

ATTACHMENT E

MISSION BAY SOUTH

FINANCING PLAN

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1. DEFINITIONS

1.A. Capitalized Terms.

1.A.i. The following terms shall have the meanings ascribed to them in this Section 1.A. for purposes of this Financing Plan. Unless otherwise indicated, any other capitalized terms used herein shall have the meanings ascribed to them in the South OPA, the Mission Bay South Redevelopment Plan, the Interagency Cooperation Agreement or the Tax Allocation Agreement, as applicable.

“Acquisition Agreement” is defined in Section 5.A.i. of this Financing Plan.

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended.

“Additional Payments” is defined in Section 4.A.iv. of this Financing Plan.

“Catellus” means Catellus Development Corporation, a Delaware corporation.

“CFD” means a community facilities district established by the Commission, acting as the legislative body thereof, under the Act.

“Commission” means the Commission of the Agency.

“Determination Date” is defined in Section 2.C.ii. of this Financing Plan.

“Excess Increment” is defined in Section 2.C.iii. of this Financing Plan.

“Exempt Land” means land (a) conveyed or to be conveyed to the City or the Agency (i) under the terms of the South OPA, or (ii) under the Land Transfer Agreements (including, but not limited to, Open Space Parcels), (b) conveyed to any governmental agency in connection with any of the Infrastructure conveyed to a governmental agency, (c) on which Agency Sponsored Affordable Housing Units are or will be constructed, (d) owned by a governmental agency as of the Effective Date (but not after the date such land is conveyed to a non-governmental entity), or (e) which is the subject of a public trust or other permanent easement to a public agency making impractical its use for other than the purposes set forth in the easement.

“Fiscal Year” shall mean the fiscal year of the Agency, as in effect from time to time. The current fiscal year of the Agency is from July 1 through June 30 of the following year.

“Goals for CFDs” means the Agency’s Local Goals and Policies for Community Facilities Districts, in the form provided to the Owner on the date of the South OPA (and to be adopted in substantially such form by the Commission), and as thereafter amended but, with respect to the CFD(s) formed under this Financing Plan, solely to the extent required under the Act or other controlling federal or state law or as otherwise agreed to by the Owner, in its discretion.

“Guaranty Agreement” is defined in Section 4.A.iv. of this Financing Plan.

"Housing Increment" means that portion of the tax increment revenues arising under the Mission Bay South Redevelopment Plan required by Redevelopment Law to be set-aside for the provision of low and moderate income housing (being at least 20% of the total tax increment revenues received by the Agency pursuant to the Mission Bay South Redevelopment Plan). Housing Increment may be increased by the amount of any Excess Increment to be used for affordable housing purposes in the North Plan Area as provided in this Financing Plan, pursuant to Section 33334.2 of the Redevelopment Law.

"Infrastructure" means those items identified in the Infrastructure Plan, including open space (including, among other items, park improvements and restrooms), streets, rails and rail line bridges, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), traffic signal systems, acquisition of Required Infrastructure Lands, dry utilities, and other improvements any of which are to be constructed in or for the benefit of the South Plan Area or any other matters otherwise described in the Infrastructure Plan.

"Infrastructure Costs" has the meaning given in Section 2.C.ii. of this Financing Plan.

"Infrastructure Plan" means the document attached to the South OPA as Attachment D, as it may be amended from time to time.

"Net Available Increment" means the tax increment revenues arising under the Mission Bay South Redevelopment Plan and received by the Agency, exclusive of: (i) Housing Increment (calculated solely at 20% of the total tax revenues received by the Agency pursuant to the Mission Bay North Redevelopment Plan), (ii) tax increment revenues required by Redevelopment Law to be paid to other taxing agencies (initially, 20% of the total tax increment revenues received by the Agency, and otherwise pursuant to the Redevelopment Law and the Mission Bay South Redevelopment Plan), and (iii) tax increment revenues needed to pay Agency Costs not otherwise paid from other sources.

"Net Worth" shall mean net worth, calculated in accordance with generally accepted accounting principles, plus the difference between (A) the fair market value of any real estate owned and (B) the book value of any real estate owned less accumulated depreciation thereon.

