordable Housing Units may be increased once each year to reflect changes, if any, in the Area Median Income and the Utility Allowance. No annual increase shall be greater than the percentage increase during the immediately preceding year, if any, in the Area Median Income, even if the Owner, due to an increase in the Area Median Income, was entitled to increase the Rent in prior years but elected not to do so.

4. **INCOME CERTIFICATION FOR TENANTS OF OWNER AFFORDABLE UNITS.**

4.1 **Initial Income Certification.** The Owner shall require all households applying for occupancy of Owner Affordable Housing Units to submit an income certification at the time of application and annually thereafter on the form attached hereto as Attachment A. The Owner shall make reasonable efforts to verify such income certifications. The initial rentals of Owner Affordable Housing Units for each household shall be to households whose income does not exceed sixty percent (60%) of Area Median Income.

4.2 **Household Income After Occupancy.** Changes in incomes of households occupying Owner Affordable Housing Units shall not affect the classification of Residential Units as Owner Affordable Housing Units until the household income exceeds 120% of Area Median Income, in which case the Residential Unit shall no longer be considered an Owner Affordable Housing Unit and the Owner shall designate the next available Residential Unit of comparable size within the Residential Project as an Owner Affordable Housing Unit at the same original level of affordability as the de-designated Residential Unit, and shall restrict the Rent on such Residential Unit to the applicable level specified in Section 3.1 above. Upon designation of the next available Residential Unit, the Owner shall no longer be required to limit rental charges for the Residential Unit which is no longer considered an Affordable Housing Unit to the levels described in Section 3 above.

5. **RECORDS AND REPORTING REQUIREMENTS FOR OWNER AFFORDABLE HOUSING UNITS.**

5.1 **Reports.** The Owner shall provide reports to the Successor Agency on a quarterly basis, commencing on the 15th of the month after issuance of a Certificate of Occupancy for the Residential Project, regarding the Owner Affordable Housing Units in the form attached hereto as Attachment B, and any additional reports or information reasonably requested by the Agency as to the operation of the Owner Affordable Housing Units.

5.2 **Maintenance of Records.** The Owner shall maintain and retain records of all applications, income certifications, income verifications, leases, management actions, and rent rolls relating to the Owner Affordable Housing Units for five (5) years. The Successor Agency or its designee shall have the right to inspect such records upon reasonable notice during regular business hours.
6. **COVENANTS.**

6.1 **Restrictions.** The restrictions set forth in this Declaration shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and shall inure to the benefit of each Owner thereof and their successors and assigns.

7. **REMEDIES.**

Notwithstanding any other provisions of the South OPA to the contrary, the Successor Agency shall be entitled to all remedies in the event of any default in or breach of this Declaration which are available in law or equity.

8. **GOVERNING LAW.**

This Declaration shall be governed and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Owner has executed this instrument the day and year first hereinabove written.

“OWNER”

[FOCIL-MB, LLC,
a Delaware corporation; or if another party insert appropriate name of party]

By: ________________________________

Its: ________________________________
STATE OF CALIFORNIA

COUNTY OF ____________________________

On ____________, 20 ___ before me, the undersigned, a Notary Public in and for said State personally appeared ____________________________ (OR - 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.

WITNESS my hand and official seal.

________________________________________
Signature of Notary (Seal)
Attachment “A”

INCOME CERTIFICATION

[To be provided for each Residential Project prior to recordation of Declaration.]
Attachment “B”

OWNER AFFORDABLE HOUSING UNIT REPORT

[To be provided for each Residential Project prior to recordation of Declaration.]
ATTACHMENT 4

EXHIBIT L

MISSION BAY SOUTH HOUSING PROGRAM
BLOCK 1 OWNER’S MARKETING AND OPERATING OBLIGATIONS
EXHIBIT L

MISSION BAY SOUTH HOUSING PROGRAM

BLOCK 1 OWNER’S MARKETING AND OPERATING OBLIGATIONS

I. Purpose.

A. The purpose of this Exhibit F is to set forth the Owner’s marketing and operating obligations with respect to all Owner Affordable Residential Units on Block 1, including For-Rent Owner Affordable Housing Units and For-Sale Owner Affordable Housing Units.

