FREE RECORDING PURSUANT TO
GOVERNMENT CODE §27383 AT THE
REQUEST OF THE SUCCESSOR AGENCY TO
THE REDEVELOPMENT AGENCY OF THE
CITY AND COUNTY OF SAN FRANCISCO

WHENRecordedReturnTo:
The Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco, One South Van Ness Avenue,
5th Floor, San Francisco, California 94103

AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT

between the

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

and

MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P.,
a California limited liability partnership

Dated and executed as of __________________, 2013
This AMENDED AND RESTATED DISPOSITION AND DEVELOPMENT AGREEMENT (“DDA” or “Agreement”) is entered into as of _________________, 2013, (the “Effective Date”), between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, hereafter referred to as the Office of Community Investment and Infrastructure, a public body, organized and existing under the laws of the State of California (“OCII”) and MISSION BAY BLOCK 7 HOUSING PARTNERS, L.P., a California limited partnership (“Developer”).

RECITALS

A. In furtherance of the objectives of the California Community Redevelopment Law (Health and Safety Code, section 33000 et seq. the “CRL”), the former San Francisco Redevelopment Agency (the “Former Agency”) would undertake programs for the reconstruction and rehabilitation of blighted areas in the City and County of San Francisco (the “City”).

B. In accordance with the CRL, the City, acting through its Board of Supervisors, approved a Redevelopment Plan for the Mission Bay South Redevelopment Project Area (the “Project Area”) by Ordinance No. 335-98 adopted on November 2, 1998. The Redevelopment Plan is referred to as the “Mission Bay South Redevelopment Plan.” In cooperation with the City, the Former Agency was responsible for implementing the Mission Bay South Redevelopment Plan.

C. The Mission Bay South Redevelopment Plan provides for the redevelopment, construction and revitalization of the area generally bounded by the China Basin Channel, Seventh and Mariposa Streets, and the San Francisco Bay and containing approximately 238 acres of land. The Mission Bay South Redevelopment Plan anticipates and describes a mixed-use development comprised of public open space, retail, commercial, entertainment uses, and parking and loading uses.

D. The Mission Bay South Owner Participation Agreement between the Former Agency and Catellus Development Corporation dated as of November 16, 1998, as amended by: (1) the First Amendment to Mission Bay South Owner Participation Agreement dated February 17, 2004; (2) the Second Amendment to Mission Bay South Owner Participation Agreement dated November 1, 2005; (3) the Third Amendment to Mission Bay South Owner Participation Agreement dated May 21, 2013; and, the Fourth Amendment to Mission Bay South Owner Participation Agreement dated June 4, 2013 (as may be further amended from time to time in accordance with its terms, the "OPA") provides that FOCIL-MB, LLC ("FOCIL") will contribute land to OCII, at no cost, for the development of affordable housing and OCII will oversee the development of up to one thousand one hundred and eight (1,108) affordable housing units in the Project Area. Pursuant to the OPA, the Former Agency received an option to acquire the portions of the Project Area commonly known as "Block 7-East" and "Block 7-West".

E. The Regents of the University of California, a public corporation ("The Regents") and the Former Agency entered into a Disposition and Development Agreement (“2005 DDA”) for Block 7 East in the Project Area, on October 18, 2005 to develop affordable housing with
occupancy preferences for University of California San Francisco ("UCSF") employees. The Former Agency and The Regents entered into a second Disposition and Development Agreement recorded in the Official Records of San Francisco County as Document No. 2010-1939099-00 on March 18, 2010 to, among other things, develop affordable housing on Block 7 West (the “2010 DDA”).

F. The Regents elected to pay $5,000,000.00 in liquidated damages to OCII in lieu of constructing the Phase 1 Affordable Housing Project on Block 7-East and OCII has released The Regents from all obligations under the 2005 DDA and from any obligations to construct affordable housing on Block 7 East under the Memorandum of Understanding between The Regents and the Former Agency, dated November 1, 2005 and amended and restated March 2, 2010 (“MOU”). The Regents has also elected to pay $2,400,000.00 in liquidated damages to OCII in lieu of constructing the Phase 2 Affordable Housing Project on Block 7 West and OCII will release The Regents from all obligations under the 2010 DDA and from any obligations to construct affordable housing on Block 7 West under the MOU; and subject to the leasing of the Project, as defined in Recital H below, on Block 7 West, in compliance with the Tenant Selection Criteria Leasing System as attached to the Assignment and as included in Attachment 7 hereto.

G. Under California State Assembly Bill No. 1X26 (Chapter 5, Statutes of 2011-12, first Extraordinary Session) ("AB 26"), as amended by California State Assembly Bill No. 1484 ("AB 1484") (together the “Dissolution Laws”) the Former Agency dissolved as a matter of law on February 1, 2012. On October 2, 2012 the San Francisco Board of Supervisors, acting as legislative body of OCII as the successor to the Former Agency, passed Ordinance 215-12, which outlined the rights and responsibilities of OCII as the Former Agency’s successor agency, including but not limited to the retained existing enforceable obligations for the development of affordable housing required for the Project Area. Accordingly, under Ordinance 215-12 and Dissolution Law, OCII has the obligation and authority to enter into this Agreement to allow for the development of the Project as defined in Recital H below.

H. Developer wishes to ground lease Block 7 West, as modified by a lot line adjustment between Block 7 West and Block 7 East (the “Lot Line Adjustment”) and as further depicted on Attachments 1 and 2 hereto (the “Site”), and develop, own and operate an affordable housing project with 200 residential units that shall be affordable up to 60% of Median Income (the “Residential Space”) and approximately 10,000 square feet of retail space thereon (the “Commercial Space,” and together with the Residential Space, the “Project”). First priority for renting units in the Block 7 West Project will be given to income-eligible applicants who are also eligible for the OCII’s Property Owner and Occupant Preference Program (“Certificate of Preference Holders”). In connection therewith: (i) the 2010 DDA has been assigned from The Regents to Developer pursuant to the Assignment; (ii) The Regents will make a payment of $2,400,000 to OCII in lieu of the liquidated damages payment required under the 2010 DDA; and (iii) the 2010 DDA will be amended and restated (the “Amended Housing Project DDA”) through this Agreement.

I. At its meeting on June 18, 2013, the OCII Commission, through Resolution Number 30-2013, authorized the OCII Executive Director to execute a Predevelopment Loan with the Developer, an amount not to exceed $2,000,000 (the “Loan Agreement”), to enable the
Developer to pursue predevelopment activities for the construction and management of the Project.

J. OCII believes that the redevelopment of the Site, pursuant to this Agreement, and the fulfillment generally of this Agreement and the intentions set forth herein, are in the vital and best interests of the City and the health, safety, morals and welfare of its residents, and in accord with the public purposes and provisions of the applicable State and Federal laws.

K. Developer has agreed to develop and operate the Site for and in accordance with the uses described in this Agreement.

L. OCII, on the basis of the foregoing, and the undertakings of Developer pursuant to this Agreement, is willing to lease the Site to Developer for the purpose of accomplishing its redevelopment in accordance with the provisions of the Redevelopment Plan and this Agreement.

NOW, THEREFORE, each of the parties, in consideration of the mutual promises hereto, do hereby covenant and agree as follows:

AGREEMENT

ARTICLE 1. DEFINITIONS

1.01 Defined Terms. As used in this Agreement, the following words and phrases have the following meanings:

"Agreement" means this Amended and Restated Disposition and Development Agreement.

"Agreement Date" means the date first written above.

"Authorizing Resolutions" means: (a) in the case of a corporation, a certified copy of resolutions adopted by its board of directors; (b) in the case of a partnership (whether general or limited), a certificate signed by all of its general partners; and (c) in the case of a limited liability company, a certified copy of resolutions adopted by its board of directors or members, satisfactory to the City and evidencing Developer's authority to execute, deliver and perform the obligations under the OCII Documents to which Developer is a party or by which it is bound.

"Bona Fide Institutional Lender" means a bank, a savings and loan association, an insurance company, a pension fund, a publicly traded real estate investment trust, a governmental agency or a charitable organization engaged in making loans.

"Developer" means Mission Bay Block 7 Housing Partners, L.P., a California limited partnership, and its authorized successors and assigns.

"CFR" means the Code of Federal Regulations.

"Charter Documents" means: (a) in the case of a corporation, its articles of incorporation
and bylaws; (b) in the case of a partnership, its partnership agreement and any certificate or statement of partnership; and (c) in the case of a limited liability company, its operating agreement and any LLC certificate or statement. The Charter Documents must be delivered to OCII in their original form and as amended from time to time and be accompanied by a certificate of good standing for Developer issued by the California Secretary of State and, if Developer is organized under the laws of a state other than California, a certificate of good standing issued by the Secretary of State of the state of organization, issued no more than ninety (90) days before the Agreement Date.

"City" means the City and County of San Francisco, a municipal corporation, represented by the Mayor, acting by and through MOHCD. Whenever this Agreement provides for a submission to the City or an approval or action by the City, this Agreement refers to submission to or approval or action by MOHCD unless otherwise indicated.

"CNA" means a 20-year capital needs assessment or analysis of replacement reserve requirements.

“Commercial Shell” means all components of an unfinished Commercial Space as further defined by MOHCD’s commercial space policy, as it may be amended from time to time.

"Commercial Space" has the meaning set forth in Recital H and further defined in MOHCD’s commercial space policy as it may be amended from time to time. As used in this Agreement, the term excludes non-residential space in the Project to be used primarily for the benefit of the Tenants.

“Control of the Site” means Developer’s acquisition of a leasehold interest in the Site (or a portion thereof).

“CRL” has the meaning set forth in Recital A.

"Developer" means Mission Bay Block 7 Housing Partners, L.P., a California limited partnership whose general partners are: Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company and CCDC-MBB7 LLC, a California limited liability company, and its authorized successors and assigns. The Developer is considered a Qualified Housing Developer as defined in the OPA.

“Dissolution Law” has the meaning set forth in Recital I.

“DRDAP” is the Mission Bay South Design Review and Document Approval Procedure, which is Attachment G of the OPA.

"Environmental Activity" means any actual, proposed or threatened spill, leak, pumping, discharge, leaching, storage, existence, release, generation, abatement, removal, disposal, handling or transportation of any Hazardous Substance from, under, into or on the Site.

"Environmental Laws" means all present and future federal, state, local and administrative laws, ordinances, statutes, rules and regulations, orders, judgments, decrees, agreements, authorizations, consents, licenses, permits and other governmental restrictions and

"Escrow Agent" means the escrow agent for the title company issuing the Title Policy.

"Event of Default" has the meaning set forth in Section 19.1.

"Governmental Agency" means: (a) any government or municipality or political subdivision of any government or municipality; (b) any assessment, improvement, community facility or other special taxing district; (c) any governmental or quasi-governmental Agency, authority, board, bureau, commission, corporation, department, instrumentality or public body; or (d) any court, administrative tribunal, arbitrator, public utility or regulatory body.

“Ground Lease” means that certain ground lease by and between Developer and OCII pursuant to which OCII will lease the Site to the Developer. The Ground Lease shall have a term of 75 years, with a 24 year option, and shall require annual base rental payments in an amount equal to $15,000.

"Hazardous Substance" means any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any Governmental Agency, such as OCII, to pose a present or potential hazard to human health or safety or to the environment. Hazardous Substance includes any material or substance listed, defined or otherwise identified as a "hazardous substance," "hazardous waste," "hazardous material," "pollutant," "contaminant," "pesticide" or is listed as a chemical known to cause cancer or reproductive toxicity or is otherwise identified as "hazardous" or "toxic" under any Environmental Law, as well as any asbestos, radioactive materials, polychlorinated biphenyls and any materials containing any of them, and petroleum, including crude oil or any fraction, and natural gas or natural gas liquids. Materials of a type and quantity normally used in the construction, operation or maintenance of developments similar to the Project will not be deemed "Hazardous Substances" for the purposes of this Agreement if used in compliance with applicable Environmental Laws.

“Mission Bay South Housing Program” means that certain document attached to the OPA as Attachment C.

"HUD" means the United States Department of Housing and Urban Development acting by and through the Secretary of Housing and Urban Development and any authorized agents.

"Indemnify" means, whenever any provision of this Agreement requires a person or entity (the "Indemnitor") to Indemnify any other entity or person (the "Indemnitee"), that the
Indemnitor will be obligated to defend, indemnify and protect and hold harmless the Indemnitee, its officers, employees, agent, constituent partners, and members of its boards and commissions harmless from and against any and all Losses arising directly or indirectly, in whole or in part, out of the act, omission, event, occurrence or condition with respect to which the Indemnitor is required to Indemnify an Indemnitee, whether the act, omission, event, occurrence or condition is caused by the Indemnitor or its agents, employees or contractors, or by any third party or any natural cause, foreseen or unforeseen; provided that no Indemnitor will be obligated to Indemnify any Indemnitee against any Loss arising or resulting from the gross negligence or intentional wrongful acts or omissions of the Indemnitee or its agents, employees or contractors. If a Loss is attributable partially to the grossly negligent or intentionally wrongful acts or omissions of the Indemnitee (or its agents, employees or contractors), the Indemnitor must Indemnify the Indemnitee for that part of the Loss not attributable to its own grossly negligent or intentionally wrongful acts or omissions or those of its agents, employees or contractors.

"Indemnitee" has the specific meaning set forth in Section 23.1 and the general meaning set forth in the definition of "Indemnify."

"Indemnitor" has the meaning set forth in the definition of "Indemnify."

"Laws" means all statutes, laws, ordinances, regulations, orders, writs, judgments, injunctions, decrees or awards of the United States or any state, county, municipality or Governmental Agency, such as OCII, including the CRL.

"Loan Agreement" has the meaning set forth in Recital I.

"Loss" or "Losses" includes any loss, liability, damage, cost, expense or charge and reasonable attorneys' fees and costs, including those incurred in a proceeding in court or by mediation or arbitration, on appeal or in the enforcement of OCII’s or the City's rights or in defense of any action in a bankruptcy proceeding.

"Median Income" means area median income as determined by HUD for the San Francisco area, adjusted solely for household size, but not high housing cost area.

"MOHCD" means the Mayor's Office of Housing and Community Development or its successor.

“OCII” means the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, known as the Office of Community Investment and Infrastructure.

“OCII Deed of Trust” has the meaning set forth in Section 3.12(b).

"OCII Documents" means this Agreement and any other documents executed or, delivered in connection with this Agreement.

“OCII Loan” has the meaning set forth in Section 3.12(b).

"Opinion" means an opinion of Developer's California legal counsel, satisfactory to OCII and its legal counsel, that Developer is a duly formed, validly existing California limited
partnership in good standing under the laws of the State of California, has the power and authority to enter into the OCII Documents and will be bound by their terms when executed and delivered, and that addresses any other matters OCII reasonably requests.

"Permitted Exceptions" means liens in favor of OCII, real property taxes and assessments that are not delinquent, and any other liens and encumbrances OCII expressly approves in writing in its escrow instructions.

"Project" means the development described in Recital H. If indicated by the context, "Project" means the Site and the improvements developed on the Site.

“Project Area” has the meaning set forth in Recital B.

“Public Benefit Purposes” means activities or programs that primarily benefit low-income persons, are implemented by one or more nonprofit 501(c)3 public benefit organizations, or have been identified by OCII, a City agency or a community planning process as a priority need in the neighborhood in which the Project is located.

"Publication" means any report, article, educational material, handbook, brochure, pamphlet, press release, public service announcement, webpage, audio or visual material or other communication for public dissemination, which relates to all or any portion of the Project or is paid for in whole or in part using the Funding Amount.

“Risk Management Plan” – is a Mission Bay project area document which presents the decision framework and the specific protocols for managing the chemicals in the soil and ground water in a manner that is protective of human health and the ecological environment, consistent with the existing and planned future land uses, and compatible with long-term phased development. This document delineates the specific risk management measures that must be implemented prior to, during, and after development of each parcel within the Mission Bay area.

“Schedule of Performance” means the schedule attached hereto as Attachment No. 4 that sets forth Project tasks and milestones and the dates by which they will be completed.

"Site" means the real property described in Recital H of this Agreement.

"TCAC" means the California Tax Credit Allocation Committee.

“TCAC AMI” means area median income as determined by TCAC.

"Tenant" means any residential household in the Project.

“Term” has the meaning set forth in Section 2.06.

"Unit" means a residential rental unit within the Project.

“Work Product” has the meaning set forth in Section 9.02(c).

1.02 Interpretation. The following rules of construction will apply to this Agreement
and the other OCII Documents.

(a) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. The word "include(s)" means "include(s) without limitation" and "include(s) but not limited to," and the word "including" means "including without limitation" and "including but not limited to" as the case may be. No listing of specific instances, items or examples in any way limits the scope or generality of any language in this Agreement. References to days, months and years mean calendar days, months and years unless otherwise specified. References to a party mean the named party and its successors and assigns.

(b) Headings are for convenience only and do not define or limit any terms. References to a specific OCII Document or other document or exhibit mean the document, together with all exhibits and schedules, as supplemented, modified, amended or extended from time to time in accordance with this Agreement. References to Articles, Sections and Exhibits refer to this Agreement unless otherwise stated.

