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Section 27383 and 27388.1 at the Request of
the Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director



San Francisco Assessor-Recorder
Carmen Chu, Assessor-Recorder
DOC- 2018-K654772-00
Acct 26-SFCC Redevelopment Agency
Monday, AUG 13, 2018 10:06:14
Ttl Pd \$0.00 Rcpt # 0005853196
OYY/YY/1-15

(Space above this line reserved for Recorder's use only)

Lot 006 (Formerly Portion of Lot 002). Block 8719

SIXTH AMENDMENT TO

MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT

Dated as of July 26, 2018

By and Between

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

and

FOCIL-MB, LLC

**SIXTH AMENDMENT TO MISSION BAY SOUTH OWNER PARTICIPATION
AGREEMENT**

THIS SIXTH AMENDMENT TO THE MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT (this "Amendment") dated for reference as of July 26 2018, is by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, established and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (the "Successor Agency" or "OCII") and FOCIL-MB, LLC, a Delaware limited liability company (the "Owner" or "FOCIL"). As used in this Amendment, "City" means the City and County of San Francisco, a charter city and county. All initially capitalized terms in this Amendment shall have the meanings set forth in the Mission Bay South OPA (as defined below), unless otherwise specifically provided in this easement.

THIS AMENDMENT is made with reference to the following facts and circumstances:

- A. The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") adopted the Mission Bay South Redevelopment Plan on November 2, 1998 by Ordinance No. 335-98 ("Redevelopment Plan") and amended the Redevelopment Plan on July 9, 2013 by Ordinance No. 143-13. The Redevelopment Plan establishes land use controls for the Mission Bay South Project Area ("South Plan Area").
- B. The former Redevelopment Agency for the City and County of San Francisco ("Former Agency") entered into that certain Mission Bay South Owner Participation Agreement ("Original OPA"), dated as of November 16, 1998 and recorded December 3, 1998, and recorded as Document No. 98-G477258-00 in the Official Records of the City and County of San Francisco ("Official Records"), and which was subsequently amended by (i) a First Amendment to the Mission Bay South Owner Participation Agreement, dated as of February 7, 2004 and recorded March 3, 2004, as Document No. 2004H66995 in the Official Records ("First Amendment"), (ii) the Second Amendment to the Mission Bay South Owner Participation Agreement, dated as of November 1, 2004, and recorded November 30, 2005, as Document No. 2005I080843 in the Official Records ("Second Amendment"), (iii) the Third Amendment to the Mission Bay South Owner Participation Agreement, dated as of May 21, 2013 and recorded December 9, 2013, as Document No. 2013J802261 in the Official Records ("Third Amendment"), (iv) the Fourth Amendment to the Mission Bay South Owner Participation Agreement dated as of June 4, 2013, and recorded December 9, 2013, as Document No. 2013J802262 in the Official Records ("Fourth Amendment"), and (v) the Fifth Amendment to the Mission Bay South Owner Participation Agreement dated as of April 29, 2014, and recorded August 15, 2014, as Document No.

2014J927657 (“Fifth Amendment”). The Original OPA, as amended by the First Amendment, the Second Amendment, the Third Amendment, the Fourth Amendment and the Fifth Amendment is hereafter referred to as the “Mission Bay South OPA.” The Mission Bay South OPA establishes terms pursuant to which the private developer will develop improvements within the South Plan Area.