B. This Exhibit L first sets forth the nondiscrimination requirements applicable to all Owner Affordable Residential Units on Block 1. It then sets forth the specific marketing and operating requirements applicable to each type of Owner Affordable Residential Unit. It then sets forth the reporting requirements applicable to each type of Owner Affordable Residential Unit.

C. In addition to this Exhibit L, there will be recorded against each Residential Project on Block 1 containing a For-Rent Owner Affordable Housing Unit and against each For-Sale Owner Affordable Housing Unit a “Declaration of Restrictions” in the form attached as Exhibit J (for Block 1 Owner Affordable Rental Residential Units) or Exhibit K (for Block 1 Owner For-Sale Affordable Residential Units) to the Housing Program. Each Declaration of Restrictions sets forth the income requirements and rental or sales price restrictions applicable to the Owner Affordable Housing Units in a particular Residential Project.

D. In the event of any inconsistency between the terms of this Exhibit L and the South OPA, including the Mission Bay South Housing Program attached as Attachment C to the South OPA (the “Housing Program”), the South OPA and Housing Program shall control.

II. Definitions.

Initially capitalized terms, unless separately defined in this Exhibit L, have the meanings set forth in the South OPA and the Housing Program attached as Attachment C to the South OPA. Terms defined in the South OPA and the attachments thereto, including the Housing Program, and also set forth in this Exhibit L, are provided in this Exhibit L for convenience purposes only.

A. Affordable Housing Units means Residential Units constructed in on Block 1 which shall consist of For-Rent Owner Affordable Housing Units and For-Sale Owner Affordable Housing Units.

B. Certificate Holder means an owner or occupant of residential property who meets the following criteria:

1. The owner or occupant was displaced by either (i) the Agency’s acquisition of such residential property, or (ii) the rehabilitation of such
residential property where the owner of the property has entered into an owner participation agreement or other similar agreement with the Agency to perform such rehabilitation; and

2. The Agency has determined that such individual is eligible to receive a Certificate of Preference pursuant to the relocation and replacement housing responsibilities of the Agency pursuant to Article 9, beginning with Section 33410, et seq., of the California Health and Safety Code; and

3. The Agency has certified such individual as a holder of a Certificate of Preference pursuant to the Agency’s Property Owner and Occupant Preference Program, established pursuant to Article 9, beginning with Section 33410 of the California Health and Safety Code, as such program currently exists or as may be amended within ninety (90) days of the Effective Date in accordance with the Plan and Plan Documents, and such future amendments as may be consented to by Owner in its sole discretion. Any person claiming to be a Certificate Holder who has not been certified by the Agency is not entitled to any of the preferences in this Exhibit L until such time as that person has been certified by the Agency as a Certificate Holder.

C. Certificate of Preference means a certificate issued by the Agency pursuant to the Agency’s Property Owner and Occupant Preference Program, established pursuant to Article 9, beginning with Section 33410 of the California Health and Safety Code, to evidence the status of an owner or occupant of residential property as a Certificate Holder. For purposes of this Exhibit L, a Certificate of Preference may be either a “Residential A Certificate,” or a certificate issued to other members of a Residential A Certificate household, a “Residential C Certificate,” as described in the Agency’s Property Owner and Occupant Preference Program, as such program currently exists or as may be amended within ninety (90) days of the Effective Date in accordance with the Plan and Plan Documents, and such future amendments as may be consented to by Owner in its sole discretion.

D. For-Rent or Rental means a Residential Unit which is not a For-Sale Residential Unit.

E. For-Sale or Sale means a Residential Unit which is intended at the time of Complete Construction to be offered for sale, e.g., as a condominium for individual Residential Unit ownership.

F. Market Rate Residential Unit means a Residential Unit which has no restrictions under the Housing Program or the South OPA with respect to affordability levels or income restrictions for occupants.

G. Owner Affordable Housing Unit means an Affordable Housing Unit to be constructed by the Owner on Block 1 pursuant to the Housing Program and the
South OPA which shall be either For-Rent or For-Sale housing offered in accordance with the terms of the Housing Program.

H. **Income Verification Information** means the information required by the United States Department of Housing and Urban Development (“HUD”) Handbook 4350.3 to determine eligibility for the rental of a For-Rent Owner Affordable Housing Unit, or the purchaser of a For-Sale Owner Affordable Housing Unit.