(c) Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with GAAP as in effect on the date of performance. References to any Law, specifically or generally, will mean the Law as amended, supplemented or superseded from time to time.

(d) The terms and conditions of this Agreement and the other OCII Documents are the result of arms'-length negotiations between and among sophisticated parties who were represented by counsel, and the rule of construction to the effect that any ambiguities are to be resolved against the drafting party will not apply to the construction and interpretation of the OCII Documents. The language of this Agreement must be construed as a whole according to its fair meaning.

1.03 Websites for Statutory References. The statutory and regulatory materials listed below may be accessed through the following identified websites.

(a) CFR provisions: www.access.gpo/nara/cfr

(b) OMB circulars: www.whitehouse.gov/OMB/circulars

(c) S.F. Administrative Code: www.sfgov.org/site/government_index.asp#codes

1.04 Contracting Requirements. Developer shall use the OCII contract compliance requirements for procurement activities, as further set forth in Section 12.10 of this Agreement.

ARTICLE 2. AGREEMENT TERMS

2.01 OCII
OCII’s principal office is located at One South Van Ness Avenue, 5th Floor, San Francisco, California 94103.
2.02 Developer
The Developer is Mission Bay Block 7 Housing Partners, L.P., a California limited partnership whose general partners are: Related/Mission Bay Block 7 Development Co., LLC, a California limited liability company and CCDC-MBB7 LLC, a California limited liability company, and its authorized successors and assigns. Developer’s principal office is located at c/o The Related Companies of California, LLC 333 Pine Street, Suite 300, San Francisco, California 94104.

2.03 Property
The Site is the real property located in the Mission Bay South Redevelopment Project Area and consists of the parcel shown on the Site Map, Attachment No. 1 and is commonly referred to as Mission Bay South Block 7 West.

2.04 Performance Deposit
The total performance deposit ("Performance Deposit") required under this Agreement is Ten Thousand Dollars ($10,000). The Performance Deposit will be paid no later than the date of execution of this DDA and will be retained by OCII as security for the successful completion of the Project in accordance with the terms of this Agreement and the Ground Lease, and it will be refunded to Developer in accordance with the terms of this Agreement and the Ground Lease. If not refunded earlier in accordance with the terms of this Agreement or the Ground Lease, the Performance Deposit shall be refunded to Developer upon completion of construction of the Project.

2.05 Permitted Uses
The approved Permitted Uses for the Site are for the development, ownership and operation of an affordable housing project with 200 residential units that shall be affordable up to 60% of Median Income (the “Residential Space”) and approximately 10,000 square feet of retail space thereon (the “Commercial Space,” and together with the Residential Space, the “Project”), subject to the Redevelopment Plan, this Agreement, and the leasing provisions included in the Tenant Selection Criteria Leasing System described in Recital F and attached hereto as Attachment 7.

2.06 Term of Agreement
The term of this Agreement will be from the Effective Date until the earlier of: (1) termination in accordance with its terms; or (2) Close of Escrow and execution of the Ground Lease by OCII and Developer (the “Term”).

2.07 Schedule of Performance
Developer must perform its obligations hereunder in accordance with the Schedule of Performance, Attachment No. 4, subject to Article 10. Failure to perform substantially in accordance with the Schedule of Performance, based on OCII’s reasonable determination exercised in good faith, will constitute, after any applicable notice and cure period, a default under the terms of this Agreement entitling OCII to the remedies set forth below.
ARTICLE 3. LEASE TERMS

3.01 Lease and Development
Subject to all of the terms, covenants and conditions of this Agreement, OCII agrees to lease the Site to Developer pursuant to a ground lease as negotiated between the parties (the “Ground Lease”) for the purpose of developing, constructing, and operating the Project (the “Improvements”) thereon, and Developer agrees to lease the Site from OCII, pursuant to the Ground Lease. In accordance with this Agreement and the Ground Lease, Developer shall develop, construct, and operate the Improvements on the Site.

3.02 Escrow
(a) Opening of Escrow. On or before the date specified in the Schedule of Performance, Attachment No. 4, Developer must establish an escrow (“Escrow”) with a title company doing business in the City selected by Developer and approved by OCII (“Title Company”) and provide written notice of the Escrow to OCII. OCII hereby approves of First American Title Insurance Company, or a title company mutually agreeable by Developer and OCII, to act as the Title Company.
(b) Escrow Instructions. At least fifteen (15) days prior to the date specified for Close of Escrow in the Schedule of Performance, each Party agrees to furnish the Title Company with appropriate Escrow instructions consistent with, and sufficient to implement the terms of, this Agreement, and shall contemporaneously furnish a copy of said instructions to the other Party. (Notwithstanding the foregoing, the Parties elect, by mutual consent, to file joint instructions.) At least two (2) days prior to such date specified for Close of Escrow, the Parties shall each deposit into Escrow all documents and instruments that such Party is obligated to deposit into Escrow in accordance with this Agreement. At least one (1) day prior to such date specified for Close of Escrow, the Parties shall each deposit into Escrow all funds that such Party is obligated to deposit into Escrow in accordance with this Agreement.
(c) Closing Costs. Developer must pay to the Title Company or the appropriate payee any and all costs related to the closing including, but not limited to: all preliminary title report costs; title insurance premiums and endorsement charges; all transfer taxes; recording fees; and any Escrow fees in connection with the lease of the Property by OCII to the Developer pursuant to this Agreement. OCII will not incur any expense, other than staff time, in closing this Escrow, pursuant to this Agreement.
(d) Close of Escrow. At the Close of Escrow, provided that Developer is not then in default under the terms of this Agreement, and the conditions to OCII’s obligations and the conditions to Developer’s obligations hereunder have been satisfied or expressly waived, then OCII shall ground lease the Property to Developer pursuant to the terms and conditions of the Ground Lease, subject to the lien of general and special taxes and assessments, not delinquent, but free and clear of all other liens, encumbrances and other exceptions to title, other than the approved title exceptions as agreed to by OCII and Developer (“Approved Title Exceptions”).
(e) OCII Unable to Deliver Clean Title. If on the date which is forty (40) days prior to the date specified for Close of Escrow in the Schedule of Performance, OCII owns the Property and title to the Property is subject to a lien, encumbrance or other exception to title in addition to the Approved Title Exceptions, OCII shall use diligent, good faith efforts to cause such title exception to be removed within thirty (30) days thereafter. If OCII shall be unable to cause such title exception to be removed within such period of time, Developer shall have the right to cause such title exception to be removed, whether through the issuance of a bond
therefor or otherwise. If despite its exercise of diligent, good faith efforts, OCII shall not be able to cause such title exception to be removed, and Developer shall not elect to cause such title exception to be removed through issuance of a bond or otherwise, Developer shall have the right to: (1) terminate this Agreement and the Predevelopment Loan Agreement by written notice to OCII and receive reimbursement of the Performance Deposit and Developer’s predevelopment costs associated with the Improvements and the escrow, excluding costs funded and disbursed by OCII under the Predevelopment Loan Agreement and not repaid by Developer to the OCII; or (2) accept title to the Property subject to such title exception. Notwithstanding anything to the contrary contained in this Article 3.02(e), if at Close of Escrow, title to the Property is subject to a lien, encumbrance or other exception to title in addition to the Approved Title Exceptions, OCII shall be deemed to be in default under this Agreement, and Developer shall be entitled to exercise the remedies provided therefor in Article 9 hereof.

3.03 Title Insurance
(a) The Escrow instructions will provide that, upon the Close of Escrow, the Title Company must provide and deliver to Developer an owner’s title insurance policy (which at Developer’s option may be an ALTA owner’s policy) issued by the Title Company, with any reinsurance and direct access agreements that Developer reasonably requests, in amounts designated by Developer that are satisfactory to the Title Company, insuring that the Leasehold Estate consisting of fee title to the Improvements and leasehold title to the Property and all easements appurtenant to it are vested in Developer, together with endorsements to title insurance policies that Developer requires.

(b) If Developer elects to secure ALTA owner’s policies, and if requested to do so by Developer, the OCII will cooperate with Developer by providing surveys and engineering studies in its possession or control that relate to or affect the condition of title or a geological condition, at no cost to the OCII and without warranty of any kind. The responsibility of OCII assumed by this paragraph is limited to providing such surveys and engineering studies. Developer will be responsible for securing any and all other surveys and engineering studies at its sole cost and expense.

3.04 Taxes and Assessments
Ad valorem taxes and assessments, if any, levied, assessed or imposed on the Site or the Improvements or any rights under this Agreement during the Term shall be the responsibility of OCII.

3.05 Access and Entry by Developer to the Property
(a) Inspection Period. Between the time that the OCII acquires the Site and the Close of Escrow, the Developer and its representative will have the right of access and entry upon the Site then owned by OCII, for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement, provided, however, that Developer must repair any damage to the Site caused by its access to and entry upon the Site to the extent reasonably possible. Between the Effective Date and until such time as the OCII acquires the Site pursuant to Article 3.11, Developer shall have access to the Property pursuant to the terms of that certain Access and Indemnity Agreement by and between the Developer and FOCIL dated as of January 31, 2013 (the “Right of Entry Agreement”). OCII shall ensure that FOCIL shall provide the Developer with the same rights of access to the Site that OCII may have from time to time during the Term, subject to all applicable laws and regulations. In making any entry onto the Site, neither the Developer nor any of its agents,
contractors or representatives shall materially interfere with or obstruct the permitted, lawful use of the Site by its tenants or occupants, if any, or the conduct of their business operations, unless otherwise permitted pursuant to the terms of the Right of Entry Agreement.

(b) Developer’s Right to Terminate Based Upon Inspection. If Developer determines in its sole and absolute discretion that the results of any inspection, test or examination are unacceptable or unsatisfactory for development of the Property in the manner contemplated by this Agreement, Developer may terminate this Agreement upon written notice to OCII, following a required meet and confer with OCII, consisting of a minimum of one meeting, unless additional meetings are agreed to by both OCII and the Developer, to be held within ten (10) days of OCII’s receipt of the Developer’s written notice, regarding the possible termination of the Agreement, and given at least thirty (30) days prior to the Close of Escrow. If Developer terminates this Agreement within the required time, the Performance Deposit shall be reimbursed to Developer.

3.06 OCII Representations and Warranties
OCII hereby covenants, warrants and represents to Developer as follows:
(a) OCII has full right, power and capacity to execute, deliver and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation of OCII enforceable in accordance with its terms; and
(b) From the Effective Date through the Close of Escrow, OCII will give to Developer promptly copies of all notices received by the OCII relating to the Property, including those asserting a violation of, or otherwise given with respect to, any federal, state, city or municipal law, ordinance, regulation or order.

3.07 Developer Representations and Warranties
Developer hereby covenants, warrants and represents to the OCII as follows:
(a) Developer has full right, power and capacity to execute, deliver and perform this Agreement, and this Agreement constitutes a legal, valid and binding obligation of Developer enforceable in accordance with its terms; and
(b) From the Effective Date through the Close of Escrow, Developer will give to OCII promptly copies of all notices received by Developer relating to the Property, including those asserting a violation of, or otherwise given with respect to, any federal, state, city or municipal law, ordinance, regulation or order.

3.08 Conditions Precedent to Developer’s Obligations
The following are conditions precedent to Developer’s obligations with respect to the lease of the Property and the construction of the Improvements thereon, to the extent not expressly waived by Developer:
(a) OCII shall have performed all obligations hereunder required to be performed by OCII, including, but not limited to, those set forth in Article 3.11, (i) prior to the date or times specified in this Agreement or, if the Agreement does not establish specific times or dates for OCII's performance then (ii) prior to the date for Close of Escrow in the Schedule of Performance;
(b) The Title Company is prepared to issue to Developer all title insurance required by Article 3.03 to be delivered to Developer;
(c) This Agreement shall not have been previously terminated pursuant to any other provision hereof; OCII shall have delivered to Developer and the Title Company all instructions and documents to be delivered by OCII at Close of Escrow pursuant to the terms and
provisions hereof;
(d) A full building permit for the Improvements on the Property has been issued, except that in the case of Fast Track, only the structural permit, needs to have been issued;
(e) OCII has obtained fee simple title to the Site on or prior to the date required by the Schedule of Performance;
(f) Developer and OCII shall have negotiated and agreed upon the form of Ground Lease, and OCII has duly executed the Ground Lease and a memorandum of Ground Lease, and such documents have been deposited into escrow;
(g) Developer shall have approved the environmental condition of the Site in accordance with Section 3.05(b);
(h) FOCIL shall have placed the Property in the condition required under Section 2.5 and 3.2 of the Mission Bay South Housing Program in accordance with the terms of the OPA.
(i) Developer shall have obtained all entitlements necessary, in Developer’s discretion, necessary to construct the Project in the manner required by this Agreement on the Site;
(j) Developer has obtained the Project Financing in accordance with Section 3.12;
(k) OCII is prepared to close and fund the OCII Loan in full concurrent with the Close of Escrow; and
(l) OCII shall have instructed the Title Company to consummate the Escrow as provided in the Escrow instructions.

To the extent the foregoing conditions have not been met to Developer’s reasonable satisfaction on or prior to the date required for Close of Escrow in the Schedule of Performance Developer shall have the option to waive any of the foregoing conditions, or to terminate this Agreement and receive a reimbursement of the Performance Deposit.

3.09 Conditions Precedent to OCII’s Obligations
The following are conditions precedent to the OCII’s obligations with respect to the lease of the Property to the extent not expressly waived by OCII:
(a) OCII shall have obtained fee title to the Site in accordance with the Mission Bay South Housing Program;
(b) Developer shall have performed all obligations hereunder required to be performed by Developer prior to the date of such lease;
(c) OCII shall have received and approved all items referred to in Article 3.10, to the extent required prior to the Close of Escrow;
(d) OCII shall have approved the Construction Documents for the Improvements on the Site which are required to be approved by OCII by the Close of Escrow as provided in the Schedule of Performance;
(e) A full building permit for the Improvements on the Property has been issued, except that in the case of Fast Track, only the structural permit, needs to have been issued;
(f) OCII shall have approved, as provided in Article 3.10, the financing of the Improvements by Close of Escrow as provided in the Schedule of Performance.
(g) Developer shall have certified in writing to OCII that Developer is ready, willing and able in accordance with the terms and conditions of this Agreement to commence
construction of the Improvements required for the Property by the time set forth in the Schedule of Performance and that all conditions precedent under this Agreement to such commencement have been fulfilled;

(h) Developer shall have instructed the Title Company to consummate the Escrow as provided in the Escrow instructions; and

(i) Developer shall have furnished to OCII certificates of insurance or duplicate originals of insurance policies required by this Agreement.

3.10 Developer Obligations; Submission of Evidence of Financing and Project Commitments

No later than the time specified in the Schedule of Performance for submission of evidence of financing (unless the Parties agree in writing as to a different time), Developer shall submit the following to OCII for review and approval:

(a) A statement setting forth a budget of the total estimated construction costs of the Improvements, with the hard costs of construction portion prepared by, or with the assistance of, a licensed, bondable general contractor (the “Budget”);

(b) A copy of a bona fide commitment or commitments without any provisions requiring acts of Developer prohibited herein or prohibiting acts of Developer required herein for the financing of the construction costs of the Improvements on the Property, as described in the Scope of Development, Attachment No. 3, certified by Developer to be a true and correct copy or copies thereof. If the lender under any such commitment or commitments is to receive a Mortgage on the Leasehold Estate, said lender shall be a Bona Fide Institutional Lender;

(c) Evidence satisfactory to OCII of additional commitments of funding to cover the difference, if any, between the Mortgage amount and the Budget. If required by the interim construction financing, commitments for permanent financing shall be provided, also certified by Developer to be true and correct copies thereof;

(d) A statement in form satisfactory to OCII sufficient to demonstrate that Developer has adequate funds or will have adequate funds upon the funding of the commitments referred to above and is committing such funds to the construction costs of the Improvements as set forth in the Budget;

(e) A construction contract, with a bondable general contractor reasonably satisfactory to the OCII, for the construction of the Improvements in accordance with the estimated costs set forth in the Budget. Pursuant to this requirement, Nibbi Brothers General Contractors has been selected as the general contractor by the Developer and the OCII has approved such selection.

(f) A completion bond of an issuer satisfactory to the OCII or a completion guaranty from The Related Companies, L.P., a New York limited partnership; and

(g) OCII will notify the Developer in writing of its approval or disapproval of any of the foregoing documents within fifteen (15) days of submission of such documents to the OCII, unless some other time period is specified in the Schedule of Performance or by mutual written agreement. Failure of OCII to notify Developer of its approval or disapproval of a document or submission within said periods of time shall entitle the Developer to a time extension for the approval of such document or submission until the later of: (1) the date of approval by the OCII; or (2) fifteen (15) days after the OCII provides written reasons for a disapproval. In no event will OCII’s failure to respond be deemed to be an approval.
3.11 **Application for Financing; Costs and Expenses**

The Developer executed the Predevelopment Loan Agreement with OCII and the proceeds of the Predevelopment Loan Agreement shall be used to pay or cause to be paid all predevelopment costs associated with the Project including applying for, obtaining, and maintaining any necessary or appropriate entitlements for the development of the Site. OCII will endeavor to reimburse the Developer within thirty (30) days of Developer's reimbursement request for all Project-related expenses approved by OCII pursuant to the Predevelopment Loan Agreement.