- C. The Redevelopment Plan includes an approximately 0.3 acre portion of Seawall Lot 337 that is subject to the public trust and owned and administered by the Port of San Francisco (“Port”), identified as “P20” in the Redevelopment Plan, which is underutilized and is not furthering the objectives and policies of the Redevelopment Plan. The Redevelopment Plan and the Mission Bay South OPA identify P20 as an “open space” area.
- D. On February 1, 2012, the Former Agency was dissolved pursuant to California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“AB 26”), codified in relevant part in California’s Health and Safety Code Sections 34161 - 34168 and upheld by the California Supreme Court in *California Redevelopment Assoc. v. Matosantos*, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“AB 1484”), which among other things, provide that a successor agency is a separate public entity from the public agency that provides for its governance. (AB 26 and AB 1484, as amended from time to time, are primarily codified in Cal Health & Safety Code §§ 34170 et seq., and referred to as the “Redevelopment Dissolution Law.”)
- E. Pursuant to the Redevelopment Dissolution Law, all of the Former Agency’s assets (other than housing assets) and obligations were transferred to the Successor Agency. Some of the Former Agency’s housing assets were transferred to the City, acting by and through the Mayor’s Office of Housing and Community Development.
- F. Subsequent to the adoption of AB 1484, on October 2, 2012, the Board of Supervisors, acting as the legislative body of the Successor Agency, adopted Ordinance No. 215-12, which was signed by the Mayor on October 4, 2012, and which, among other matters, delegated to the Successor Agency Commission, commonly known as the Commission on Community Investment and Infrastructure (“Commission”), the authority to (i) act in the place of the Redevelopment Agency Commission to, among other matters, implement, modify, enforce and complete the Former Agency’s enforceable obligations; (ii) approve all contracts and actions related to the assets transferred to or retained by OCII, consistent with the applicable enforceable obligations; and (iii) take any action that the Redevelopment Dissolution Law requires or authorizes on behalf of the Successor Agency and other action that the Commission deems appropriate, consistent with the Redevelopment Dissolution Law, to comply with such obligations.
- G. The Board of Supervisors’ delegation to the Commission includes authority to approve and amend all contracts and actions relating to assets transferred to the

Successor Agency, including the Mission Bay South OPA, as allowed under the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (“CRL”).

- H. The State Legislature has declared, pursuant to Assembly Bill 2797, Stats. 2016, ch. 529 (“AB 2797”), that redevelopment of Seawall Lot 337 is of “particular importance to the state,” and on that basis, has authorized expedited procedures to facilitate the reconfiguration of Seawall Lot 337. Stats. 2016, ch. 529, § 4 (“[N]o action of the Department of Finance or the Controller shall be required for, any action taken by the oversight board, the successor agency commission, the board of supervisors, or any other governmental body required to act to amend the Mission Bay South redevelopment plan to remove Parcel P20 from the Mission Bay South redevelopment project area, or to amend any related documents or agreements to delete regulatory requirements, zoning controls, and the Mission Bay developer’s obligations with respect to Parcel P20.”). Consistent with the foregoing, and as the result of an extended public process, the Port engaged with a private developer to redevelop Seawall Lot 337, Pier 48 and adjacent streets, all as described in the Final Environmental Impact Report (“FEIR”) for the Seawall Lot 337 and Pier 48 Mixed-Use Project (“Project”). The Project calls for the redevelopment of the aforementioned areas as a mixed-use residential and commercial project that will be integrated with the adjacent neighborhood as well as provide parks, open space and enhanced San Francisco Bay connectivity.
- I. Seawall Lot 337 is underutilized and frequently vacant, thereby contributing to blight within the adjacent South Plan Area, and the removal of P20 from the Redevelopment Plan effectuates the reconfiguration of Seawall lot 337 and the redevelopment of that site consistent with the Project.
- J. To implement the Project, the Owner and Successor Agency proposed an amendment to the Redevelopment Plan. In accordance with those provisions of the Community Redevelopment Law, as amended by Redevelopment Dissolution Law, that authorize an amendment to a redevelopment plan, Cal. Health & Safety Code §§ 33450 et seq., the Board of Supervisors has approved an amendment to the Redevelopment Plan by Ordinance No. 0032-18 (January 28, 2018) to remove P20 from the Mission Bay South Plan Area.
- K. Removal of P20 from the Mission Bay South OPA would implement the amended Redevelopment Plan, AB 2797 and San Francisco Proposition D (Nov. 2015), advance the Port’s land use planning efforts for Seawall Lot 337, and comply with the Redevelopment Dissolution Law by promoting development in an area formerly subject to the Redevelopment Plan without the need to use property tax revenues (formerly tax increment).
- L. Under Redevelopment Dissolution Law, the Oversight Board has the authority to “approve any amendments to [any contracts between the dissolved redevelopment agency and any private parties] if [the Oversight Board] finds that amendments . . . would be in the best interests of the taxing entities.” Cal. Health & Safety Code

Successor Agency, including the Mission Bay South OPA, as allowed under the California Community Redevelopment Law (Health and Safety Code Section 33000 et seq.) (“CRL”).