I. **Marketing Information** means the following with respect to each Residential Project that contains Owner Affordable Housing Units on Block 1:

1. A master Residential Unit list which indicates the following:
   a. The unit numbers of Owner Affordable Housing Units to be offered for Rental or Sale;
   b. The number of bedrooms and baths in each such Owner Affordable Housing Units;
   c. The approximate net square footage of each such Owner Affordable Housing Units;
   d. A list of amenities in each such Owner Affordable Housing Units (e.g., disposal, washer/dryer, etc.); and
   e. The initial rent or purchase price, as appropriate, for each such Residential Unit.

2. For each For-Rent Owner Affordable Housing Unit, the estimated itemized cost of utilities to be paid by each tenant household by Residential Unit size.

3. For For-Sale Owner Affordable Housing Units, the estimated cost of homeowner’s association dues to be paid by Residential Unit size.

4. A detailed description of Owner’s rules for tenants (or Covenants Conditions and Restrictions, as appropriate).

5. For For-Rent Owner Affordable Housing Units, the amount of any deposit required to reserve a Residential Unit, security deposit and all other fees related to the rental of such unit; and a policy for the deposit, use and return of any such amounts.

6. For For-Rent Owner Affordable Housing Units, the proposed duration of rental agreement or lease.

7. The amount of application processing fee, if any.
8. A description of application process, the length of time needed by Owner to process applications.

9. For For-Rent Owner Affordable Housing Units, copies of rental application and all forms to be used for Income Verification Information.

J. **Rent-Up** means the period of time from when the For-Rent Owner Affordable Housing Units in a Residential Project are first offered for lease until such time as rental agreements have been signed for all such For-Rent Owner Affordable Housing Units in the Residential Project.

K. **Residential Project** has the meaning set forth in the South OPA as follows: a Project containing Residential Units and possibly containing other uses permitted under the Mission Bay South Redevelopment Plan and this Housing Program.

L. **Residential Unit** has the meaning set forth in the South OPA as follows: a dwelling unit as defined in the Mission Bay South Redevelopment Plan. A dwelling unit is defined in the Mission Bay South Redevelopment Plan as follows: a room or suite of two or more rooms that is designed for residential occupancy for 32 consecutive days or more, with or without shared living spaces, such as kitchens, dining facilities or bathrooms.

M. **San Francisco Residents** means a household in which there are one or more persons 18 years or older who have resided in San Francisco for a minimum of twelve (12) continuous months prior to the date of application or purchase offer.

N. **San Francisco Worker** means a household in which there are one or more persons 18 years or older who have been employed full time at a company or business located in San Francisco for a minimum of twelve (12) continuous months, and such individual(s) have actually worked in San Francisco for such 12-month period.

O. **Second Lien Documents** means those documents described in Section 4.2 of Exhibit K to the Housing Program (“Declaration of For-Sale Restrictions”) to be executed by the purchaser of each For-Sale Owner Affordable Housing Unit.

### III. Nondiscrimination Requirements.

The Owner acknowledges the goal of achieving a residential population in the Owner Affordable Housing Units developed on Block 1 which reflects the racial and ethnic diversity of San Francisco. To that end, the Owner will comply with the affirmative marketing obligations described in this Exhibit L. In addition, in the marketing, operation and rental or sale of the Owner Affordable Housing Units on Block 1 (including the initial and subsequent rentals and sales of all Owner Affordable Housing Units), the Owner and any subsequent owner of any such Owner Affordable Housing Units shall not discriminate based on race, religion, color, ancestry, national origin, age, sex, sexual orientation, marital status, gender identity, disability, lawful source of income (as defined in Section 3304 of the San Francisco Police Code) (including, but not limited to Section 8 or any equivalent rent subsidy), or any other basis prohibited by law.
Nothing in this Section shall prohibit the Owner from applying other lawful standards for resident selection or from exercising its rights in managing property, so long as such standards and rights are equitably applied to prospective and actual residents of both Owner Affordable Housing Units.