3.12 **Project Financing Contingency**

(a) It is contemplated that Partnership will finance development of the Project through a combination of:

(i) Developer equity, consisting of equity raised by the sale to reputable investors of the low-income housing credit obtained pursuant to 26 U.S.C. §42 (the "Tax Credits");
(ii) a senior loan from a reputable institutional lender (the “Senior Loan”); and
(iii) the OCII Loan (collectively, the Project Financing’).

(b) OCII agrees to make a loan to Developer (the "OCII Loan") in the principal amount of $16,975,000 with a term of 75 years and an interest rate equal to 3% subject to all required approvals. The OCII Loan shall close (i.e., the OCII Deed of Trust shall record in the official records of San Francisco County and the proceeds shall be disbursed to Developer) concurrently with the Close of Escrow. The OCII Loan shall be evidenced by a promissory note and shall be secured by a subordinate deed of trust (the “OCII Deed of Trust”).

(c) The Developer shall use commercially reasonable efforts to obtain a commitment for the Senior Loan, and a reservation for the Tax Credits. In the event Developer has failed to obtain a commitment for the Senior Loan and/or a reservation of Tax Credits by a date that is at 30 days prior to the date given for the Close of Escrow in the Schedule of Performance, after using commercially reasonable efforts to obtain such commitments and, provided Developer has obtained sufficient financing commitments (in Developer’s discretion) to warrant an application for Tax Credits, after Developer has submitted submitting no less than two applications for Tax Credits, Developer may terminate this Agreement by giving thirty (30) days' notice to OCII. If Developer terminates this Agreement pursuant to this Section 3.12, the Performance Deposit shall be reimbursed to Developer.

**ARTICLE 4. HAZARDOUS MATERIALS INDEMNIFICATION**

4.01 **Hazardous Substance Indemnification**

During the Term, Developer shall indemnify, defend and hold OCII and the City, and their respective members, officers, agents and employees (individually, an “Indemnified Party” and collectively, the “Indemnified Parties”) against any release, spill or escape of Hazardous Substance on or about the Property caused by the Developer or its agents, contractors or representatives; except for losses resulting from the gross negligence or willful misconduct of any of the Indemnified Parties. Such indemnity shall include, without limitation, the reasonable fees and disbursements of counsel and engineering consultants.
4.02 OPA Obligations Regarding Property Conditions

(i) Pursuant to the terms of the OPA, FOCIL has certain obligations to OCII to deliver the Property in the condition required under Section 2.5 of the Mission Bay South Housing Program. The following are the obligations related to the condition of the Property for development of the Project.

(ii) Under the OPA, FOCIL is responsible to:

(A) Assure that the Property will be in the condition required by Sections 2.5 and 3.2 of the Mission Bay South Housing Plan, as follows:

i) in the environmental regulatory condition required by the South Environmental Investigation and Response Program (Attachment K to the OPA);

ii) either served by infrastructure as described in the Infrastructure Plan (Attachment D to the OPA) or such infrastructure shall be covered by a subdivision improvement agreement for which subdivision improvement security for the installation of the same has been provided, and in which event shall be provided in a timely manner by the time the Project has completed construction and is available for occupancy;

iii) cleared of any surface structures; and,

iv) as of the date of conveyance, with title in the condition described in Section 2.4 of the Mission Bay South Housing Program.

(B) Comply with its obligations pursuant to that certain Memorandum of Agreement for Incremental Environmental Costs and Action for Agency Affordable Housing Sites between Catellus and the Agency, attached hereto as Attachment 9, as it may be amended in accordance with its terms, with respect to the Property.

(iii) Third Party Beneficiary Rights. OCII shall use commercially reasonable efforts to try and secure third party beneficiary rights for the Developer to enforce certain obligations of FOCIL related to the foregoing, which rights were originally granted to The Regents and were contained in the OPA First Amendment.

ARTICLE 5. CONSTRUCTION OF THE IMPROVEMENTS

5.01 Developer’s Construction Obligations
Developer must construct, or cause to be constructed, the Improvements upon the Property, within the times and in the manner set forth in the Ground Lease.

5.02 Compliance with Ground Lease
All of the Improvements to be constructed by Developer must be constructed in substantial compliance with the terms and conditions of the Ground Lease.

5.03 Design Documents
The Design Documents to be submitted by Developer to OCII consist of:
(a) the Combined Basic Concept and Schematic Design Drawings;
(b) the Design Development Documents; and
5.04 Construction Document Compliance
The Construction Documents must comply with the Redevelopment Plan and the Mission Bay South Design for Development and amendments thereto (all as modified by the conditions of approval for the Project), and this Agreement, including the Scope of Development (sometimes referred to collectively as “Redevelopment Requirements”).

5.05 Preparation of Construction Documents / Approval of Architect
(a) An architect (or architects) licensed to practice architecture in and by the State of California must: (1) prepare or sign the Construction Documents; and (2) coordinate the work of any associated design professions, including engineers and landscape architects. A California-licensed civil engineer must review and certify all final foundation and grading plans. All architectural firms or architects engaged by Developer or by or through architectural firms or architects (except those exclusively engaged in interior design) must be approved by the OCII. Pursuant to this requirement, the Developer has selected David Baker as its architectural firms and OCII has approved these architectural firms.
(b) Developer must include in all structural engineer and landscape engineer contracts and authorizations entered into by Developer for services pertaining to the planning and design of the Improvements an express agreement by the person performing the services that OCII may use the person’s Design Documents for the Project without compensation or payment by OCII in excess of that otherwise due under the person’s contract with Developer in the event the Design Documents are delivered to OCII in accordance with Section 9.02(c) of this Agreement, provided that OCII agrees not to remove the name of the preparer of the Design Documents without the preparer’s written permission, or to remove it at the preparer’s written request.

5.06 Submission of Design Documents
Developer must prepare and submit the Design Documents to OCII for review and approval in accordance with the Scope of Development, the Mission Bay South Design Review and Document Approval Procedure (“DRDAP”), and at the times established in the Schedule of Performance. Upon Developer’s submission of the Construction Documents to OCII, the architect must provide an Architect’s Certificate for Code Compliance substantially in the form of Attachment No. 8 certifying that the Improvements have been designed in accordance with a reasonable interpretation of all local, state and federal laws and regulations relating to accessibility for the disabled. In the event the Developer, using commercially reasonable, good faith efforts, is unable to cause the architect to execute the Architect Certificate for Code Compliance, substantially in the form of Attachment No. 8, then such event shall not constitute a default.

5.07 Scope of OCII Review and Approval of Developer’s Design Documents
(a) OCII staff’s review and approval of Developer’s Design Documents are limited to: a determination of their compliance with the Redevelopment Requirements per the DRDAP.
(b) No OCII staff review is made or approval given as to the compliance of the Design Documents with any building standards, including building engineering and structural...
matters, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements.

(c) OCII staff will approve or disapprove (or may approve conditionally) the Design Documents in writing within the timeframe allowed by the DRDAP. Failure by OCII staff to either approve or disapprove the Design Documents within the times provided therein will entitle Developer to an extension of time for the period of delay as to the submission and any subsequent submissions and the final date of approval specified in the Schedule of Performance. In no event will failure of the OCII staff to respond within the times provided therein be deemed to be an approval.

(d) OCII staff’s review and approval or disapproval of Design Documents as provided in this Article 5.07 will be final and conclusive. OCII staff will act in good faith in its review and approval process. OCII staff will not disapprove or require changes subsequently (except by mutual agreement) in a manner inconsistent with matters it has approved previously. If OCII staff and Developer disagree as to whether or not a matter contained in a particular submittal has been approved previously or whether OCII staff is acting in a manner inconsistent with matters that it approved previously, the OCII staff’s reasonable judgment will apply in resolving the disagreement.

(e) If OCII staff rejects the Design Documents in whole or in part, the Developer must submit new or corrected plans within thirty (30) days (or such longer period as may be reasonably required by OCII staff comments) after the OCII’s written notification to Developer of rejection, and the provisions of this Article 5.08 relating to approval, rejection and resubmission of corrected Design Documents will continue to apply until Design Documents have been approved by OCII staff.

5.08. Scope of Developer Submission of Design Documents
The following provisions will apply to all stages of Developer submissions of Design Documents in accordance with the times established in the Schedule of Performance and the Scope of Development. Each of the Design Document stages is intended to constitute a further development and refinement from the previous stage. Specific submittal requirements for each stage of design development are outlined in the DRDAP.

(a) Combined Basic Concept and Schematic Design Drawings. The Basic Concept Drawings are intended to set forth basic design concepts of the development, and such drawings have been approved by the OCII.

(b) Design Development Documents. The elements of the Design Development Documents requiring approval must incorporate conditions, modifications and changes specified for the approval of the Schematic Drawings. Design Development Documents must be in sufficient detail and completeness to show that the Improvements and the construction thereof will be in compliance with the Redevelopment Requirements and matters previously approved by the OCII and are more particularly described in the DRDAP.

(c) Construction Documents. The Construction Documents must be a final development of and be based upon and conform to the approved Design Development Documents including any revisions requested by the OCII staff pursuant to issues related to conformance with the Redevelopment Requirements. The Construction Documents are more
particularly described in the DRDAP and must include all drawings, specifications and
documents necessary for the Improvements to be constructed and completed in accordance with
this Agreement.

5.09 Changes in Construction Documents

(a) Developer may not, without OCII approval, make any Material Changes in
any OCII-approved Construction Documents as to elements requiring OCII approval.

(b) A “Material Change” means any changes to those elements approved by
the OCII as part of the OCII’s approval of the Construction Documents as related to any
requirements under the Redevelopment Plan or any change to the scope of the Permitted Uses for
the Site as included in Section 2.05 of this Agreement.

5.10 Property Permit Process (Fast Track)

(a) The so-called “Fast Track” method of permit approval for constructing
the Improvements allows the commencement of construction with less than a full building permit
and the continuation and completion of construction of the Improvements through the issuance
of addenda covering the remaining aspects and phases of construction not covered by the initially
approved portion of the building permit. The OCII is willing to permit the Fast Track
construction of the Improvements on the Site at the election of Developer, which election the
Developer has chosen, provided that Developer submits to the OCII in writing Developer’s
schedule for securing the structural site permit, and each succeeding permit addendum necessary
for the construction and completion of the Improvements, identifying each addendum and the
expected time of issuance. The OCII will review the schedule promptly and advise Developer in
writing within ten (10) days thereafter whether or not the schedule is acceptable. If the schedule
is not acceptable to the OCII in the exercise of its reasonable discretion, Developer must consult
with the OCII and transmit a revised schedule satisfactory to the OCII within fourteen (14) days
of receipt of the OCII’s notice. Failure by the OCII to approve or disapprove the schedule within
the times provided herein will entitle Developer to an extension of time, equal to the period of
the OCII’s delay, as to the obligations set forth in this Agreement or the Schedule of
Performance.

(b) Developer acknowledges that the City must approve a schedule of permit
addenda. If the City-approved schedule is different from the OCII-approved schedule,
Developer must immediately transmit the City-approved schedule to the OCII, and Developer
and the OCII will accept the City schedule.

(c) If the Fast Track schedule is timely received and approved by the OCII as
required in subparagraph (a) above, Developer will be relieved of the requirement to submit
Construction Documents by the date specified in the Schedule of Performance and instead may
submit the Construction Documents in connection with the structural permit addendum and with
the other permit addenda that follow the structural permit addendum.

(d) In the event that any Fast Track permit addendum is not issued in
accordance with the approved schedule, then, if the OCII determines that: (1) the delay is due to
a delay in processing the permit addendum by the City or any other governmental authority, or
other causes beyond the Developer’s control, the OCII will cooperate with Developer, as
appropriate, to expedite the issuance of the permit addendum or address the other causes beyond
the Developer’s control; or (2) the delay is due primarily to Developer’s acts or omissions, the OCII will so advise Developer, and Developer must take any and all actions necessary or appropriate in order to cause the permit addendum to be issued on or before forty-five (45) days following the date for issuance of the permit addendum under the approved schedule; provided, however, if the Developer reasonably requires more than forty-five (45) days for issuance of such permit addendum under the approved schedule, Developer shall notify OCII in writing and shall thereafter work diligently to obtain issuance of the permit addendum.

(e) Developer will have the right to change from Fast Track to “regular track” construction of the Improvements at any time prior to Developer’s commencement of construction by giving written notice of Developer’s election to the OCII; provided that Developer will have the right to make the change only if the OCII determines in its reasonable discretion that the change will not delay the commencement and completion of construction of the Improvements in accordance with the Schedule of Performance. The OCII’s determination in this regard will be made reasonably and will be final and conclusive.

5.11 Government-Required Changes

Without in any manner limiting any other provisions of this Agreement, the OCII acknowledges and agrees that the OCII may not withhold its approval of those elements of the Design Documents and those changes in the Design Documents that are required by any governmental authority; provided, however, that: (1) the OCII must have been afforded a reasonable opportunity to discuss any element of, or change in, the Design Documents with the governmental authority requiring the element or change and with Developer’s architect; and (2) Developer’s architect must have reasonably cooperated with the OCII and the governmental authority in seeking reasonable modifications of the required element or change as the OCII deems necessary or desirable. Developer and the OCII each agrees to use its diligent, good faith efforts to resolve the OCII’s request for reasonable modifications to the required elements or changes, as soon as reasonably possible. Notwithstanding the foregoing, failure by OCII staff to either approve or disapprove the Design Documents within the times provided in the DRDAP as a result of OCII’s exercise of its rights under this Section 5.11 will entitle Developer to an extension of time for the period of delay as to the submission and any subsequent submissions.

5.12 Construction Document Review Procedures

(a) Role of OCII Staff and Commission. OCII review and approval of Design Documents pursuant to the provisions of this Article 5 means review by the OCII staff for conformance with the Redevelopment Requirements.

(b) Method of OCII Action. OCII staff will approve or disapprove (or may approve conditionally) the Design Documents in writing.

(c) OCII Disapproval / Conditional Approval / Developer Resubmission. If OCII staff disapproves the Design Documents, in whole or in part, OCII in the written disapproval may also recommend changes and make other recommendations. If OCII staff conditionally approves the Design Documents, in whole or in part, the conditions will be stated in writing and a time will be stated for meeting the conditions.

5.13 Progress Meetings/Consultation

During the preparation of Design Documents, OCII staff and Developer will hold periodic progress meetings as appropriate to coordinate the preparation of, submission to, and review of Design Documents by OCII. OCII staff and Developer will communicate and consult informally
as frequently as is necessary to ensure that the formal submission of any Design Documents to OCII can receive prompt consideration.

5.14 Reserved

5.15 Cost of Developer Construction
The cost of developing the Property and construction of all Improvements thereon must be borne by Developer in accordance with the Ground Lease. The OCII and Developer will each pay the costs necessary to administer and carry out their respective responsibilities and obligations under this Agreement.

5.16 Issuance of Building Permits
(a) Developer has the sole responsibility for obtaining all necessary site and building addenda permits and will make application for permits directly to the Central Permit Bureau of the City. The OCII will cooperate reasonably with Developer in its efforts to obtain permits, at no cost or expense to the OCII. Prior to commencing construction of all or any portion of the Improvements, Developer must have obtained necessary permits. Developer must submit its application for a building permit (or in the case of Fast Track, a site permit and subsequent addenda) to the City within a period of time sufficient to allow issuance of the building permit before or concurrently with the date specified for commencement of construction in the Schedule of Performance. From and after the date of Developer’s submission of any application, Developer must diligently prosecute the application. In addition, from and after submission of any application, and until issuance of the building permit, Developer must report permit status in writing every thirty (30) days to the OCII, if this information is not conveyed at the Project site meetings.

(b) Developer is advised that the Central Permit Bureau forwards all site and building permits to the OCII for OCII approval of compliance with Redevelopment Requirements. The OCII’s review of the Design Documents does not include any review of compliance with the requirements and standards referred to in Article 5.07(b), and the OCII will have no obligations or responsibilities for such compliance. The OCII evidences its approval by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to Developer. Approval of a site permit or any intermediate permit is not approval of compliance with all Redevelopment Requirements necessary for a building permit.

5.17 Reserved

5.18 Insurance Requirements
(a) Without in any way limiting Developer’s indemnification obligations under this Agreement, and subject to approval by the OCII’s Risk Manager of the insurers and policy forms, the Developer shall obtain and maintain, or cause to be obtained and maintained at no cost to the OCII, the following insurance during the Term, unless otherwise provided in this Agreement.

(b) Minimum Scope. Coverage must be at least as broad as:
(1) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 01) or other form approved by the OCII’s Risk Manager.
(2) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – “any auto”) or other form approved by the OCII’s Risk Manager.
(3) **Workers’ Compensation** insurance as required by the State of California and **Employer’s Liability Insurance**.