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- K. Removal of P20 from the Mission Bay South OPA would implement the amended Redevelopment Plan, AB 2797 and San Francisco Proposition D (Nov. 2015), advance the Port’s land use planning efforts for Seawall Lot 337, and comply with the Redevelopment Dissolution Law by promoting development in an area formerly subject to the Redevelopment Plan without the need to use property tax revenues (formerly tax increment).
- L. Under Redevelopment Dissolution Law, the Oversight Board has the authority to “approve any amendments to [any contracts between the dissolved redevelopment agency and any private parties] if [the Oversight Board] finds that amendments . . . would be in the best interests of the taxing entities.” Cal. Health & Safety Code

§ 34181 (e). For the reasons stated above, this Sixth Amendment meets this standard for amendment of an enforceable obligation.

M. The Owner and the Successor Agency wish to enter into this Sixth Amendment to implement the amended Redevelopment Plan and the Project.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Successor Agency and FOCIL agree as follows:

1. Amendments to the Mission Bay South OPA.

1.1. Cooperation in Implementing OPA Amendments. A new section 5.5 is added to the Mission Bay South OPA as follows:

P20 Amendments. The parties intend that the removal of P20 from the OPA and all related plans and agreements does not result in any adverse impact on the ability of any development within the South Plan Area to meet any applicable land use development standard (including but not limited to parks and open space calculations) or have any adverse impact on any tax increment financing. In the event, at a later time, it is determined that the removal of P20 does result in such unintended impact, the parties will meet and confer and take the necessary steps to reduce or eliminate such unintended impact; provided, however, that nothing herein shall obligate the Successor Agency to assume any financial obligation directly or indirectly to reduce or eliminate the impact.

1.2. Mission Bay South Land Use Plan and Legal Description. Attachment A to the Mission Bay South OPA (Mission Bay South Land Use Plan and Legal Description) is hereby deleted and replaced with Exhibit A hereto.

1.3. Mission Bay South Infrastructure Plan. Section I. B. g of Attachment D to the Mission Bay South OPA (Mission Bay South Infrastructure Plan) is amended as follows:

Section I. B. g. Other Open Space Parcels. (P10, ~~P20~~ and P27.)

Landscape improvements will be provided in P10, ~~P20~~ and P27.

1.4. Mission Bay South Infrastructure Plan. Section II. B. 3. A. iv (C) of Attachment D to the Mission Bay South OPA (Mission Bay South Infrastructure Plan) is amended as follows:

Section II.B.3.a.iv. (C). Parcels P10, ~~P20~~ and P27 will be provided in connection with adjacent street Improvements

2. General Provisions.

- 2.1. Mission Bay South OPA in Full Force and Effect. Except as otherwise amended by this Amendment and as previously revised under instruments signed by the Successor Agency and the Owner to reflect various non-material changes to the Infrastructure Plan, all terms, covenants, conditions and provisions of the Mission Bay South OPA shall remain unmodified, and in full force and effect.
- 2.2. Representations and Warranties By the Parties. The Parties represent and warrant to each other as follows:
- 2.2.1. Authority and Enforceability. Each party has the power and authority to enter into this Amendment. This Amendment, when executed and delivered by each of the Parties, will be valid and binding and enforceable against each signatory Party in accordance with its terms.
- 2.2.2. Advice of Counsel. Each party (i) has had the opportunity to seek the advice of counsel concerning this Amendment and the transactions contemplated hereby, (ii) has been fully advised of the meaning and effect of this Amendment and such transactions as are contemplated in this Amendment, and (iii) has executed this Amendment after independent investigation without reliance on any representation, warranty, promise or inducement not specifically set forth in this Amendment.
- 2.3. Successors and Assigns. This Amendment is binding upon and will inure to the benefit of the successors and assigns of the Parties, subject to the limitations on assignment set forth in the Mission Bay South OPA.
- 2.4. Entire Agreement. This Amendment (together with the Mission Bay South OPA) constitutes the entire agreement between the Parties with respect to the subject matter of this Amendment and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Amendment. No parole evidence of any prior draft of this Amendment shall be permitted to contradict or vary the terms of this Amendment.
- 2.5. Further Assurances. The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Amendment. Subject to approvals required by law, the Successor Agency's Executive Director is authorized to execute on behalf of the Successor Agency any contracts, agreements, memoranda or similar documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Amendment and do not materially increase the liability or obligations of the Successor Agency under this Amendment, if the Executive Director, in consultation with the Successor Agency's General Counsel, determines that the document is necessary or proper for the purposes and objectives of this Amendment and in the