IV. For-Rent Owner Affordable Housing Units.

   A. Procedures for Initial Rentals of For-Rent Owner Affordable Housing Units.

       1. Affirmative Marketing Obligations.

           a. Prior to the initial rental of For-Rent Owner Affordable Housing Units, the Owner shall advertise in media directed to different ethnic groups in San Francisco including, but not limited to, Asian Week, Chinese Times, El Bohemio, El Mensajero, Hokubei, Mainichi, Horizontes, Korea Times, Metro Reporter Group, New Bayview, New Fillmore, Nichi Bei Times, and Phillipine News. The Agency reserves the right to modify this list from time to time to adequately reflect diverse ethnicities and to allow for media which no longer exist; provided, however, that the list of required advertising media shall not exceed fifteen (15) publications. Advertisements shall be published in the predominant language of the ethnic group served by each applicable publication.

           b. Print ads shall be published at least twice in each publication which has a weekly circulation, and at least once in all other publications. Ads must be published prior to the Owner’s conducting the lottery described in Section IV.A.3 below for the initial rental of For-Rent Owner Affordable Housing Units in the applicable Residential Project.

           c. The Owner shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Subsection (b) above at least sixty (60) days prior to conducting the lottery described in Section IV.A.3 below for the initial rental of For-Rent Owner Affordable Housing Units. The Agency’s approval rights are limited to determining compliance with Subsection (d) below. The Agency will approve or disapprove the proposed advertisement within five (5) days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

           d. Print advertisements shall be no less than four inches (4”) by six inches (6”) in size. Each print advertisement shall include the U.S. Department of Housing and Urban Development Fair Housing logo and the words “Equal Housing Opportunity.” The
Owner shall include models of different races and ethnic background in all its pictorial advertising which includes models.

2. **Occupancy Priorities.**

   a. **Certificate Holders.** In the initial rental of For-Rent Owner Affordable Housing Units, the Owner shall give a first-priority preference to Certificate Holders of Residential A Certificates and a second-priority preference to Certificate Holders of Residential C Certificates, each in the manner described in Section IV.A.3.g below.

   b. **San Francisco Residents.** In the initial rental of For-Rent Owner Affordable Housing Units, the Owner shall give third-priority preference to San Francisco Residents in the manner described in Section IV.A.3.g below.

   c. **San Francisco Workers.** In the initial rental of For-Rent Owner Affordable Housing Units, the Owner shall give a fourth-priority preference to San Francisco Workers in the manner described in Section IV.A.3.g below.

3. **Rental Procedures/Lottery.**

   a. The Owner shall determine priority for occupancy of For-Rent Owner Affordable Housing Units according to the lottery system described in this Subsection 3.

   b. The Owner shall conduct a separate lottery for each Residential Project containing For-Rent Owner Affordable Housing Units.

   c. At least ninety (90) days prior to executing leases for For-Rent Owner Market Rate Residential Units in a Residential Project the Owner shall provide to the Agency the Marketing Information applicable to such Residential Units, together with a notice stating the date on which the Owner intends to start leasing such Residential Units.

   d. The Agency shall be solely responsible for notifying Certificate Holders of the availability of For-Rent Owner Affordable Housing Units. Within forty-five (45) days of the Agency’s receipt of the Owner’s notice under Subsection (c), the Agency shall provide to the Owner a list of Certificate Holders to include in the lottery for the applicable Residential Project, together with completed rental applications and Income Verification Information for each such Certificate Holder.
e. No later than the earlier of (i) fifteen (15) days from Owner’s receipt of the Agency’s list of Certificate Holders, or (ii) the expiration of the time period for the Agency to provide the information described in Subsection (d) above, the Owner shall combine applications from all Certificate Holders, if any, San Francisco Residents, San Francisco Workers and applications from members of the general public into one lottery for each Residential Project with Owner Affordable Housing Units.

f. The Owner shall select potential tenants at random from the combined pool of applicants, and shall prioritize potential tenants in the order selected into an initial list of potential tenants (the “Lottery List”).

g. The Owner shall then prioritize names on the Lottery List in the following order:

1) First, all Certificate Holders of Residential A Certificates on the Lottery List in the order in which their name was selected for the Lottery List;

2) Second, all Certificate Holders of Residential C Certificates on the Lottery List in the order in which their name was selected for the Lottery List;

3) Third, all San Francisco Residents on the Lottery List in the order in which their name was selected for the Lottery List;

4) Fourth, all San Francisco Workers on the Lottery List in the order in which their name was selected for the Lottery List; and

5) All remaining names on the Lottery List in the order in which their name was selected for the Lottery List.