(4) **Professional Liability Insurance**: Developer must require that all architects, engineers, and surveyors for the Project have liability insurance covering their negligent acts, errors and omissions. Developer must provide the OCII with copies of consultants’ insurance certificates showing such coverage.

(5) **Property Insurance**: Special form coverage against direct physical loss to the Project, excluding earthquake or flood, during the course of construction and following completion of construction.

(c) **Minimum Limits**. Developer must maintain limits no less than:

1. **General Liability**: $2,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this development or the general aggregate limit must be twice the required occurrence limit.

2. **Automobile Liability**: $1,000,000 per accident for bodily injury and property damage.

3. **Workers’ Compensation and Employer’s Liability**: Workers’ Compensation limits as required by the State of California and Employers Liability limits of $1,000,000 for bodily injury by accident and $1,000,000 per person and in the annual aggregate for bodily injury by disease.

4. **Professional Liability**: $1,000,000 each occurrence and in the annual aggregate covering all negligent acts, errors and omissions of Developer’s architects, engineers and surveyors. If the Professional Liability insurance provided by the architects, engineers, or surveyors is “claims made” coverage, Developer shall assure that these minimum limits are maintained for no less than three (3) years beyond the completion of construction.

5. **Property Insurance**: During the course of construction, builder’s risk insurance in the full completed value of the Project. Following completion of construction, full replacement value of the Project with no coinsurance penalty provision.

(d) **Deductibles and Self-Insured Retentions**. Any deductibles or self insured retentions over $25,000 must be declared to and approved by the OCII. In the event such deductibles or self-insured retentions are in excess of $25,000, at the option of the OCII’s Risk Manager, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the OCII, the City and County of San Francisco, and their respective commissioners, members, officers, agents, and employees; or the Developer shall procure a financial guarantee satisfactory to the OCII’s Risk Manager guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) **Other Insurance Provisions**.

The policies are to contain, or be endorsed to contain, the following provisions:

1. **General Liability and Automobile Liability Coverage**:
   i. **Additional Insureds**: “The Successor Agency to the San Francisco Redevelopment Agency, the City and their respective commissioners, members, officers, agents, and employees” shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of the Developer, premises owned, occupied or used by the Developer; and automobiles owned, leased, hired or borrowed by or on behalf of the Developer. The coverage...
shall contain no special limitations on the scope of protection afforded to the OCII, the City and County of San Francisco and their respective Commissioners, members, officers, agents or employees.

   ii. **Primary Insurance:** For any claims related to this Project, Developer’s insurance coverage must be primary insurance as respects to the OCII, the City and their respective commissioners, members, agents, and employees. Any insurance or self-insurance maintained by the OCII, the City and their respective commissioners, members, agents, officers or employees must be in excess of Developer insurance and will not contribute with it.

   iii. **Reporting Provisions:** Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the OCII, the City and their respective commissioners, members, officers, agents or employees.

   iv. **Severability of Interests:** Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(2) **Builder’s Risk (Course of Construction) Insurance:** Contractor may submit evidence of Builder’s Risk insurance in the form of Course of Construction coverage. Such coverage shall contain the following provision:

   i. OCII shall be named as loss payee as their interest may appear.

(3) **All Coverages:** Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to OCII, except in the event of suspension for nonpayment of premium, in which case ten (10) days’ notice shall be given.

   (f) **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A. M. Best’s rating of no less than A:VII or as otherwise approved by the OCII’s Risk Manager.

   (g) **Verification of Coverage.** Developer must furnish the OCII with certificates of insurance and with original endorsements effecting coverage required by this Article 5.18. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the OCII before work commences. The OCII reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time.

   (h) **Subcontractors and Consultants Insurance.** Contractor, Subcontractors and Consultants Insurance. Developer shall cause its general contractor and all subcontractors and consultants to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by the OCII's Risk Manager. Developer must furnish OCII with general contractor's, architects' and engineers' certificates of insurance and original endorsements effecting coverage required by this Article 5.18(h)
ARTICLE 6. COVENANTS AND RESTRICTIONS

6.01. Covenants
Developer expressly covenants and agrees for itself, that as to the Property and any Improvements constructed or to be constructed thereon, or any part thereof, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer shall use, devote, operate and maintain the Property and the Improvements thereon, and every part thereof, only and in strict accordance with the provisions of the Ground Lease.

6.02. General Restrictions
The Property and the Improvements thereon must be devoted only to the uses permitted by the Predevelopment Loan Agreement and the Ground Lease, including, but not limited to, the affordability and other leasing restrictions described in Article 7 of the Predevelopment Loan Agreement.

6.03. Mandatory Language in All Subsequent Deeds, Leases and Contracts
(a) Basic Requirement. The Developer covenants by and for itself, its successors and assigns that there shall be no discrimination against or segregation of a person or of a group of persons on account of race, color, creed, religion, sex, sexual orientation, marital status, national origin, ancestry or disability in the sale, lease, sublease transfer, use, occupancy, tenure or enjoyment of the Project nor shall the Developer or any person claiming under or through the Developer establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the Project. The foregoing covenant shall run with the land.

(b) Provisions In Conveyance Documents. All deeds, leases or contracts made or entered into by Developer, its successors or assigns, as to any portion of the Property shall contain therein the following language:

(1) In Deeds:
"(1) Grantee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property herein conveyed, nor shall the grantee or any person claiming under or through the grantee, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees in the property herein conveyed. The foregoing covenant shall run with the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(2) In Leases:
"(1) Lessee herein covenants by and for itself, its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the leasing, subleasing, transferring, use, occupancy, tenure or enjoyment of the premises herein leased nor shall the lessee or any person claiming under or through the lessee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees, subtenants, or vendees in the premises herein leased.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

(3) In Contracts:
"(1) There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) and (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955 and Section 12955.2 of the Government Code in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the property nor shall the transferee or any person claiming under or through the transferee establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land.

(2) Notwithstanding paragraph (1), with respect to familial status, paragraph (1) shall not be construed to apply to housing for older persons, as defined in Section 12955.9 of the Government Code. With respect to familial status, nothing in paragraph (1) shall be construed to affect Sections 51.2, 51.3, 51.4, 51.10, 51.11, and 799.5 of the Civil Code, relating to housing for senior citizens. Subdivision (d) of Section 51 and Section 1360 of the Civil Code and subdivisions (n), (o), and (p) of Section 12955 of the Government Code shall apply to paragraph (1)."

ARTICLE 7. ASSIGNMENT PROVISIONS

7.01. Qualifications and Identity of Developer Consideration for Agreement
Developer acknowledges:

(a) the importance of the redevelopment of the Property to the general welfare of the community;
(b) the substantial subsidy and other public assistance that have been made available by law and by federal and local governments for the purpose of making redevelopment possible; and
(c) the fact that a transfer of an ownership interest in Developer or of a substantial part thereof, or any other act or transaction involving or resulting in a significant
change in the ownership or distribution of ownership interests or with respect to the identity of the parties in control of Developer or the degree thereof, is for practical purposes a transfer or disposition of the property then owned by Developer. Therefore, the qualifications and identity of Developer and its members are of particular concern to the community and the OCII. Developer further recognizes that the OCII is entering into this Agreement with Developer because of its qualifications and identity. Developer also recognizes that the OPA requires the development of the Site to be completed by a Qualified Housing Developer, as defined in the OPA.

7.02. Prohibition Against Transfer and Assignment
OCII and Developer acknowledge and agree that the OCII is entering into this Agreement on the basis of the particular experience, financial capacity, skills and capability of Developer and its partners. This Agreement is personal to Developer and is not assignable and no Significant Change may occur under any circumstance (whether by agreement or by operation of law) without the prior written consent of the OCII; provided, however, that the OCII hereby agrees that Developer shall be permitted, upon prior written notice to the OCII to admit a tax credit investor entity or entities as its limited partners concurrent with the execution of the Ground Lease as long as the resulting developer entity is a “Qualified Housing Developer” under the OPA. Significant Change means any dissolution, merger, consolidation, or other reorganization, or any issuance, sale assignment, hypothecation or other transfer of legal or beneficial interests.

ARTICLE 8. MORTGAGE FINANCING

8.01. No Mortgage Except as Set Forth Herein
Commencing at Close of Escrow, Mortgages held by Bona Fide Institutional Lenders (or such other lenders as approved by the OCII) are permitted to be placed upon the Leasehold Estate for the purpose of securing loans of funds to be used for financing the acquisition, design, construction, renovation or reconstruction of the Improvements and any other expenditures reasonably necessary and appropriate to acquire, own, develop, construct, renovate, or reconstruct the Improvements under the Ground Lease and in connection with the operation of the Improvements, and costs and expenses incurred or to be incurred by Developer in furtherance of the purposes of the Ground Lease, all pursuant to the applicable provisions in the Ground Lease.

ARTICLE 9. DEFAULTS AND REMEDIES

9.01. Developer Default
The occurrence of any one of the following events or circumstances, if not cured within the specified cure or grace period, will constitute an event of default (“Event of Default”) by Developer under this Agreement, giving the OCII the right to declare Developer in default and to exercise any or all of its remedies, at its sole election and in its sole discretion:

(a) Developer suffers or permits an assignment, attempted assignment or Significant Change in violation of Article 7.
(b) Developer causes or permits a default as defined in and occurring under the Predevelopment Loan Agreement and fails to cure the same in accordance with such agreement, provided that OCII’s remedies for a default under the Predevelopment Loan Agreement shall be limited to the remedies respectively set forth therein.
(c) Developer does not accept lease of the Property in accordance with this
Agreement upon tender by OCII pursuant to this Agreement, and such failure continues for a period of three (3) Business Days following the date of written notice from OCII.

(d) Developer does not submit to the OCII all Design Documents as required by this Agreement within the periods of time respectively provided therefor in this Agreement and the Schedule of Performance or by any permitted Fast Track, and Developer does not cure such default within thirty (30) days following the date of written demand from OCII.

(e) Developer fails to provide the insurance certificate for the insurance required in Article 5.18 within the time prescribed in Article 5.18, and such failure shall continue for a period of ten (10) Business Days following the date of written notice thereof from OCII.

(f) Developer defaults in the performance of or violates any material covenant, or any part thereof, set forth in Article 6, and such default or violation continues for a period of thirty (30) days after the date of written demand to cure from OCII to Developer.

(g) Developer fails to perform any other material agreements or obligations on Developer’s part to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by OCII to Developer to perform such agreement or obligation, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

9.02. Remedies of the OCII

The OCII’s exclusive remedies for an Event of Default by Developer are set forth below.

(a) Termination. In the event of a default by Developer prior to lease of the Property to Developer, OCII shall have the right to terminate this Agreement upon written notice to Developer. Upon the giving of such notice, this Agreement shall terminate at 5:00 p.m. on the 21st calendar day after OCII’s delivery of such notice of termination, unless the OCII Commission at a public meeting held before the end of such 21-day period, or within a revised time period as such time period may be extended at the discretion of the OCII Executive Director or the OCII Commission, either on its own motion or on application by Developer, which application must be submitted within five (5) days following the receipt of the OCII’s written notice, affirmatively determines by majority vote not to terminate this Agreement, or determines to extend the termination date of this Agreement, or some combination of either of such alternatives. The OCII Commission shall have no obligation to act at all, but if it chooses to act, its action may be upon such terms and conditions as it may select.

(b) Retention of Performance Deposit. The OCII may retain the Performance Deposit. The OCII agrees to provide the Developer with ten (10) days’ written notice prior to retaining the Performance Deposit in accordance with this Article 9.02; provided, however, that failure to provide such notice will not defeat the OCII’s right to such offset under any circumstances, and the only remedy for such failure will be the obligation of the OCII to provide such notice.

(c) Work Product Security. If the OCII terminates this Agreement, then subject to the proprietary rights of their authors and any confidentiality agreements and privileges recognized by applicable law, the Developer shall deliver to OCII copies of any and all reports, studies, document lists and plans regarding the redevelopment of the Property in the Developer’s possession or prepared by or on behalf of the Developer (the Developer’s “Work Product”). The Developer shall deliver its Work Product within ten (10) business days after written demand from the OCII, which obligation shall survive the termination of this Agreement.
The OCII may use the Work Product for any purpose relating to the Property, provided that, the OCII shall release the Developer and the Developer’s contractor, architect, engineer and other consultants from any losses arising out of the OCII’s use of such documents except to the extent that the OCII retains any of them and they agree to such continued liability. The Developer and the OCII acknowledge that the Work Product also serves as security pursuant to the Predevelopment Loan Agreement and that the provision of Section 24.21 of the Predevelopment Loan Agreement shall govern the assignment of the Work Product to the OCII.

(d) If the OCII chooses to terminate the Agreement pursuant to this Article 9, the Agreement shall be terminated and neither party shall have any rights or liability to the other, except those provisions that are specified to survive such termination shall remain in full force and effect.

(e) Limitation on Personal Liability of Developer. No owner, manager, partner, officer, director, member, official or employee of Developer shall be personally liable to the OCII, or any successor in interest, for any default by Developer or for any obligations under the terms of this Agreement.

9.03. OCII Default
The occurrence of any one of the following events or circumstances, if not cured within the specified cure or grace period, will constitute an event of default (“Event of Default”) by the OCII under this Agreement, giving the Developer the right to declare the OCII in default and to exercise any or all of its remedies, at its sole election and in its sole discretion:

(a) OCII fails to enforce its rights to obtain fee title to the Property from FOCIL.

(b) OCII obtains fee title to the Property but fails to lease the Property to Developer in violation of this Agreement, and such failure shall continue for a period of five (5) days following the date of written notice thereof from Developer.

(c) OCII fails to perform any other agreements or obligations on OCII's part to be performed under this Agreement, and such failure shall continue for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Developer to OCII to perform such agreement or obligation, or, in the case of a default not susceptible of cure within thirty (30) days, the OCII fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

9.04. Remedies of the Developer
Developer’s only remedies for an Event of Default by the OCII are set forth below.

(a) Termination. Developer shall have the right to terminate this Agreement upon written notice to OCII and receive reimbursement of the Performance Deposit and Developer's predevelopment costs associated with the Improvements and the Escrow, excluding costs funded and disbursed by the OCII under the Predevelopment Loan Agreement and not repaid by Developer to the OCII.

(b) Specific Performance. Subject to the provisions of subparagraph (c) below, in the event the OCII has obtained fee title to the Property, Developer shall have the right to institute legal action for specific performance of the terms of this Agreement to the extent that such action is available at law or in equity with respect to such default.

(c) Nonliability of OCII Members, Officials and Employees. No member, official or employee of OCII shall be personally liable to Developer, or any successor in interest,
for any default by OCII or for any amount which may become due to Developer or any successor in interest under the terms of this Agreement.

9.05. General Enforcement of Remedies

(a) Subject to the limitations contained in this Agreement, either Party may institute legal action to cure, correct or remedy any default, to recover damages for any default or to obtain any other remedy consistent with the terms of this Agreement. Legal actions must be instituted in the Superior Court of the City and County of San Francisco, State of California, or any other appropriate court in the City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) In the event that any legal action is commenced by Developer against the OCII, service of process on OCII must be made by personal service upon the Executive Director of the OCII, through the San Francisco City Attorney’s Office, or in any other manner as may be provided by law. In the event that any legal action is commenced by the OCII against Developer, service of process on Developer must be made by personal service upon Developer at the address provided in Article 12.04 or at any other address Developer has designated pursuant to Article 12.04 of this Agreement, or in any other manner as may be provided by law, and will be valid whether made within or without the State of California.

(c) In the event that any Party brings a legal action to enforce rights under this Agreement, the prevailing Party in the proceeding will be entitled to recover its reasonable attorneys’ fees and costs of the proceeding, which will include expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses and any other amount the court adjudges to be reasonable attorneys’ fees for the services rendered to the prevailing Party in such action or proceeding. Attorneys’ fees include reasonable attorneys’ fees and costs incurred on any appeal. For purposes of this Agreement, reasonable attorneys’ fees for a Party’s in-house counsel will be based on the fees regularly charged by private attorneys (in San Francisco law firms) with an equivalent number of years of professional experience in the subject matter area of the law for which the Party’s in-house counsel’s services were rendered.

(d) Rights and Remedies are Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the Parties to this Agreement, whether provided by law, in equity or by this Agreement, are cumulative, and the exercise by either Party of any one or more of its rights or remedies will not preclude the exercise by the Parties of any other or further rights or remedies for the same or any other default or breach by the other Party. No waiver made by either Party with respect to the performance, or manner or time thereof, of any obligation of the other Party or any condition to its own obligation under this Agreement will be effective beyond the particular obligation of the other Party or condition to its own obligation expressly waived and to the extent thereof, or a waiver in respect to any other rights of the Party making the waiver or any other obligations of the other Party.