Successor Agency's best interests. The Executive Director's signature of any such document shall conclusively evidence such a determination by him or her.

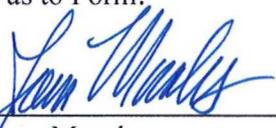
- 2.6. No Third Party Beneficiaries. This Amendment is made and entered into for the sole protection and benefit of the Parties to this Amendment and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Amendment.
- 2.7. Cooperation. In connection with this Amendment, FOCIL, on the one hand, and the Successor Agency on the other shall reasonably cooperate with one another to achieve the objectives and purposes of this Amendment.
- 2.8. Interpretation of Agreement.
 - 2.8.1. Words of Inclusion. The use of the term "including," "such as" or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.
 - 2.8.2. No Presumption Against Drafter. This Amendment has been negotiated at arm's length and amongst Parties sophisticated and knowledgeable in the matters dealt with in this Amendment. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Amendment shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Amendment (including, but not limited to California Civil Code Section 1654).
 - 2.8.3. Recitals. The Recitals in this Amendment are included for convenience of reference only and are not intended to create or imply covenants under this Amendment. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall control.
 - 2.8.4. Captions. The captions preceding the articles and Sections of this Amendment have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Amendment.
 - 2.8.5. Counterparts. This Amendment may be executed in any number of counterparts, all of which together shall constitute the original agreement hereof.

[The remainder of this page is intentionally left blank]

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

Authorized by Successor Agency Resolution

No. 2-2018, adopted May 24, 2018

<p>SUCCESSOR AGENCY:</p> <p>Successor Agency to the Redevelopment Agency of the City and County of San Francisco</p> <p>By:  Name: Nadia Sesay Title: Executive Director</p> <p>Approved as to Form:</p> <p>By:  Name: James Morales Title: General Counsel</p>	<p>OWNER:</p> <p>FOCIL – MB, LLC, a Delaware limited liability company</p> <p>By:  Name: Richard B. Fried Title: Managing Member</p>
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CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

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

State of California)
County of San Francisco)
On 7/3/2019 before me, Ann Golden, Notary Public
Date Here Insert Name and Title of the Officer
personally appeared Richard B Fied
Name(s) of Signer(s)

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

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

WITNESS my hand and official seal.



Signature [Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: 6th Amendment to OPA Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____
Signer Is Representing: _____

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

State of California)

County of San Francisco)

On July 27, 2018 before me, Jane L. Suskin, Notary Public

personally appeared Nadia Sesay,

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

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

WITNESS my hand and official seal.



Signature Jane L. Suskin

EXHIBIT A

(Mission Bay South OPA Attachment A)