This prioritized list shall be referred to as the “Potential Tenant List.” The Owner shall provide the Agency with the Potential Tenant List within three (3) days of its creation.

h. Within thirty (30) days of the creation of the Potential Tenant List, unless otherwise mutually agreed by the Owner and the Agency, the Owner shall, to the extent of availability of enough households on the Potential Tenant List, determine the eligibility of enough households on the Potential Tenant List as there are available For-Rent Owner Affordable Housing Units in a particular Residential Project (i.e., one household per available For-Rent Owner Affordable Housing Unit) in the order of priority on the Potential Tenant List, taking into account income and household
size restrictions for the For-Rent Owner Affordable Housing Units in each Residential Project, and applying all such other Owner tenant selection criteria consistent with this Exhibit L so as to fill all of the For-Rent Owner Affordable Housing Units. The Owner shall then inform all eligible tenants so selected of the availability of For-Rent Owner Affordable Housing Units in the particular Residential Project.

i. The Owner must provide to qualified Certificate Holders, San Francisco Workers and San Francisco Residents from the Potential Tenant List, as determined under Subsection (h) above, a reasonable opportunity to view either the actual Residential Unit for which the individual/household is qualified, or a model or other Residential Unit in that Residential Project which is substantially similar to the Residential Unit which the individual/household is qualified to occupy. The Owner may provide this opportunity at the same time for the entire group of such eligible individuals/households; provided that the duration and timing of such opportunity shall be not less than the opportunity given to individuals on the Potential Tenant List who are not Certificate Holders, San Francisco Residents or San Francisco Workers.

j. Certificate Holders, San Francisco Residents and San Francisco Workers qualified by the Owner from the Potential Tenant List, as described in Subsection (h) above, shall have at least three (3) days from and including the reasonable opportunity to view a Residential Unit under Subsection (i) above within which to notify the Owner of his/her intention to rent a For-Rent Owner Affordable Housing Unit and take all other steps necessary in accordance with the Marketing Information to secure such For-Rent Owner Affordable Housing Unit. The Owner is not required to provide a priority for the rental of such Residential Units among the qualified Certificate Holders, San Francisco Residents or San Francisco Workers.

4. **Tenant Income Eligibility.** The required tenant income levels for each For-Rent Owner Affordable Housing Unit in each applicable Residential Project shall be determined solely according to the requirements of Exhibit J to the Housing Program. Exhibit J, indicating the income restrictions for For-Rent Owner Affordable Housing Units in a Residential Project, shall be recorded against each such Residential Project in accordance with the Housing Program.

5. **Rental Charge Restrictions.** The rental rates for For-Rent Owner Affordable Housing Units in each applicable Residential Project shall be determined solely according to the requirements of Exhibit J to the Housing Program. Exhibit J, indicating the rental charge restrictions for
For-Rent Owner Affordable Housing Units in a Residential Project, shall be recorded against each such Residential Project in accordance with the Housing Program.

B. Procedures for Subsequent Rentals of Vacant For-Rent Owner Affordable Housing Units.

1. Affirmative Marketing Obligations. The Owner shall make good faith efforts to advertise the periodic vacancy of For-Rent Owner Affordable Housing Units in a manner designed to reach diverse ethnic populations.

2. Occupancy Priorities.

a. Certificate Holders. In the subsequent rental of vacant For-Rent Owner Affordable Housing Units, the Owner shall give a first priority preference (as described in Subsection 3 below) to Certificate Holders (first, holders of Residential A Certificates, and second, holders of Residential C Certificates) who were on the Potential Tenant List for such Residential Units, and then to Certificate Holders who request to be included on the waiting list following completion of Rent-Up of such Residential Units.

b. San Francisco Residents. In the subsequent rental of vacant For-Rent Owner Affordable Housing Units, the Owner shall give a third priority preference (as described in Subsection 3 below) to San Francisco Residents on the waiting list for such Residential Units.

c. San Francisco Workers. In the subsequent rental of vacant For-Rent Owner Affordable Housing Units, the Owner shall give a fourth priority preference (as described in Subsection 3 below) to San Francisco Workers on the waiting list for such Residential Units.