ARTICLE 10. FORCE MAJEURE AND EXTENSIONS OF TIME

10.01. Force Majeure

(a) For the purposes of any of the provisions of this Agreement, and notwithstanding any provision herein to the contrary, neither the OCII nor Developer, as the case may be (the “Delayed Party” as applicable), will be considered in breach of or default in any way.
obligation or satisfaction of a condition to an obligation of another Party, during an event of Force Majeure (defined below). In the event of the occurrence of any event of Force Majeure, the time or times for performance of the obligations of the OCII or Developer will be extended for the period of the Force Majeure event; provided, however, that the Party seeking the benefit of the provisions of this Article 10 must notify the other Party in writing within thirty (30) days after the beginning of any Force Majeure event, and state the cause or causes of delay and provide notification of an extension for the period of the Force Majeure event.

(b) “Force Majeure” means events that cause enforced delays in the Delayed Party’s performance of its obligations under this Agreement due to causes beyond the Delayed Party’s control, including acts of God or of a public enemy, acts of terrorism, acts of the government (other than acts of the government relating to the delay or failure to issue building permits for cause), fires, floods, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered the materials on a timely basis), unusually severe weather, archeological finds on the Property, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration (provided that Developer proceeds with due diligence to resolve any dispute that is the subject of action), and delays of subcontractors due to any of these causes.

10.02. Extensions of Time
(a) Extension by OCII. The OCII may extend the time for Developer’s performance of any term, covenant or conditions of this Agreement, or any other document referenced herein pursuant to which the Developer is required to perform, or permit the curing of any default upon terms and conditions the OCII determines appropriate.
(b) Extension(s) by OCII Executive Director. The Executive Director of the OCII may extend the date for Developer’s performance of any item set forth in the Schedule of Performance without OCII Commission approval, so long as the extensions do not in the aggregate exceed a total of twelve (12) months from the dates in the Schedule of Performance.

ARTICLE 11. ADDITIONAL TERMS, COVENANTS AND CONDITIONS

Developer has agreed to comply with the mitigation measures provided in the 1998 Final Mission Bay Subsequent Environmental Impact Report (“EIR”) in the construction of the Project. Additionally, the Developer is required to comply with the measures identified in the RMP when engaging in the development process.

ARTICLE 12. GENERAL PROVISIONS

12.01. Indemnification
The Developer shall indemnify an Indemnified Party against any and all losses (including reasonable attorneys fees and court costs) arising out of (a) any default by the Developer in the observance or performance of any of the Developer's obligations under this Agreement, (b) any failure of any representation by the Developer to be correct in all material respects when made, (c) injury or death to persons or damage to property or other loss occurring on or in connection with the Property, caused by the negligence or any other act or omission of the Developer and its officers, agents and employees, (d) any claim, demand or cause of action, or any action or other proceeding, whether meritorious or not, brought or asserted against any Indemnified Party that relates to or arises out of negligent performance by the Developer under this Agreement, or any
transaction contemplated by, or the relationship between the Developer and the OCII under the Agreement, (e) any failure of the Developer or its agents or contractors to comply with all applicable Environmental Law relating to the development of the Property, (f) any claim, demand or cause of action, or any investigation, inquiry, order, hearing, action or other proceeding by or before any governmental agency, whether meritorious or not, which directly or indirectly relates to, arises from or is based on the occurrence or allegation of any of the matters described in clauses (a) through (e) above, provided that no Indemnified Party shall be entitled to indemnification under this Article 12.01 for matters caused by such Indemnified Party’s gross negligence or willful misconduct. In the event any action or proceeding is brought against an Indemnified Party by reason of a claim arising out of any loss for which the Developer has indemnified the Indemnified Party, and upon written notice from such Indemnified Party, the Developer shall at its sole expense answer and otherwise defend such action or proceeding using counsel approved in writing by the Indemnified Party. The Indemnified Party shall have the right, exercised in its sole discretion, but without being required to do so, to defend, adjust, settle or compromise any claim, obligation, debt, demand, suit or judgment against the Indemnified Party in connection with the matters covered by this Agreement.

12.02. Surety Waivers
Developer, for itself and its successors and assigns, and all other persons who are or shall become, whether by express or implied assumption or otherwise, liable upon or subject to any obligation or burden under this Agreement, hereby waives, to the fullest extent permitted by law and equity, any and all claims or defenses otherwise available on the ground of its or their being or having become a person in the position of a surety, whether by agreement or operation of law, including any and all claims and defenses based upon extension of time, indulgence, or modification of terms of contract.

12.03. Estoppels
At the request of either Party, the other Party must execute and deliver to the requesting Party within ten (10) days a written statement in which the other Party certifies that this Agreement is in full force and effect; that this Agreement has not been modified or amended (or stating all modifications and amendments); that neither Party is in default under this Agreement (or setting forth any defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any Party, or any duty or obligation of the certifying Party (or setting forth any set-offs or defenses); and as to any other matters relating to this Agreement that the requesting Party reasonably requests.

12.04. Notices
Any notice, demand or other communication required or permitted to be given under this Agreement by either Party to the other Party will be sufficiently given or delivered if transmitted by: (i) registered or certified United States mail, postage prepaid; (ii) personal delivery; or (iii) nationally recognized private courier services, addressed as follows:

To OCII: Office of Community Investment and Infrastructure
Successor Agency to the San Francisco Redevelopment Agency
1 South Van Ness, 5th Floor
San Francisco, CA  94103
Attn: Executive Director
12.05. Time of Performance
Except as provided herein, all performance (including cure) dates expire at 5:00 p.m. Pacific Standard/Daylight Savings Time, as applicable, on the performance or cure date. Provisions in this Agreement relating to number of days will be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action is not a Business Day, then the last day for undertaking the action or giving or replying to the notice will be the next succeeding Business Day. Time is of the essence in the performance of all the terms and conditions in this Agreement.

12.06. Non-Discrimination in Benefits
Developer does not as of the date of this Agreement and will not during the Term, in any of its operations in San Francisco or with respect to its operations under this Agreement elsewhere in the United States discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “Core Benefits”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership had been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the OCII’s Non-Discrimination in Contracts and Benefits Policy, as more particularly set forth in the Ground Lease.
12.07. Prevailing Wages (Labor Standards)
The Parties acknowledge that the development of the Project is a private work of improvement. Developer agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in the Ground Lease.

12.08. Compliance With Minimum Compensation Policy And Health Care Accountability Policy
The Developer agrees, as of the date of this Agreement and during the term of this Agreement, to comply with the provisions of the OCII’s Minimum Compensation Policy and Health Care Accountability Policy, adopted by OCII Resolution 168-2001, as such policies may be amended from time to time. Such compliance includes providing all “Covered Employees”, as defined under Section 2.7 of such policies, a minimum level of compensation and offering health plan benefits to such employees or to make payments to the City and County of San Francisco’s Department of Public Health, or to participate in a health benefits program developed by the City and County of San Francisco’s Director of Health.

12.09. Successors and Assigns
This Agreement will be binding upon and, subject to the provisions of Article 7 (Assignment Provisions), will inure to the benefit of the successors and assigns of the OCII and Developer. This Agreement is made and entered into only for the protection and benefit of the Parties and their successors and assigns. Except as expressly provided otherwise in this Agreement, no non-party has or acquires any right or action of any kind based upon the provisions of this Agreement.

12.10. Small Business Enterprise
(a) The Developer, and all its contractors and subcontractors, shall be subject to the Small Business Enterprise Policy (“SBE Policy”), dated July 21, 2009, or as amended, for all professional, contracting, and supplier contracts.

(b) There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of this Agreement. The Developer will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status). Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations to clients or the general public.

(c) The Developer will, in all solicitations or advertisements for employees placed by it or on its behalf, state it is an equal opportunity employer.

(d) The Developer will cause the foregoing provisions to be inserted in all subcontracts for any work covered by this Agreement so that such provisions will be binding upon each subcontractor, provided that the foregoing provisions shall not apply to contracts or subcontracts for standard commercial supplies or raw materials.

(e) If the Developer intends to utilize subcontractors in the provision of services under this Agreement, it must consult with the OCII’s Contract Compliance Division.
and comply with all the applicable provisions of the OCII’s Purchasing Policy and Procedures in regard to subcontracting pursuant to the SBE Policy.

(f) The Developer agrees not to discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, and shall comply fully with all provisions of the OCII’s Nondiscrimination in Contracts Policy, adopted by OCII Resolution No. 175-97, as such policy may be amended from time to time.

(g) The Developer shall provide all services to the public under this Agreement in facilities that are accessible to persons with disabilities as required by state and federal law.

12.11. Counterparts
This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original, and all counterparts will constitute one and the same instrument.

12.12. Integration
This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the subject matter hereof.

12.13. Formal Amendment Required
Any modifications or waiver of any provisions of this Agreement or any amendment thereto must be in writing and signed by a person or persons having authority to do so, on behalf of both the OCII and Developer.

This Agreement is governed by, and must be construed and enforced in accordance with, the laws of the State of California.

12.15. Further Assurances
Each Party will execute and deliver to the other Party additional documents and instruments that the other Party reasonably requests in order to more fully effectuate the purpose and intent of this Agreement.

12.16. Effective Date
The Effective Date of and the Parties’ rights and obligations under this Agreement will be the date on which this Agreement is approved for execution by the OCII Commission. The OCII will insert the date into the appropriate locations in this Agreement upon execution.

12.17. Representation by Counsel
Developer and the OCII each acknowledges, warrants and represents that it has been fully informed with respect to, and represented by counsel of its choice in connection with the rights and remedies of and waivers by it contained in this Agreement and after advice and consultation has presently and actually intended, with full knowledge of its rights and remedies otherwise available at law or in equity, to waive and relinquish those rights and remedies to the extent specified in this Agreement, and to rely solely on the remedies provided for in this Agreement with respect to any Event of Default by the other Party, or any other right that either Developer
or the OCII seeks to exercise. The language of this Agreement must be construed as a whole according to its fair meaning.

12.18. Interpretation
   (a) Unless otherwise specified, whenever in this Agreement, including its Attachments, reference is made to the Table of Contents, any Article or Attachment, or any defined term, the reference will be deemed to refer to the Table of Contents, Article or Attachment, or defined term of this Agreement. Any reference to an Article includes all clauses, subsections and subparagraphs of that Article. The terms “Paragraph” and “Article” may be used interchangeably. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and must be disregarded in construing or interpreting any of its provisions.
   (b) The use in this Agreement of the words “including,” “such as” or words of similar import when following any general term, statement or matter, may not be construed to limit the statement, term or matter to the specific items or matters, whether or not language of non-limitation, such as “without limitation” or “but not limited to,” or words of similar import, is used, but rather will be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of the statement, term or matter. No specific example limits the more general application of a provision.
   (c) The masculine, feminine or neutral gender and the singular and plural forms include the others whenever the context requires. Defined terms and variants of them will have the same definition. References to days, months and years mean calendar days, months and years unless otherwise specified. Accounting terms and financial covenants will be determined, and financial information must be prepared, in compliance with Generally Accepted Accounting Principles (“GAAP”) as in effect on the date of performance.
   (d) References to any law or document, specifically or generally, will mean the law as amended, supplemented or superseded from time to time.
   (e) In the event of a conflict between the Recitals and the remaining provisions of the Agreement, the remaining provisions will prevail.

12.19. Recordation
OCII shall cause this Agreement to be recorded in the Recorder’s Office of the City and County of San Francisco upon execution of this Agreement.

12.20. Conflict of Interest - OCII
   No employee, agent, consultant, officer or official of the OCII who exercises any functions or responsibilities with respect to this Agreement or who is in a position to participate in a decision making process or gain inside information with regard to it, shall obtain a personal or financial interest in or benefit from any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for himself or herself or for those with whom they have family or business ties, during his or her tenure or for one year thereafter.

12.21. Limitations on Contributions
Through execution of this Agreement, Developer acknowledges that it is familiar with section 1.126 of the San Francisco Campaign and Governmental Conduct Code, which prohibits any person who contracts with the OCII for the rendition of personal services, for the furnishing of any material, supplies or equipment, for the sale or lease of any land or building, or for a grant, loan or loan guarantee, from making any campaign contribution to (1) the Mayor or
members of the Board of Supervisors, (2) a candidate for Mayor or Board of Supervisors, or (3) a committee controlled by such office holder or candidate, at any time from the commencement of negotiations for the contract until the later of either the termination of negotiations for such contract or six months after the date the contract is approved. Developer acknowledges that the foregoing restriction applies only if the contract or a combination or series of contracts approved by the same individual or board in a fiscal year have a total anticipated or actual value of $50,000 or more. Developer further acknowledges that the prohibition on contributions applies to each prospective party to the contract; each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the bid or contract; and any committee that is sponsored or controlled by Developer. Additionally, Developer acknowledges that Developer must inform each of the persons described in the preceding sentence of the prohibitions contained in section 1.126.

Finally, Developer agrees to provide to the OCII the names of each member of Developer's board of directors; Developer's chairperson, chief executive officer, chief financial officer and chief operating officer; any person with an ownership interest of more than 20 percent in Developer; any subcontractor listed in the bid or contract; and any committee that is not sponsored or controlled by Developer.

[Signatures on following page.]
IN WITNESS WHEREOF, the parties hereto have executed this Agreement at San Francisco, California as of the date first written above.

**OCII:**
Office of Community Investment
And Infrastructure, 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:
Tiffany Bohee
Executive Director

**DEVELOPER:**
MISSION BAY BLOCK 7 HOUSING
PARTNERS, L.P, a California limited partnership

By: Related/Mission Bay Block 7
Development Co., LLC, a California limited
liability company, its administrative general
partner

By: William A. Witte, President

**APPROVED AS TO FORM:**
DENNIS J. HERRERA
City Attorney

By:
Heidi J. Gewertz
Deputy City Attorney

By: Chinatown Community Development
Center, Inc., a California nonprofit corporation, is
sole member/manager

By: Norman Fong, its Executive Director

Authorized by OCII Resolution No. ____-2013, adopted ________________, 2013
ATTACHMENTS TO AGREEMENT

1. Site Map
2. Site Legal Description
3. Scope of Development
4. Schedule of Performance
5. Reserved
6. Reserved
7. Tenant Selection Criteria Leasing System
8. Form of Architect’s Certificate for Code Compliance
9. Memorandum of Agreement for Incremental Environmental Costs and Action for Agency Affordable Housing Sites between Catellus and the Agency
ATTACHMENT NO. 1
SITE MAP

The land referred to in this Agreement is situated in the State of California, City and County of San Francisco and is described as follows:
ATTACHMENT NO. 2
SITE LEGAL DESCRIPTION

APN 226 (FORMER APN 31 AND PORTION OF FORMER APN 32)

All that real property situated in the City and County of San Francisco, State of California, described as follows:

Being Assessor's Block 8711 Lot 31 and a portion of Assessor's Block 8711 Lot 32 as said lots are shown on that certain map entitled “Final Map Tract No. 3936 - for Residential and Commercial Condominium Purposes, Mission Bay (2-7 and 13)” recorded on February 22, 2006 in Book BB of Maps at Pages 54 through 58 in the Office of the Recorder of the City and County of San Francisco, State of California and being more particularly described as follows:

BEGINNING at the northwesterly corner of said Lot 31; thence, proceeding clockwise the following courses and distances: North 86°49'04" East, 294.00 feet along the northerly line of said Lot 31 and Lot 32 to a line being parallel with and distant easterly 294.00 feet, measured at right angles, from the westerly line of said Lot 31; thence, South 03°10'56” East, 275.03 feet along said parallel line to the southerly line of said Lot 32 and Lot 31; thence, South 86°49'04" West, 294.00 feet along said southerly line to said westerly line of said Lot 31; thence, North 03°10'56" West, 275.03 feet along said westerly line to the POINT OF BEGINNING.