ATTACHMENT A
MISSION BAY SOUTH
LEGAL DESCRIPTION OF PLAN AREA

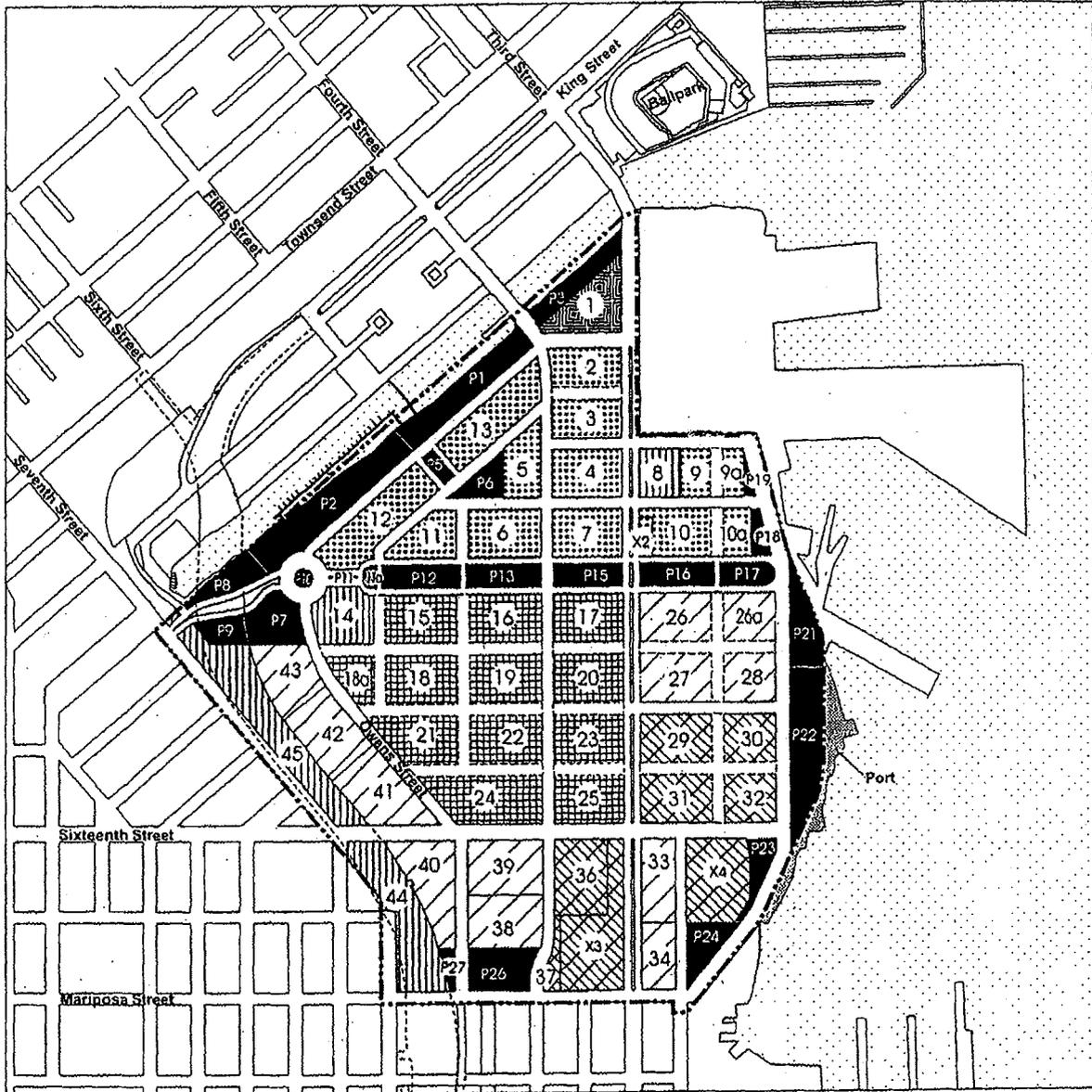
All that certain real property situate in the City and County of San Francisco, State of California, more particularly described as follows:

Commencing at the intersection point of the northeasterly line of Sixth Street (82.50 feet wide) with the southeasterly line of Berry Street (82.50 feet wide), said intersection having a coordinate of north 468817.32, east 1451868.98 in the California Coordinate System of 1927, Zone 3; thence along said southeasterly line of Berry Street south $46^{\circ} 18' 07''$ west 990.05 feet to the southwesterly line of Seventh Street (82.50 feet wide); thence along said southwesterly line of Seventh Street south $43^{\circ} 41' 53''$ east 440.00 feet to the southeasterly line of Channel Street (200.00 feet wide), and being the true point of beginning; thence continuing along said southwesterly line of Seventh Street south $43^{\circ} 41' 53''$ east 2017.19 feet to the westerly line of Pennsylvania Street (90.00 feet wide); thence along said westerly line of Pennsylvania Street south $3^{\circ} 10' 56''$ east 600.92 feet to the southerly line of Mariposa Street (66.00 feet wide); thence along said southerly line of Mariposa Street north $86^{\circ} 49' 04''$ east 1690.17 feet to the westerly line of Illinois Street (80.00 feet wide); thence along said westerly line of Illinois Street south $3^{\circ} 10' 56''$ east 63.85 feet; thence north $86^{\circ} 49' 04''$ east 80.00 feet to a point on the easterly line of Illinois Street, last said point being on the Mission Bay Project boundary; thence along said Mission Bay Project boundary the following courses and distances; thence north $35^{\circ} 06' 05''$ east 616.30 feet; thence northeasterly along an arc of a curve to the left, tangent to the preceding course with a radius of 440.00 feet through a central angle of $12^{\circ} 49' 53''$ an arc distance of 98.54 feet; thence tangent to the preceding curve north $22^{\circ} 16' 12''$ east 700.07 feet; thence northerly along an arc of a curve to the left, tangent to the preceding course with a radius of 340.00 feet through a central angle of $12^{\circ} 28' 00''$ an arc distance of 73.98 feet; thence tangent to the preceding curve north $9^{\circ} 48' 12''$ east 86.42 feet; thence northerly along the arc of a curve to the left, tangent to the preceding course with a radius of 340.00 feet, through a central angle of $11^{\circ} 58' 09''$, an arc distance of 71.03 feet; thence tangent to the preceding curve north $2^{\circ} 09' 57''$ west 121.44 feet; thence north $3^{\circ} 10' 56''$ west 198.86 feet; thence north $2^{\circ} 19' 47''$ west 292.70 feet; thence northwesterly along an arc of a curve to the left, tangent to the preceding course with a radius of 481.57 feet through a central angle of $24^{\circ} 30' 49''$, an arc distance of 206.04 feet; thence tangent to the preceding curve north $26^{\circ} 50' 36''$ west 402.03 feet; thence northwesterly along an arc of a curve to

the right, tangent to the preceding course with a radius of 236.29 feet, through a central angle of $9^{\circ} 00' 04''$ an arc distance of 37.12 feet; thence tangent to the preceding curve north $17^{\circ} 50' 32''$ west 652.35 feet to the easterly prolongation of the northerly line of future Mission Rock Street (65.25 feet wide); thence leaving said Mission Bay Project boundary, along said easterly prolongation and along said northerly line of future Mission Rock Street, south $86^{\circ} 49' 04''$ west 673.43 feet to the easterly line of Third Street; thence along said easterly line of Third Street north $3^{\circ} 10' 56''$ west 23.36 feet to an angle point therein; thence along said easterly line of Third Street south $86^{\circ} 49' 04''$ west 12.50 feet to an angle point in the easterly line of Third Street; thence along said easterly line of Third Street north $3^{\circ} 10' 56''$ west 1265.04 feet; thence south $64^{\circ} 21' 26''$ west 95.76 feet to the intersection of the westerly line of Third Street with said southeasterly line of Channel Street; thence along said southeasterly line of Channel Street south $46^{\circ} 18' 07''$ west 3578.74 feet to the true point of beginning.

Containing 10,340,343 square feet, more or less.

The bearings used in the above description are on the California Coordinate System of 1927, Zone 3. Multiply the above distances by 0.999928 to obtain grid distances.



OPEN SPACE	HOTEL (Mixed use including Retail)	UCSF	COMMERCIAL INDUSTRIAL / RETAIL
MISSION BAY RESIDENTIAL (Mixed use including neighborhood serving Retail)	COMMERCIAL INDUSTRIAL (Mixed use including neighborhood serving Retail)	PUBLIC FACILITIES (School, Police, Fire, Rail and Area below Freeway)	

0 300 N

MISSION BAY LAND USE PLAN - SOUTH

JOHNSON FAIN PARTNERS

SAN FRANCISCO, CALIFORNIA

CAYELUS DEVELOPMENT CORPORATION