3. Rental Procedures.

a. The Owner shall maintain and select new tenants for vacant For-Rent Owner Affordable Housing Units from a waiting list for occupancy of For-Rent Owner Affordable Housing Units in each Residential Project based on the order listed on the Potential Tenant List.

b. A Certificate Holder, San Francisco Resident or San Francisco Worker on such waiting list shall no longer be entitled to maintain the individual’s/household’s priority position on the waiting list upon occurrence of any of the following:
1) The individual/household is offered a For-Rent Owner Affordable Housing Unit which the individual/household is eligible to occupy (based on income and Household Size), and the individual/household does not rent such Residential Unit;

2) The income of the individual/household is too high for that individual/household to qualify for any For-Rent Affordable Housing Unit available in the particular Residential Project; or

3) The individual/household fails to satisfy the Owner’s tenant selection criteria applicable to the particular Residential Units consistent with all applicable local, state and federal fair housing laws.

4. Tenant Income Eligibility. The required tenant income levels for each For-Rent Owner Affordable Housing Unit in each applicable Residential Project shall be determined solely according to the requirements of Exhibit J to the Housing Program. Exhibit J, indicating the income restrictions for For-Rent Owner Affordable Housing Units in a Residential Project, shall be recorded against each such Residential Project in accordance with the Housing Program.

5. Rental Charge Restrictions. The rental rates for each For-Rent Owner Affordable Housing Unit in each applicable Residential Project shall be determined solely according to the requirements of Exhibit J to the Housing Program. Exhibit J, indicating the rental charge restrictions for For-Rent Owner Affordable Housing Units in a Residential Project, shall be recorded against each such Residential Project in accordance with the Housing Program.

V. For-Sale Owner Affordable Housing Units.

A. Procedures for the Initial Sales of For-Sale Owner Affordable Housing Units.

1. Affirmative Marketing Obligations.

a. Prior to the initial sale of For-Sale Owner Affordable Housing Units, the Owner shall advertise in media directed to different ethnic groups in San Francisco including, but not limited to, Asian Week, Chinese Times, El Bohemio, El Mensajero, Hokubei, Mainichi, Horizontes, Korea Times, Metro Reporter Group, New Bayview, New Fillmore, Nichi Bei Times, and Phillipine News. The Agency reserves the right to modify this list from time to time to adequately reflect diverse ethnicities and to allow for media which no longer exist; provided, however, that the list of required advertising media shall not exceed fifteen (15) publications.
Advertisements shall be published in the predominant language of the ethnic group served by each applicable publication.

b. Print ads shall be published at least twice in each publication which has a weekly circulation, and at least once in all other publications. Ads must be published prior to the Owner’s conducting the lottery described in Section V.A.3.e below for the initial sale of For-Sale Owner Affordable Housing Units in the applicable Residential Project.

c. The Owner shall prepare and provide to the Agency for its review and approval a copy of the proposed advertisement described in Subsection (b) above at least sixty (60) days prior to accepting applications for the initial sale of For-Sale Owner Affordable Housing Units. The Agency’s approval rights are limited to determining compliance with Section V.A.1.d below. The Agency will approve or disapprove the proposed advertisement within five (5) days of receipt. Failure by the Agency to either approve or disapprove the proposed advertisement within such five (5) day period shall be deemed approval.

d. Print advertisements shall be no less than four inches (4”) by six inches (6”) in size. Each print advertisement shall include the U.S. Department of Housing and Urban Development Fair Housing logo and the words “Equal Housing Opportunity.” The Owner shall include models of different races and ethnic background in all its pictorial advertising which includes models.

2. **Occupancy Priorities.**

a. **Certificate Holders.** In the initial sale of For-Sale Owner Affordable Housing Units, the Owner shall give a first-priority preference to Certificate Holders of Residential A Certificates and a second-priority preference to Certificate Holders of Residential C Certificates in the manner described in Section V.A.3.e below.

b. **San Francisco Residents.** In the initial sale of For-Sale Owner Affordable Housing Units, the Owner shall give third-priority preference to San Francisco Residents in the manner described in Section V.A.3.e below.

c. **San Francisco Workers.** In the initial sale of For-Sale Owner Affordable Housing Units, the Owner shall give a fourth-priority preference to San Francisco Residents in the manner described in Section V.A.3.e below.
3. **Sales Procedures.**

   a. At least One Hundred Eighty (180) days prior to the initial sale of a For-Sale Owner Affordable Housing Unit, the Owner shall provide to the Agency the Marketing Information applicable to such Residential Units.