Being a portion of Assessor's Block 8711.
Containing 80,859 square feet (1.86 acres) more or less.
The development shall consist of 200-unit affordable rental units with approximately 10,000 square feet of retail space on approximately 1.86 acres within the Mission Bay – South Redevelopment Area. The property is within the western portion of Block 7 located on Fourth Street between China Basin and Mission Bay Boulevard North. The building will contain ground-level retail, 200 rental one- and two-bedroom units, parking at ground level, and common amenity spaces for residents.
<table>
<thead>
<tr>
<th>Task</th>
<th>Estimated Date</th>
<th>Contractual Deadline</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Developer Pays Performance Deposit.</strong></td>
<td>Complete</td>
<td>Complete</td>
</tr>
<tr>
<td>Pursuant to Article 2.04, Developer shall pay Performance Deposit no later than the date of execution of this DDA.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DDA Effective Date</strong></td>
<td>Not later than</td>
<td>Date OCII Approves DDA</td>
</tr>
<tr>
<td>Date the OCII approves the DDA.</td>
<td>December 3, 2013</td>
<td></td>
</tr>
<tr>
<td><strong>Combined Basic Concept and Schematic Design Drawings – Approval by the OCII.</strong></td>
<td>Not later than</td>
<td>Date OCII Approves Basic Concept and Schematic Design Drawings</td>
</tr>
<tr>
<td></td>
<td>January 7, 2013</td>
<td></td>
</tr>
<tr>
<td><strong>Design Development Drawings – Submission to the OCII.</strong></td>
<td>May 2014</td>
<td>Within eight months after OCII approves Basic Concept and Schematic Design Drawings</td>
</tr>
<tr>
<td>Pursuant to DRDAP, the OCII completeness check within ten (10) days of submittal.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Design Development Documents – Approval by the OCII.</strong></td>
<td>July 2014</td>
<td>Date OCII Approves Design Development Drawings</td>
</tr>
<tr>
<td>Pursuant to DRDAP, the OCII review within thirty (30) days of completeness check.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>CDLAC and TCAC Applications.</strong></td>
<td>Within 30 days after</td>
<td>Within 120 days after the OCII approval of the OCII Loan.</td>
</tr>
<tr>
<td>Developer to apply to CDLAC for tax-exempt bonds and TCAC for 4% tax credits.</td>
<td>the OCII approval of the OCII Loan.</td>
<td></td>
</tr>
<tr>
<td><strong>OCII Loan Approval.</strong></td>
<td>July 2014</td>
<td>Date OCII Commission approves the OCII Loan.</td>
</tr>
<tr>
<td>The OCII Loan is a document that must be executed and approved by OCII Commission prior to CDLAC and TCAC Applications.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Construction Drawings – Submission to the OCII.</strong></td>
<td>October 2014</td>
<td>Six months after OCII approval of Design Development Documents</td>
</tr>
<tr>
<td>Final Construction Drawings and Site Permit up to Addendum 3 (Architecture) submitted to the OCII concurrently with submittal to the Department of Building Inspection.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Construction Drawings – Approval by the OCII

Pursuant to DRDAP, the OCII review within ten (10) days of approval by the Department of Building Inspection and any other City agencies.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>January 2015</td>
<td>Date OCII Approves Construction Drawings</td>
</tr>
</tbody>
</table>

## CDLAC/TCAC Allocations

Approximately 60 days after CDLAC and TCAC Applications. Approximately 90 days after 2nd round of CDLAC and TCAC Applications.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days after CDLAC/TCAC Allocations.</td>
<td>Date OCII Delivers Clean Title</td>
</tr>
</tbody>
</table>

## The OCII to Deliver Clean Title

Pursuant to Article 3.02(e), forty (40) days prior to Close of Escrow, if the Property is subject to a lien, encumbrance or other exception to title in addition to the Approved Title Exceptions, the OCII shall use diligent, good faith efforts to cause such title exception to be removed within thirty (30) days thereafter.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 30 days after CDLAC/TCAC Allocations.</td>
<td>Date OCII Delivers Clean Title</td>
</tr>
</tbody>
</table>

## Evidence of Financing and Project Commitments – Submission to the OCII

Pursuant to Article 3.02(b), at least fifteen (15) days prior to Close of Escrow.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 60 days after CDLAC/TCAC Allocations.</td>
<td>Within 80 days after CDLAC/TCAC Allocations.</td>
</tr>
</tbody>
</table>

## Developer Opens Escrow

At least twenty (20) business days prior to Close of Escrow.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 70 days after CDLAC/TCAC Allocations.</td>
<td>Within 90 days after CDLAC/TCAC Allocations.</td>
</tr>
</tbody>
</table>

## Parties Submit Escrow Instructions

Pursuant to Article 3.02(b), at least fifteen (15) days prior to Close of Escrow.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 75 days after CDLAC/TCAC Allocations.</td>
<td>Within 95 days after CDLAC/TCAC Allocations.</td>
</tr>
</tbody>
</table>

## Evidence of Financing and Project Commitments – Approval by the OCII

Pursuant to Article 3.10(g), the OCII will notify the Developer in writing of its approval or disapproval of any of the documents within fifteen (15) days of submission.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>15 days from Evidence of Financing and Project Commitments – Submission to the OCII.</td>
<td>15 days from Evidence of Financing and Project Commitments – Submission to the OCII.</td>
</tr>
</tbody>
</table>

## Parties to deposit into escrow all documents and instruments

Pursuant to Article 3.02(b), at least two (2) days prior to Close of Escrow.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 88 days after CDLAC/TCAC Allocations.</td>
<td>Within 108 days after CDLAC/TCAC Allocations.</td>
</tr>
</tbody>
</table>

## Parties to deposit into escrow all funds

Pursuant to Article 3.02(b), at least one (1) day prior to Close of Escrow.

<table>
<thead>
<tr>
<th>Event</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Within 88 days after CDLAC/TCAC Allocations.</td>
<td>Within 108 days after CDLAC/TCAC Allocations.</td>
</tr>
</tbody>
</table>
**Construction Loan Closing and Close of Escrow.**

- Within 90 days after CDLAC/TCAC Allocations.
- Within 110 days after CDLAC/TCAC Allocations.

**Commence Construction.** Developer plans to utilize the “Fast Track” method. The piles, foundation, and concrete podium addendum (addendum 1) will need to be issued to Developer before construction can commence.

- Within 10 days after Close of Escrow.
- Within 30 days after Close of Escrow.

**Complete Construction.** General Contractor estimates construction will take eighteen (18) months to complete.

- 18 months from Commence Construction date.
- 24 months from Commence Construction date.
ATTACHMENT NO. 6.
RESERVED
ATTACHMENT NO. 7
TENANT SELECTION CRITERIA LEASING SYSTEM

Applicants will be processed in order as established below:

a. Category #1: Per the Amended Housing Project DDA, first priority will be given to income-eligible applicants ("Applicants") who are also eligible for a priority in OCII-assisted affordable housing under the Property Owner and Occupant Preference Program (October 1, 2008), as amended from time to time;

b. Category #2: Twenty-five percent of the units available to rent (50 units) will be available to applicants who score at least one point as follows. Applicants with highest points will be processed first. Those with the same point score will be processed in order as determined by lottery. One point will be assigned for each characteristic, for a total possible of 2 points:
   i. Applicant is an employee of a public higher education institution located in San Francisco (1 point)
   ii. Applicant is an employee of a public healthcare institution located in San Francisco (1 point)

If there are insufficient Applicants in Category #2 resulting from the outreach and lottery process, units will not be held open for Category #2 Applicants; but rather, units will be made available to Applicants in Category #3.

c. Category #3: The remaining units after Categories #1 and #2 will be available to income–eligible members of the general public without application of additional selection criteria.

Nothing in this Section C of the Selection Criteria Leasing System shall be construed as prohibiting changes to the selection criteria if, upon mutual agreement by the parties, additional funding is secured that requires such changes. The parties agree that any additional selection criteria adopted under Category #2 or #3 will be in compliance with Fair Housing Law.

d. Procedure for Re-Leasing Units: The Marketing and Management Plan will outline in detail the process for releasing units that are vacated after initial occupancy. In general, Applicants, including those on any waitlists, will be identified according to their eligibility under all three Categories above. Any unit that becomes available for re-lease will be offered to qualifying households in the following order:

- First to an Applicant that is identified as qualifying under Category #1;
- To the extent that the list of potential Applicants in Category #1 is exhausted and if less than 50 units are occupied by households qualifying under Category #2, the
unit will then be offered to an Applicant qualifying under Category #2 in accordance with total points scored;

- To the extent that the list of potential Applicants in Categories #1 and #2 (up to 50 units for Category #2) are exhausted, then the unit will be offered to Applicants qualifying in Category #3.
ATTACHMENT NO. 8
FORM OF ARCHITECT’S CERTIFICATE FOR CODE COMPLIANCE

Design of Improvements

TO: San Francisco Redevelopment OCII
One South Van Ness Avenue, 5th Floor
San Francisco, California 94103

FROM: Architect of Record

Dated: ____________________________________

Development: _______________________________________
_____________________________________

Location: _______________________________________
_____________________________________

Note: This Certification is being provided pursuant to Article 5.07 of that certain Amended and Restated Disposition and Development Agreement between the Redevelopment OCII of the City and County of San Francisco and Mission Bay Block 7 Housing Partners, L.P., a California limited partnership, dated as of ____________, 2013 (“DDA”). Capitalized terms used herein have the meanings given in the DDA.

As Code Compliance Consultant for the construction of the Improvements, I hereby declare to the best of my knowledge it is my professional opinion that:

1. Design of the Improvements has been performed in accordance with all applicable local, state, federal building laws and regulations with respect to Accessibility for Persons with Disabilities, including the following specifications (e.g., Title 24, UFAS, ADAAG, etc.), which I used in reviewing the Design:

   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________
   _______________________________________________________________________

2. I examined the Schematic Drawings for conformity to such local, state, federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

3. I hereby declare that the Preliminary Construction Documents provide for construction of the Improvements in accordance with all applicable local, state, federal building laws and regulations with respect to Accessibility for Persons with Disabilities.

   ____________________________________
   Architect
ATTACHMENT NO. 9
MEMORANDUM OF AGREEMENT FOR INCREMENTSAL ENVIRONMENTAL COSTS AND ACTIONS FOR AGENCY AFFORDABLE HOUSING SITES

(ATTACHED)
This Memorandum of Agreement for Incremental Environmental Costs on Mission Bay Affordable Housing Sites ("Agreement") is entered into by and between Catellus Development Corporation, a Delaware corporation ("Catellus"), under the Owner Participation Agreements for the North Plan Area of Mission Bay and for the South Plan Area of Mission Bay, and the Redevelopment Agency of the City and County of San Francisco ("Agency"), with reference to the following facts:

A. Catellus and the Agency entered into an Owner Participation Agreement for the South Plan Area of Mission Bay ("South OPA") and an Owner Participation Agreement for the North Plan Area of Mission Bay ("North OPA") dated as of November 16, 1998. Both the South OPA and the North OPA, in an Attachment K appended thereto, specified Environmental Investigation and Response Programs ("EIRPs") for the certain parcels in their respective plan areas. The EIRPs contemplated that Catellus would pay specified environmentally related construction costs during construction of the initial permanent improvements on parcels to be owned and developed by the Agency. Specifically, Section IV.A.3.(b) of Attachment K of each respective EIRP provided that Catellus would be responsible for:

Carrying out the activity or paying for the cost of any Investigation and Response measures specified in the RMP [Risk Management Plan] and required during the Construction of the Initial Permanent Improvements; provided, however, that (i) Owner will be responsible only for the incremental costs or acts required beyond the costs and actions that a developer would incur for development if Investigation and Response measures were not required, and (ii) Owner's obligations under this EIRP to Investigate and Remediate Hazardous Substances on Affordable Housing Parcels are based on the understanding that Construction will be at or above existing grade, will not include subterranean garages and will provide for grading to be balanced on site to the extent reasonably possible. When determining incremental costs, in instances where an activity or cost item would be required for development (e.g., landscaping, drainage, substantial utility excavation, soil or geotechnical conditions) assuming no Investigation or Remediation action were required and also would have an environmental use or purpose, the Agency shall be responsible for the activity or cost to the extent it would be needed for development purposes assuming no Investigation or Remediation action were required, and Owner shall be responsible for providing any additional activities or cost (beyond that provided by the Agency) required for Investigation or Remediation. No incremental costs, which the Agency seeks to impose upon Owner, will be incurred unless Owner performs the activity giving rise to the
cost, or unless Owner and the Agency have agreed in writing that some other entity may perform the activity. Further details and procedures for the implementation of this Section IV.A.3.(b) shall be set forth in a Memorandum of Understanding between Owner and Agency.

B. The purpose of this Agreement is to allocate fully the responsibilities and costs for the environmental activities set forth below that are required by the Risk Management Plan ("RMP") between Owner and the Agency in accordance with the foregoing provision in Section IV.A.3.(b) of the EIRPs. Notwithstanding any other provision of this Agreement, Owner’s responsibility to perform or reimburse the Agency under this Agreement is limited to actions or costs beyond those costs and actions that a developer would incur for development if Investigation and Response measures were not required, and by the other principles set forth in Section IV.A.3.(b) and elsewhere in Attachment K of the South OPA and North OPA. If the Regional Board or an environmental agency other than the Regional Board requires Investigation and Response measures for hazardous materials during Construction at an Affordable Housing Parcel which measures are expanded or changed in a substantial and material way and significantly more expensive than contemplated by the Parties under the RMP, the recorded Environmental Covenant and Restrictions and the EIRPs, the Parties’ responsibilities under this Agreement, to the extent they are materially changed by such Investigation and Response measures, will be suspended and reevaluated in light of the provisions of the EIRPs and the material changes.

THEREFORE, the Parties do agree as follows:

I. Definitions

A. Initially capitalized terms used in this Agreement shall have the meanings set forth in this Section I or elsewhere in this Agreement. If not defined in this Section I or elsewhere in this Agreement, they shall have the meanings set forth in the North OPA and South OPA.

B. “Agency Designee” shall mean a Qualified Housing Developer designated by the Agency to carry out the development of an Agency Affordable Housing Parcel. For the purpose of this Agreement, obligations of the Agency shall be understood to be obligations of the Agency or an Agency Designee.

C. “Construction Contract” shall mean a contract for construction on an Agency Affordable Housing Parcel entered into between a Qualified Housing Developer and a contractor pursuant to Agency requirements.

D. “Financing Agreement” shall mean a contract that governs the terms of uses or disbursement of Agency loan or grant funds entered into between the Agency and a Qualified Housing Developer.

E. “Incremental Environmental Costs” shall mean those costs for which Owner is responsible in accordance with the OPA, Attachment K, Section IV.A.3(b), as further defined in this Agreement.

F. “Owner” shall mean Owner as defined in Section 1.64 of the North OPA
Affordable Housing Parcels in the North Plan Area and Owner as defined in Section 1.55 of the South OPA for Affordable Housing Parcels in the South Plan Area. The parties acknowledge that in each instance where the term Owner includes any Transferee (as defined in the North OPA or South OPA, as applicable), Transferee's rights and obligations under this Agreement shall, as in the North OPA and South OPA, be limited by Sections 13 and 14 (including, without limitation, Section 14.1(f)) of the North OPA or South OPA, as applicable.

G. "Owner Participation Agreement" or "OPA" shall mean the Mission Bay North Owner Participation Agreement for Agency Affordable Housing Parcels in the Mission Bay North Redevelopment Area, and shall mean the Mission Bay South Owner Participation Agreement for Agency Affordable Housing Parcels in the Mission Bay South Redevelopment Area.

H. "Performance Item" shall mean the Agency-Only Performance Items set forth in Section III, the Owner-Only Performance Items set forth in Section IV and the Owner-Optional Performance Items set forth in Section V.

I. "Risk Management Plan" or "RMP" shall mean the May 11, 1999 Risk Management Plan for the Mission Bay Area, San Francisco, California, approved on May 12, 1999, by the State of California Regional Water Quality Control Board, San Francisco Bay Region and any amendments approved thereto in accordance with Section 6.2 of the RMP.

J. "Unanticipated Conditions" shall mean unknown areas of contamination and unknown underground structures that are identified during site development as more fully described in Section 4.3.5.6 of the RMP.

II. Owner Obligations

For each Affordable Housing Parcel, Owner shall perform or pay as follows in full satisfaction of any obligations it has or is alleged to have under Section IV.A.3(b) of Attachment K:

A. Pay to Agency or Agency's Designee (hereinafter collectively referred to as "Agency") an amount of seventeen thousand five hundred ($17,500), to be adjusted upward on the first day of each January starting on January 1, 2000, by reference to the Engineering News Report, San Francisco Index, within thirty (30) calendar days after the Agency's issuance of a Notice to Proceed for the construction of housing on an Agency Affordable Housing Parcel.

B. Perform at its sole cost and expense those items designated below as Owner-Only Performance Items.

C. Subject to the procedures in this Agreement, at its option, perform at its sole cost and expense those items designated below as Owner-Optional Performance Items.

D. Pay Agency, pursuant to the procedures and amounts set forth in this Agreement, for the Incremental Environmental Costs of Owner-Optional Performance Items performed by Agency to the extent consistent with this Agreement. Where Owner is asked to pay the Agency for a particular cost, Owner will have the same rights to review and approve or contest billing and work performed as Agency has under its Financing Agreement. Subject to such Owner's rights, Owner will pay the Agency (i) the invoiced amount, within forty-five (45) calendar days after presentation to Owner of a complete invoice which sets forth the nature and amount of an Incremental...

504268.1 ExecCopy 11/19/01- Mission Bay Housing MOA
Environmental Cost item with the requisites and specificity required by the Construction Contract and Exhibit A hereto, and (ii) commencing on the thirty-first (31st) calendar day after presentation of such complete invoice, any interest on the invoiced amount, up to a maximum monthly interest of one and one-half percent (1.5%) compounded annually, which the Agency is contractually obligated to pay and which the contractor refuses to waive; provided, however, that no monies (including interest) will be owed by Owner for any amounts or items which Owner successfully contests (either through negotiation or litigation) on the basis that they are inconsistent with this Agreement.

E. Where Owner has, pursuant to this Agreement, committed to perform Owner-Optional Items but failed to commence performance, or commences but fails to complete the performance in accordance with the deadlines or manner set in this Agreement and the Agency is consequently required to assume responsibility for such performance of an RMP requirement, the Owner will pay Agency for the actual reasonable and necessary Incremental Environmental Costs (as determined by Attachment K, this Agreement and all relevant facts) and actual reasonable and customary Costs of Delay (as defined in Exhibit A.B). Subject to Owner’s right to review, approve or contest an invoice (which, for amounts which Owner is asked to pay under this Agreement, is the same right as the Agency has under its Financing Agreement to review, approve, or contest invoices) Owner will pay the Agency (i) the invoiced amount, within forty-five (45) calendar days after presentation to Owner of a complete invoice which sets forth the nature and amount of an Incremental Environmental Cost item with the requisites and specificity required in the Construction Contract and Exhibit A hereto, and (ii) commencing on the thirty-first (31st) calendar day after presentation of such complete invoice, any interest on the invoiced amount, up to a maximum monthly interest of one and one-half percent (1.5%) compounded annually, which the Agency is contractually obligated to pay and which the contractor refuses to waive; provided, however, that no monies (including interest) will be owed by Owner for any amount or items which Owner successfully contests (either through negotiation or litigation) on the basis that they are inconsistent with this Agreement.

F. Where this Agreement provides that the Agency will provide a date on which Owner must mobilize its contractors at an Affordable Housing Parcel to perform either an Owner-Only Performance Item or an Owner-Optional Performance Item which Owner has opted to perform, Agency will provide notice to Owner as soon as possible when it learns that the Agency specified date for Owner’s mobilization or performance at the parcel will be delayed, and Owner will in turn promptly notify its contractor of the delay in the mobilization date in an effort to minimize any extra charges imposed by the contractor on Owner for unnecessary mobilization. If the Agency notifies Owner of a delay in the date for performance less than two (2) business days prior to the scheduled date for performance of dust monitoring per Section 4.3.2 of the RMP, or less than five (5) business days prior to the scheduled date for performance of all other items, and if the contractor refuses to waive charges for unnecessary mobilization or delay in mobilization (beyond that which would have been incurred by Owner without delay in mobilization), Owner will be entitled to reimbursement from the Agency under this Agreement of such actual reasonable and customary delay charges presented to it by the contractor on Owner for unnecessary mobilization. If the Agency notifies Owner of a delay in the date for performance of dust monitoring per Section 4.3.2 of the RMP, or less than five (5) business days prior to the scheduled date, Owner will be entitled to reimbursement from the Agency under this Agreement of such actual reasonable and customary delay charges presented to it by the contractor on Owner for unnecessary mobilization. If the Agency notifies Owner of a delay in the date for performance of any other items, Owner will be entitled to reimbursement from the Agency under this Agreement of such actual reasonable and customary delay charges presented to it by the contractor on Owner for unnecessary mobilization. If the Agency notifies Owner of a delay in the date for performance of any other items, Owner will be entitled to reimbursement from the Agency under this Agreement of such actual reasonable and customary delay charges presented to it by the contractor on Owner for unnecessary mobilization. If the Agency notifies Owner of a delay in the date for performance of any other items, Owner will be entitled to reimbursement from the Agency under this Agreement of such actual reasonable and customary delay charges presented to it by the contractor on Owner for unnecessary mobilization.
compounded annually, which the Owner is contractually obligated to pay and which the contractor refuses to waive; provided, however, that interest will not be owed on any amount which Agency successfully contests (either through negotiation or litigation) on the basis that it is inconsistent with this Agreement.

III. Agency-Only Performance Items

A. Agency will perform, without further participation by or contribution from Owner other than as specified in Section II, the actions required to comply with the following RMP Sections:

1. Section 4.3.1. (basic dust control without special onsite dust plan or monitoring).
2. Section 4.3.3 (preparation and management of offsite run-off/SWPPP).
3. Section 4.3.5.1-3. (basic soil management protocols).
4. Section 4.3.6 (access control).
5. Section 4.3.8 (construction worker EHASP).
6. Section 4.3.9 (quarterly reports re RMP compliance)
7. Section 4.3.10 (documentation of construction completion).
8. Section 6.3 (RMP notice to contractors).

B. Agency will perform, without further contribution from Owner, under the following additional circumstances:

1. Soil handling, transport and disposal, if excess soil can be disposed of at a Class III landfill or permitted solid waste transfer station without a surcharge for elevated chemical constituents or at a reclamation or other site that the Agency has determined is legally authorized to accept the soil as clean fill.

2. Dewatering activities (including collection, routine groundwater characterization as required by the Public Utilities Commission for the City and County of San Francisco ("SFPUC"), storage and disposal) for groundwater except to the extent such groundwater requires treatment or payment of fees due to elevated chemical constituents (not including silt, total dissolved salts, or other physical parameters) prior to disposing in the City's Publicly Owned Treatment Works ("POTW") or into San Francisco Bay.

IV. Owner-Only Performance Items

Owner will perform the following RMP requirements at its sole expense on the time schedules indicated:
A. RMP Section 4.3.11 (Soils analysis ordinance, preparation and supplements). Owner will submit a complete data package to City Department of Public Health ("DPH") within ninety (90) calendar days after Agency provides a Development Notice in accordance with Section 4.2(b) of Attachment C to the North OPA or Section 3.2(b) of Attachment C to the South OPA. Owner will make commercially reasonable efforts to obtain DPH ordinance certification, with a copy to Agency, of such data package no later than sixty (60) calendar days before the Agency Construction Date, as defined in Section 4.2(a) of Attachment C of the North OPA and Section 3.2(a) of Attachment C of the South OPA.

B. RMP Section 6.2 (RMP Modifications). Owner will diligently prepare and submit to Regional Water Quality Control Board, RMP Modifications where triggered by Unanticipated Conditions and where appropriate under the circumstances outlined in Section 6.2 of the RMP, if requested by the Agency.

C. RMP Section 4.3.2 (Onsite Dust Monitoring). Owner will conduct as required upon receipt of notice from Agency that Agency has issued a Notice to Proceed for a Construction Contract, but in no event will Owner’s obligation to perform arise sooner than two (2) business days after receipt of notice from Agency.

V. Owner-Optional Performance Items

A. The four RMP requirements governed by Section V are: (i) RMP Section 4.3.5.5 (soil for capping Native Soil), (ii) RMP Section 4.3.5.4 (soil disposal), (iii) RMP Section 4.3.4 (trench conduits), and (iv) RMP Section 4.3.7 (dewatering). The parties agree to follow the procedures set out in this Section for determining each party’s respective performance and payment obligations.

B. Competitive Bid Procedures. Where this Section V provides for Agency to seek competitive bids, Agency shall cause to be obtained competitive bids consistent with the Agency’s purchasing policies and procedures for obtaining competitive bids. Where this Section V provides for Agency to determine whether a bid is responsive, Agency shall make such determination consistent with the Agency’s competitive bidding procedures.

C. RMP Section 4.3.5.5. Soil Cover.

1. Agency will provide the information required by the Development Notice at the time of the Development Notice. Owner has ten (10) business days from notice to advise Agency of whether Owner opts to deliver the soil cover itself.

2. If Owner elects to obtain and deliver the soil for the soil cover work, Agency will give Owner notice at least thirty (30) calendar days in advance of the required soil delivery date. If the date changes, Agency shall notify Owner as soon as possible, but in no event will the notice be less than five (5) business days prior to the delivery date specified in the most current notice. At the time of the thirty (30) day notice, Agency will provide Owner with the quantity of cover soil required and the location on site for delivery of soil.

3. Owner may provide specifications for the water permeable synthetic netting fabric. Within ten (10) business days of the Development Notice provided
above in Section V.C.1., Owner will advise Agency of whether it will provide contract specifications for the synthetic netting fabric. If Owner elects to provide contract specifications, it will do so within fifteen (15) business days of the Development Notice. Agency’s contractor will include the contract specifications in the Construction Contract unless it determines that the specifications are:

a. infeasible
b. contrary to law
c. likely to cause delays in the construction schedule, or
d. prohibitively expensive.

If the contractor determines that any of the above conditions exist, it shall propose an alternative specification and the Agency shall obtain competitive bids for the alternative approach.

4. In the event Owner does not opt to perform soil cover work, Agency will direct its contractor to seek three (3) competitive bids for the soil cover work required in the RMP (including up to 18 inches of non-native fill in areas to be accessible for human use). The bids will be required to set out the Soil Cover Cost as set forth in Exhibit A.. Agency will determine whether the bids are responsive. Assuming at least one responsive bid, Agency will select the lowest responsive bid. Owner will be responsible for paying, in accordance with Section II.D of this Agreement and Section A.3. of Exhibit A, the Incremental Environmental Soil Cover Cost of the lowest responsive bidder.

D. RMP Section 4.3.5.4. Soil Disposal.

1. In all cases, Agency will remove soil from the development site and haul the soil to the disposal location. Owner may elect to accept disposal of soil from Agency at a Mission Bay location when it has a disposal location available in Mission Bay at the time of the construction work. Owner has prepared generic procedures for Agency’s contractors in the event Owner elects to accept the soil (Exhibit A.C). Unless a separate agreement satisfactory to both parties is reached for a particular site, Agency will be the entity which is responsible for the excavation and hauling of soil, whether the disposition of the soil is offsite or onsite. If the soil disposal requires hazardous waste manifests, (i) the Owner will advise the Agency at the time of competitive bids for offsite soil disposal under Section IV.D.5. below of the legally authorized hazardous waste treatment/storage/disposal facility upon which the bids shall be based, and such facility shall be used as the hazardous waste disposal facility, and (ii) the Agency will prepare and Owner agrees to execute hazardous waste manifests for the facility designated by the Owner.
or an alternative facility that is proposed by the Agency and acceptable to the Owner in its sole discretion.

2. To allow for either disposal option, Agency will obtain competitive bids for both onsite (Mission Bay) and offsite soil disposal.

3. After issuance of the Development Notice, if Agency becomes aware of changes in its development plan that may change the soil disposal volume by more than one thousand (1,000) cubic yards, Agency will so advise Owner.

4. Owner will advise Agency of whether it elects to accept soil at an onsite location no later than seven (7) business days prior to the Agency Construction Date.

5. In the case of offsite soil disposal, Agency will direct its contractor to seek three (3) competitive bids for the soil disposal work. The bids will be required to set out the Soil Disposal Baseline Cost and the price for the Soil Disposal Bid Cost, as defined in Exhibit A.A.2. Agency will determine whether the bids are responsive. Agency will make commercially reasonable efforts to ensure that the bids will be submitted to the Agency with a simultaneous copy to the Owner no later than five (5) business days prior to the deadline for Owner's election in Section V.C.4. Agency will give Owner an opportunity to discuss the bids with the Agency and the Agency's contractor prior to an Agency determination or decision on the bids. Assuming at least one (1) responsive bid, Agency will select the lowest responsive bid. Owner will be responsible for paying the Incremental Environmental Soil Disposal Cost of the lowest responsive bidder in accordance with Section II.D of this Agreement and Exhibit A.A.2.

E. RMP Section 4.3.4. Trench Conduits.

1. Unless a separate agreement satisfactory to both parties is reached for a particular site, Agency shall perform this item, but Owner may elect to provide specifications to Agency for its Construction Contract.

2. Agency will provide the following information to Owner when it is available: a site plan showing the trench locations, trench dimensions, and the type and size of utilities that will be placed in the trench. Within ten (10) business days of notice of the above information, Owner will advise Agency of whether it will provide contract specifications for the work. If Owner elects to provide contract specifications, it will do so within fifteen (15) business days of notice of the above information. Agency's contractor will include the contract specifications in the Construction Contract unless it determines that the specifications are:

a. infeasible

b. contrary to law
c. likely to cause delays in the construction schedule, or

d. prohibitively expensive.

If the contractor determines that any of the above conditions exist, it shall propose an alternative specification and the Agency shall obtain competitive bids for the alternative specification.

3. Agency will direct its contractor to seek three (3) competitive bids for the trench conduit work. The bids will be required to set out the bid price for Trench Conduit Costs as set forth in Exhibit A.A.1. Agency will determine whether the bids are responsive. Assuming at least one responsive bid, Agency will select the lowest responsive bid. Owner will be responsible for paying the Incremental Environmental Trench Conduit Cost of the lowest responsive bidder in accordance with Section II.D of this Agreement and Exhibit A.A.1.

F. RMP Section 4.3.7. Dewatering.

1. Work that Owner may elect to perform related to dewatering activities are (i) treatment due to elevated concentrations of chemical constituents (not including silt, total dissolved salts, and other physical parameters) and (ii) for those groundwater plumes for which Owner is responsible under Section V.F.3.a., an assessment of whether dewatering will enlarge a groundwater plume or result in significant alterations in groundwater flow such as could occur in the Free Product Area.

2. Treatment

a. Agency will provide the following information to Owner when it is available: the total volume of groundwater to be removed including a per hour or per day flow rate and the results of groundwater testing performed by Agency's contractor in the due course of applying for a permit to allow such discharge. Except for unexpected dewatering for which a shortened notice time will apply as provided for below, within ten (10) business days of notice of the above information, Owner will advise Agency of whether it will perform any required treatment or provide contract specifications for the work.

b. Except for unexpected dewatering for which a shortened notice time will apply as provided for below, if Owner elects to provide contract specifications for treatment, it will do so within fifteen (15) business days of notice of the above information. Agency's contractor will include the contract specifications in the Construction Contract unless it determines that the specifications are:

   i. infeasible
   ii. contrary to law
iii. likely to cause delays in the construction schedule, or

iv. prohibitively expensive.

If the contractor determines that any of the above conditions exist, it shall propose an alternative specification and the Agency shall obtain competitive bids for the alternative specification.

c. In the event dewatering is unexpectedly required during construction and no dewatering permit has been previously obtained, Agency will orally notify Owner as immediately as possible. Agency will provide Owner with a copy of the San Francisco Public Utility Commission ("PUC") permit application and water sample test results, and either a copy of any PUC permit conditions, as soon as available, or advise Owner that PUC will not impose any permit conditions. Within forty-eight (48) hours of the time that Agency provides Owner with a copy of the PUC permit conditions or advises Owner that no permit conditions apply, Owner will notify Agency of whether it will perform any required treatment or, if Owner so desires, will provide contract specifications for the work.

d. If Owner elects to treat groundwater, Agency will advise Owner at least five (5) business days in advance of the day of the start of dewatering.

e. If Owner elects not to treat groundwater, Agency will direct its contractor to seek three (3) competitive bids for the dewatering work. The bids will be required to set out the Treatment Baseline Cost and the Treatment Bid Cost as set forth in Exhibit A.A.4 based on the water volume estimated by the Agency pursuant to Section V.F.2.a above and specifications provided by Owner pursuant to Section V.F.2.b. above. Agency will determine whether the bids are responsive. Assuming at least one (1) responsive bid, Agency will select the lowest responsive bidder. Owner will be responsible for paying the Incremental Environmental Treatment Costs of the lowest responsive bidder in accordance with Section II.D of this Agreement and Exhibit A.A.4.

3. Assessment of Potential Plume Migration and Control During Construction Dewatering Activities.

a. Assessment of the potential migration during dewatering activities (under Section 4.3.7 of the RMP) of the following groundwater plumes shall be the Owner's responsibility: Any groundwater plume which (i) originates on the South Plan Area or the North Plan Area, (ii) is not the Free Product Plume, and (iii) is not caused or
exacerbated by the placement of materials on the parcel by any entity other than the Owner after title to such parcel has transferred to the City or the Agency. Owner shall implement its responsibility as follows: (i) to address the potential for enlargement of a ground water plume, Owner will assume the cost of its environmental engineer to make the assessment of whether dewatering activities will trigger the potential impacts described in Section 4.3.7 of the RMP, and (ii) if the assessment shows that special engineering techniques are required during construction to minimize those impacts, Owner will assume the design and construction cost of those techniques or measures. In the event special construction measures are required, Agency and Owner will reasonably coordinate the construction of those measures with the other construction on the Agency Affordable Housing Parcel.

b. Assessment of the potential migration during dewatering activities of all other groundwater-plumes shall be the sole responsibility and cost of the Agency.

VI. Special Procedures Upon Discovery of Previously-Unknown Areas of Contamination and/or Previously-Unknown Underground Structures (collectively “Unanticipated Conditions”) (RMP Section 4.3.5.6).

A. Except as provided in Section VI.B. below, upon Agency’s discovery of what it believes may constitute an Unanticipated Condition under the RMP, Agency will immediately notify the Owner. Agency will provide notice to the Regional Water Quality Control Board or other regulatory agencies as required by the RMP and law.

B. If the Unanticipated Condition constitutes an emergency requiring immediate action, the Agency will diligently undertake immediate response measures using an approach that is reasonable and customary and in accordance with law and the RMP, under the circumstances, and will provide notice to the Regional Water Quality Control Board and to the Owner as soon as reasonably practicable.

C. If the Unanticipated Condition is not an emergency situation:

1. Owner will propose a remedial response and schedule that is reasonable and customary and in accordance with law, within twenty-four (24) hours of receipt of Agency’s notice, or will so propose within seventy-two (72) hours if Agency’s notice advises that the Agency has determined that a period longer than twenty-four (24) hours will not cause a delay in the construction schedule.