   b. The Agency shall be solely responsible for informing Certificate Holders of the availability of For-Sale Owner Affordable Housing Units.

   c. The Owner, in cooperation with the Agency, shall conduct at least two (2) public informational meetings regarding the sale of For-Sale Owner Affordable Housing Units in each Residential Project. Each meeting shall be advertised in conjunction with the advertising required under Section V.A.1. Each meeting shall be open to persons potentially interested in the purchase of a For-Sale Owner Affordable Housing Unit. At each meeting, the Owner and the Agency shall describe the following:

      1) The number and type of For-Sale Owner Affordable Housing Units to be offered;

      2) The income and purchase price restrictions applicable to each available Residential Unit;

      3) The resale restrictions applicable to each available Residential Unit, including the Second Lien Documents to be executed by each purchaser;

      4) The anticipated schedule for marketing and selling such Residential Units; and

      5) Information on covenants, conditions and restrictions; homeowner’s association dues; and proposed rules of the homeowners’ association applicable to such Residential Units.

   d. The Owner may, at its discretion, accept pre-applications from interested purchasers and may pre-qualify purchasers of For-Sale Owner Affordable Housing Units according to the occupancy restrictions applicable to a particular Residential Unit and the application of such other tenant selection criteria permitted under this Exhibit L.

   e. The Owner shall conduct a lottery of all interested purchasers, including any potential purchasers which have been pre-qualified by the Owner, as follows:
1) The Owner shall conduct a separate lottery for each Residential Project containing For-Sale Owner Affordable Housing Units.

2) The Owner shall combine all Certificate Holders, San Francisco Residents, San Francisco Workers and applications from members of the general public into one lottery for each Residential Project with Owner Affordable Housing Units.

3) The Owner shall select potential purchasers at random from the combined pool of applicants, and shall prioritize potential purchasers in the order selected into an initial list of potential purchasers (the “Lottery List”).

4) The Owner shall then prioritize names on the Lottery List in the following order:

   a) First, all Certificate Holders of Residential A Certificates on the Lottery List in the order in which their name was selected for the Lottery List;

   b) Second, all Certificate Holders of Residential C Certificates on the Lottery List in the order in which their name was selected for the Lottery List;

   c) Third, all San Francisco Residents on the Lottery List in the order in which their name was selected for the Lottery List;

   d) Fourth, all San Francisco Workers on the Lottery List in the order in which their name was selected for the Lottery List; and

   e) All remaining names on the Lottery List in the order in which their name was selected for the Lottery List.

   This newly prioritized list shall be referred to as the “Potential Purchaser List.” The Owner shall provide the Agency with the Potential Purchaser List within three (3) days of its creation.

5) Within thirty (30) days of the creation of the Potential Purchaser List, unless otherwise mutually agreed by the Owner and the Agency, the Owner shall determine the eligibility of enough households on the Potential Purchaser List as there are available For-Sale Owner Affordable
Housing Units in a particular Residential Project (i.e., one household per available For-Sale Owner Affordable Housing Unit) in the order of priority on that list, taking into account income and household size restrictions for the For-Sale Owner Affordable Housing Units in each Residential Project, and applying such other purchaser selection criteria consistent with this Exhibit F. The Owner shall then inform that number of eligible purchasers so selected of the availability of Residential Units in the particular Residential Project. The Owner’s determination of Purchaser Eligibility is subject to a mortgage lender’s approval of each potential purchaser.

6) The Owner must provide to qualified Certificate Holders, San Francisco Workers and San Francisco Residents from the Potential Tenant List, as determined under Subsection (v) above, a reasonable opportunity to view either the actual Residential Unit for which the individual/household is qualified, or a model or other Residential Unit in that Residential Project which is substantially similar to the Residential Unit which the individual/household is qualified to occupy. The Owner may provide this opportunity for the entire group of such eligible individuals/households on a single preview day provided that Owner must provide at least seven (7) days advance written notice of the preview date and provided further that Certificate Holders will be provided with a reasonable opportunity to view such Residential Units in advance of San Francisco Residents and San Francisco Workers on the preview day.