2. If Owner fails to timely propose a remedial response and schedule or one that is reasonable and customary and in accordance with law, Agency may proceed with its own remedial response, and Owner will reimburse Agency.
3. If Owner proposes a remedial response and schedule as provided in Section VI.C.1, above, Agency may accept such proposal and Owner will timely perform.

4. If Owner proposes a remedial response and schedule as provided in Section VI.C.1, above, and Agency disagrees with it, Agency shall, within twenty-four (24) hours after receipt of Owner's proposal, propose Agency's alternative remedial response and schedule to Owner. If Owner accepts it, Owner shall perform it. If Owner does not accept Agency's alternative remedial response and schedule, then Agency shall perform it, but Owner's reimbursement obligation shall be limited to reasonable and necessary Incremental Environmental Costs in light of Attachment K, this Agreement, and all relevant facts.

VII. Process to Facilitate Coordination Between the Parties.

The Parties agree that it is in their mutual interest to coordinate the scheduling of various phases of construction on Agency Affordable Housing Parcels relevant to items addressed in this Agreement, even beyond the time tables and notices required in this Agreement. Toward that end, regular scheduling meetings will be held in anticipation of critical time junctures for the phasing of construction of infrastructure, surface improvements, and utilities. Each party will use its best efforts to provide for regular attendance at such scheduling meetings by a qualified representative of the Party, and each representative will provide in good faith any available information that may facilitate the other Party's planning regarding performance items under this Agreement; provided, however, that information conveyed orally at such meetings shall not constitute and is not a substitute for notice required to be provided under this Agreement.

VIII. Miscellaneous Provisions

A. This Agreement may be amended or modified only by mutual written consent of the Agency and Owner.

B. The effective date of this Agreement shall be the latest of the dates of execution by the Parties below. The term of this MOA shall be the same as the term of the North OPA, as provided in Section 2 of the North OPA, as to property in the North Plan Area, and shall be the same as the term of the South OPA, as provided in Section 2 of the South OPA, as to property in the South Plan Area. An obligation that arises and was not satisfied prior to termination shall survive the termination of this MOA to the extent provided by Section 19.31 of the North and South OPAs.

C. The governing law and severability provisions for this Agreement shall be as provided in Sections 19.16 and 19.21, respectively, of the North and South OPAs.

D. The section and other headings of this Agreement are for convenience of reference only and shall be disregarded in the interpretation of this Agreement.

E. Where this Agreement provides that Owner is to pay or reimburse the Agency, the payment shall be accomplished by submitting a check, by personal delivery or overnight delivery service with receipt confirmed, to the Agency with the payee specified as follows: San Francisco
Redevelopment Agency. Where this Agreement provides that the Agency is to pay or reimburse the Owner, the payment shall be accomplished by submitting a check, by personal delivery or overnight delivery service with receipt confirmed, to the Owner with the payee specified as follows: Catellus Development Corporation.

F. Except for Development Notices, the procedure for which shall be governed by the North and South OPAs, as applicable, any notices required or provided to be given by either Party to the other, shall be deemed given when:

1. Hand delivered to the office of those individuals listed below; or

2. On the day of receipt, sent by an overnight delivery service to the individuals listed below at the addresses listed below, with delivery confirmed.

If to Owner:

John Barkey  
Associate Vice President for Development  
Catellus Urban Development Corporation

255 Channel Street  
San Francisco, CA 94107

With a copy to: Brad Cleveringa, Esq.  
Catellus Development Corporation  
255 Channel Street  
San Francisco, CA 94107

Deborah J. Schmall  
Farella Braun + Martel LLP  
235 Montgomery Street, 30th Floor  
San Francisco, CA 94104

If to Agency:

San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, CA 94102-3102  
Attn: Executive Director

With a copy to: San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, CA 94102-3102  
Attn: Agency General Counsel

Mission Bay Qualified Housing Developer  
Parcel Number  
c/o San Francisco Redevelopment Agency  
770 Golden Gate Avenue  
San Francisco, CA 94102-3102  
Attn: Agency Housing Division Manager
3. The notice or an accompanying cover letter shall state the section of this MOA to which the notice is given, the action or response required and, if applicable, the period of time within which the recipient of the notice must respond.

4. Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this MOA shall be deemed given, received, made or communicated on the date receipt by the recipient’s office actually occurs, or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

G. Subject to the provisions of Section 13 and Section 14 of the North and South OPAs, this Agreement shall be binding upon and inure to the benefit of the successor and assigns of the Agency or Owner. This Agreement is made and entered into only for the protection and benefit of the parties and their successors and assigns. No other person shall have or acquire any right or action of any kind based upon the provisions of this Agreement.

H. Nothing in this Agreement shall affect the Agency’s or Owner’s rights or duties under the OPA and other Plan Documents. This Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under the North and South OPAs and any other Plan Documents.

Approved as to form:

By: Bertha A. Ontiveros
Agency General Counsel

AGREED TO:

CATELLUS DEVELOPMENT CORPORATION
By: [Signature]
Its: President
Date: 11/17/01

REDEVELOPMENT AGENCY OF CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic, of the State of California
By: Marcia Rosen
Executive Director
Date: 1/4/02
Exhibit A

A. Determination of "Incremental Environmental Costs" for Particular RMP Requirements

This Exhibit A defines terms and sets out information to include in competitive bids and contractor invoices relevant to determining Incremental Environmental Costs.

1. Trench Conduit (RMP Section 4.3.4). The Trench Conduit Cost means the cost of minimizing the potential for creating horizontal conduits when utility trenches extend into groundwater consistent with requirements of RMP Section 4.3.4. The Incremental Environmental Trench Conduit Cost means the actual Trench Conduit Cost incurred by the Agency's selected lowest responsive bidder; provided, however, that such Incremental Environmental Trench Conduit Cost for which Owner is responsible shall not exceed the bid price for such cost except due to changes in external environmental regulatory requirements (including such fees and costs) which could not reasonably be anticipated at the time of the contractor's bid. The competitive bids will set out the bid price for Trench Conduit Costs. A copy of the bids shall be provided to the Owner. The contractor's invoice will set out the Incremental Environmental Trench Conduit Cost and shall provide a line item delineation of charges with specifications of quantities, volumes, material costs, labor costs, permits costs, and other elements of cost as may be applicable, to confirm the calculation and nature of such costs.

2. Soil Disposal Costs (RMP Section 4.3.5.4). The calculation of Incremental Environmental Soil Disposal Costs initially requires the determination of (i) a unit price (per ton) for both Soil Disposal Baseline Costs and Soil Disposal Bid Costs, (ii) the differential between the two unit prices, and (iii) a total incremental price based on the actual tons removed from the site multiplied by the unit price differential.

a. Competitive Bids. First, a contractor must determine and include in the competitive bid a price per ton for the Soil Disposal Baseline Costs based on the estimated volume of excess soil to be removed from the site. (Excess soil means soil that cannot be reused on site despite construction that conforms to Attachment K, Section IV.A.3(b)). Soil Disposal Baseline Costs are the costs of routine sampling and analysis, transport, packaging, handling and disposal of clean soil at the time of development based on either (i) disposal at the least expensive permitted Class III landfill or permitted solid waste transfer facility which could accept soil from the Affordable Housing Parcel without a surcharge for elevated chemical constituents or (ii) disposal at a reclamation or other site operating with all required regulatory authorizations and permits and capable of lawfully accepting the clean soil originating at an Affordable Housing Parcel, as determined by the Agency's legal counsel in writing to Owner. Second, the contractor must determine and include in the competitive bid a price per ton for the Soil Disposal Bid Costs. Soil Disposal Bid Costs means the bidded price for sampling and analysis, transport, packaging, handling and disposal of the actual excess soil from the site based upon its actual chemical composition. Each competitive bid will set out (i) the unit price for Soil Disposal Baseline Costs on a line-item basis and in total, (ii) the unit price for Soil Disposal Bid Costs on a line-item basis and in total, (iii) the differential between the unit costs, (iv) the total Soil Disposal Bid Cost (the bidded unit price for disposal
multiplied by the estimated tons of excess soil), and (v) the anticipated total Incremental Environmental Soil Disposal Cost, which is the unit price differential multiplied by the anticipated volume of excess soil.

b. **Contractor Invoice.** The Contractor's invoice will indicate the final total Incremental Environmental Soil Disposal Cost. The total Incremental Environmental Soil Disposal Cost is calculated by multiplying the unit price differential between the Soil Disposal Baseline Cost and the actual Soil Disposal Cost being invoiced, by the actual number of tons of excess soil removed from the site. The invoice presented to Owner for payment under Section II.D. of the Agreement will set out the final total Incremental Environmental Soil Disposal Costs in a manner which allows confirmation of the calculation as described above; provided, however, that Owner's responsibility for payment of the total Incremental Environmental Soil Disposal Costs shall be limited to an amount calculated by utilizing the bidded unit price differential except where it is higher due to (i) different soil volumes than reasonably anticipated by the contractor in its bid which results in a higher unit price, (ii) changes in external environmental regulatory requirements, (including such fees and costs) which could not be reasonably anticipated at the time of the contractor’s bid, and (iii) higher unit disposal costs due to refusal by a disposal facility identified in the bid to accept soil as planned.

3. **Soil for Capping Native Soil (RMP Section 4.3.5.5).** The Soil Cover Costs mean the costs for delivery and placement at site of up to 18 inches of Fill (i.e., imported material whose composition is sand, topsoil or fill that meets the prevailing commercial standards for fill used in commercial developments without being enhanced for horticultural reasons), or onsite material that the Regional Water Quality Control Board has approved for use for soil capping to meet the requirements of RMP Section 4.3.5.3 and costs related to procurement and placement of water permeable synthetic netting fabric on top of the Native Soils prior to placement of the Fill as required by RMP. The Incremental Environmental Soil Cover Costs mean the actual cost incurred by the Agency's selected lowest responsive bidder for Soil Cover Costs; provided, however, that such Incremental Environmental Soil Cover Costs for which Owner is responsible shall not exceed the bid price for such costs except due to (i) the quantities of the required soil or netting fabric being higher than anticipated, or (ii) changes in external environmental regulatory requirements (including such fees and costs) which could not reasonably be anticipated at the time of the contractor’s bid. The competitive bids will set out the bid price for Soil Cover Costs. A copy of the bids shall be provided to the Owner. The invoice will set out the Incremental Environmental Soil Cover Costs and shall provide a line item delineation of the charges with specifications of quantities, volumes, material costs, labor costs, permit costs, and other elements of costs as may be applicable to confirm the calculation and nature of such costs.

4. **Dewatering Costs (RMP Section 4.3.7).** The calculation of Incremental Environmental Treatment Costs initially requires the determination of (i) a unit price (per gallon if applicable) for both Treatment Baseline Costs and Treatment Bid Costs, (ii) the differential between the two unit prices, and (iii) a total incremental price based on the actual gallons of water removed from the site multiplied by the unit price differential.

a. **Competitive Bids.** First, a contractor must determine and include in the competitive bid a unit price (per gallon if applicable) for the Treatment Baseline Costs based on
the estimated volume of water to be discharged from the site. Treatment Baseline Costs are the cost of routine groundwater characterization required by the SFPUC, and the costs of collection, storage and disposal of groundwater (including fees) from dewatering facilities at the site into the City's combined sewer system assuming the absence of Hazardous Substances, including metals or hydrocarbons (e.g., no treatment for removal of Hazardous Substances in the groundwater is needed for disposal to the City's system, but reflecting whatever silt, total dissolved salts, or other physical parameters that are present in such groundwater. Second, the contractor must determine and include in the competitive bid a unit price (per gallon if applicable) for the Treatment Bid Costs. Treatment Bid Costs means the bid price for the cost of treatment and disposal of groundwater from a site to (i) the City's combined sewer system if authorized with treatment by the contractor (or its agents) to remove Hazardous Substances prior to discharge into the sewer system, (ii) the City's combined sewer system with additional fees levied by the City to conduct pretreatment of Hazardous Substances at its facility; (iii) another disposal mechanism or location or both if neither (i) nor (ii) is authorized by City.) Each competitive bid will set out (i) the unit price for Treatment Baseline Costs on a line-item basis and in total, (ii) the unit price for Treatment Bid Costs on a line-item basis and in total, (iii) the differential between the unit costs, (iv) the total Treatment Bid Cost (the bidded unit price for dewatering multiplied by the estimated units of water removed), and (v) the anticipated total Incremental Environmental Treatment Cost, which is the unit price differential multiplied by the anticipated volume of water removed. Copies of the bids will be provided to Owner.

b. Contractor Invoice. The Contractor's invoice will indicate the final total Incremental Environmental Treatment Cost. The total Incremental Environmental Treatment Cost is calculated by multiplying the unit price differential between the Treatment Baseline Cost and the actual Treatment Cost being invoiced, by the actual number of gallons of water removed from the site. The invoice presented to Owner for payment under Section II.D. of the Agreement will set out the final total Incremental Environmental Treatment Costs in a manner which allows confirmation of the calculation as described in this paragraph; provided, however, that Owner's responsibility for payment of the total Incremental Environmental Treatment Costs shall be limited to an amount calculated by utilizing the bidded unit price differential except where it is higher due to (i) different volumes than reasonably anticipated by the contractor in its bid which results in a higher unit price, or (ii) changes in external environmental regulatory requirements (including such fees and costs) which could not be reasonably anticipated at the time of the contractor's bid.

5. Plume Costs (RMP Section 4.3.7). To address the potential for enlargement of a ground water plume in the circumstances designated as Owner's responsibility under Section V.E.3, Incremental Environmental Plume Costs means the actual cost of an environmental engineer to make the assessments of whether dewatering activities will trigger the potential impacts described in Section 4.3.7 of the RMP, and, if the assessment shows that special engineering techniques are required during construction to minimize those impacts, design and construction cost of those techniques or measures.
B. Owner’s Liability for Delay and Failure to Perform and Remedies

1. Whenever Owner misses a deadline for performance of a Performance Item as specified in this Agreement, Agency shall issue a written notice to Owner within two (2) business days after the missed deadline, advising Owner of the missed deadline and that the Agency will assume responsibility for performance of the Performance Item on the fifth (5th) business day after the missed deadline unless Owner has provided notice to Agency within such period that Owner intends to complete performance. Agency’s failure to provide notice as specified shall not relieve Owner of its obligation to pay Costs of Delay. Owner shall pay, as “Costs of Delay” under this Agreement, the actual reasonable and customary incremental charges and costs imposed on the Agency by the Construction Contract or for required professional services due to Owner’s delay in performance and, (if applicable), failure to perform, and the reasonable and necessary time required of the Agency, under all the circumstances, to arrange for commencement of performance of the Performance Item by the Agency’s contractor starting on the fifth business day after the missed deadline. Any invoices presented by Agency to Owner for Costs of Delay shall detail the various items that comprised the delay and their respective costs.

2. Where this Agreement requires that the Agency provide notice of a date on which Owner must mobilize its contractors at an Affordable Housing Parcel to perform a Performance Item, and Agency changes the date for Owner’s contractor to mobilize at the Parcel, Owner shall make reasonable efforts to reschedule its contractors for the new deadline date. In no event, however, shall Owner be liable for any Costs of Delay for failure to remobilize in less time than the time frame established in this Agreement, for Agency to provide Owner advance notice of required mobilization for a given Performance Item. Further, if Agency reschedules a Performance Item more than three times and as a result of the reschedulings, the contractor is unwilling or unable to perform on the new deadline date, Owner shall be liable for Costs of Delay for the fourth and any subsequent reschedulings only if Owner’s contractor fails to remobilize within twice the number of days established in this Agreement for Agency to provide Owner advance notice of required mobilization for the Performance Item.

3. Upon Owner’s breach of an agreed-upon schedule or failure to perform agreed-upon work, Agency will use reasonable diligence to minimize costs of performance and delay.

4. Neither City nor Owner may seek incidental or consequential or punitive damages from the other party; City and Owner are limited to equitable remedies except as provided above for delay. (Section 12 of the North and South OPAs.) In addition, in the event of unresolved disputes over Construction documents or payments, either party may pursue informal dispute resolution and declaratory relief action following the procedure set out for Owner to bring such action in Section 11 of the North and South OPAs.

C. Procedures for Delivery by Agency’s Contractor of Excavated Soil to Owner’s Mission Bay Soil Disposal Site.

1. Owner shall identify the location of the Mission Bay site no later than seven (7) business days prior to the Agency Construction Date.

2. The Agency will provide notice of the beginning delivery date at least five (5) business days in advance of delivery.
3. Owner shall be prepared to accept the soil between the hours of 7:00 a.m. and 3:00 p.m., Monday through Friday, excluding City holidays, or such other time period as is agreeable to both parties; provided, however, that Owner will allow such soil to be accepted up to 5:00 p.m. if Owner accepts soil from its own contractors at that location until that hour.

4. Owner shall arrange its site operations so that each truck is able to enter, unload and exist the site within thirty (30) minutes of arrival, or such other period as is agreeable to both parties.

5. Both Owner and Agency shall handle soil in accordance with the RMP. Soil transport by Agency shall be in accordance with applicable laws.