7) Certificate Holders, San Francisco Residents and San Francisco Workers qualified by the Owner from the Potential Purchaser List, as described in Subsection (v) above, shall have during their designated preview period as described in subsection (vi) and thereafter for five (5) days from and including the reasonable opportunity to preview a Residential Unit under Subsection (vi) above within which to notify the Owner of his/her intention to purchase a For-Sale Owner Affordable Housing Unit and take all other steps necessary in accordance with the Marketing Information to secure such For-Sale Owner Affordable Housing Unit, including but not limited to executing a purchase and sale agreement and providing the required deposit applicable to such Residential Unit.
4. **Purchaser Income Eligibility.** The income levels for purchasers of each For-Sale Owner Affordable Housing Unit in each Residential Project shall be determined solely according to the requirements of Exhibit K to the Housing Program. Exhibit K, indicating the types of For-Sale Owner Affordable Housing Units in each applicable Residential Project, shall be recorded against each Residential Project containing For-Sale Owner Affordable Housing Units in accordance with the Housing Program.

5. **Sales Price Restrictions.** The sales prices for each For-Sale Owner Affordable Housing Unit in each Residential Project shall be determined solely according to the requirements of Exhibit K to the Housing Program. Exhibit K, indicating the types of For-Sale Owner Affordable Housing Units in each applicable Residential Project, shall be recorded against each Residential Project containing For-Sale Owner Affordable Housing Units in accordance with the Housing Program.

B. **Procedures for Resales of For-Sale Owner Affordable Housing Units.** All obligations of the owners of For-Sale Owner Affordable Housing Units with respect to the resale of For-Sale Owner Affordable Housing Units, including occupancy priorities and resale procedures, are contained in the Second Lien Documents. Purchaser income eligibility and sales price restrictions applicable to the resale of For-Sale Owner Affordable Housing Units shall be determined solely according to the requirements of Exhibit K to the Housing Program. Exhibit K, indicating the types of For-Sale Owner Affordable Housing Units in each applicable Residential Project, shall be recorded against each applicable Residential Project containing For-Sale Owner Affordable Housing Units as provided in the Housing Program.

VI. **Reporting Requirements.**

The Owner shall comply with the following reporting requirements, in addition to any other requirements imposed by the funding source for the development of Owner Affordable Housing Units.

A. **For-Rent Owner Affordable Housing Units.**

1. Within ten (10) days after the execution of a rental agreement for the last For-Rent Owner Affordable Housing Units in a particular Residential Project, the Owner shall provide to the Agency a report on the status of each Certificate Holder on the Potential Tenant List, and a rent roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and rent.

2. The Owner shall provide to the Agency monthly reports, no later than the 15th day of each month, which indicate the following information for the preceding month:
a. The number of individuals/households on the waiting list for a particular Residential Project containing For-Rent Owner Affordable Housing Units;

b. With respect to Certificate Holders and San Francisco Workers/Residents:

1) The names of current Certificate Holders and San Francisco Workers/Residents on the waiting list for each such Residential Project and the date on which each such name was added to the waiting list;

2) The names of Certificate Holders and San Francisco Workers/Residents who leased Residential Units during the preceding one-month period; and

3) If applicable, the reason why any Certificate Holder or San Francisco Worker/Resident on the waiting list did not rent an available For-Rent Affordable Housing Residential Unit (e.g., not income-eligible, household size not appropriate for the Residential Unit).

c. The Residential Unit number and date of leasing of each Residential Unit rented during the preceding one-month period.

d. The number of names added to and removed from each waiting list during the preceding one-month period.

3. The Owner shall provide to the Agency, on or before the 15th day of each month, a current waiting list for each such Residential Project, together with a narrative summary of each case in which a Certificate was denied occupancy of a For-Rent Owner Affordable Housing Unit, and the grounds for such denial (e.g., not income eligible, household size not appropriate for the available Residential Unit size).

B. **For-Sale Owner Affordable Housing Units.** Within ten (10) days following the close of escrow of all For-Sale Owner Affordable Housing Units in a particular Residential Project, the Owner shall provide to the Agency a report on the status of each Certificate Holder on the Potential Purchaser List, and a sales roll specifying each Residential Unit number, Residential Unit size, number of occupants, affordability designation, and sales price.