"Non-Qualifying Transferee" shall mean a Transferee that is either (i) an Affiliate with a Net Worth equal to or less than \$25,000,000 or (ii) any other Transferee that pursuant to Section 14.1(a)(4) of the South OPA does not meet the experience or Net Worth requirements as set forth in Section 14.1(a)(2) of the South OPA, excluding any Transferee of a Residential Project, or a portion thereof, under Section 14.1(a)(5) of the South OPA.

"Open Space Parcels" has the meaning given such term in the South OPA.

"Owner Representative" shall mean the person designated in writing by Catellus to act in such capacity under this Financing Plan or, if (i) all or substantially all of the undeveloped property in the South Plan Area has been Transferred to an Affiliate or (ii) a Transfer of all or substantially all of the undeveloped property in the South Plan Area has been effected by (a) the consolidation or merger of Catellus with or into any other business organization (whether or not Catellus is the surviving entity pursuant to Subchapter IX of the Delaware Corporation Law or the equivalent of the jurisdiction of Catellus' incorporation if Catellus reincorporates in another jurisdiction) (the "Resulting Entity") or (b) a Transfer permitted under the South OPA (the "Transfer Entity"), then the Affiliate, the Resulting Entity or Transfer Entity, as the case may be, may designate the person to act in such capacity under this Financing Plan by written notice of such Affiliate, Resulting Entity or Transfer Entity to the Agency. In no event shall there be more than one "Owner Representative" acting as such hereunder at any time.

“Public Financing” means a debt obligation of the Agency, secured by a pledge (or otherwise payable from a contribution) of Net Available Increment and/or Special Taxes, the net proceeds of which are used to finance or refinance Infrastructure.

“Qualifying Transferee” means a Transferee to whom the Owner has the right to Transfer all or any portion of the property in the South Plan Area and upon which Transfer the Owner is entitled to be released from obligations applicable to the Transferred Property pursuant to Section 14.1(b) of the South OPA.

“Redevelopment Law” means the Community Redevelopment Law of the State of California (Health and Safety Code Section 33000 et seq.), as amended.

“Required Infrastructure Lands” has the meaning set forth in Section 5.4 of the South OPA.

“Resulting Entity” has the meaning given such term in the definition of “Owner Representative.”

“Special Taxes” means special taxes authorized to be levied in a CFD under the Act and the proceedings to establish such CFD.

“Tax Allocation Agreement” means the Mission Bay South Tax Increment Allocation Pledge Agreement, between the City and the Agency.

“Tax Allocation Debt” means any debt of the Agency incurred under the Redevelopment Law secured by a pledge of Net Available Increment, but shall not include any CFD debt secured all or in part by a pledge of Net Available Increment.

“Tax Allocation Debt Promissory Note” is defined in Section 4.A.iv of this Financing Plan.

“Taxing Formula” means, with respect to any CFD, the rate and method of apportionment of Special Taxes for such CFD, as in effect from time to time, as adopted by the Commission and approved by the qualified electors for such CFD pursuant to the Act.

“The Regents” means The Regents of the University of California.

“Transfer Entity” has the meaning given such term in the definition of “Owner Representative.”

“UCSF Open Space” means the publicly accessible open space provided by The Regents within the UCSF Campus Site in the South Plan Area.

1.A.ii. Whenever used in this Financing Plan, “Infrastructure Costs,” “costs of Infrastructure” or similar term shall mean all costs related to the construction of Infrastructure (or reimbursement for the costs of Infrastructure), such as costs of design, engineering, construction monitoring, subdivision improvement bonds, demolition, environmental remediation, reasonable developer overhead and profit (consistent with the definition of “Actual Costs” contained in the Acquisition Agreement) and, subject to the limitations contained in Section 6.A.v. of this Financing Plan, construction financing costs, consistent with applicable law.

2. OVERVIEW

2.A. General.

2.A.i. The South OPA provides that the Owner is responsible for constructing Infrastructure in accordance with the Infrastructure Plan, subject to the applicable provisions of the South OPA. The Agency will provide for the financing of the Infrastructure: (i) through the establishment of one or more CFDs and the issuance of bonds for such CFDs, and (ii) with respect to Infrastructure to be constructed within or found by the Agency to be of primary benefit to the South Plan Area, through the use of Net Available Increment and the issuance of bonds secured by a pledge (or otherwise payable from a contribution) thereof, as described in this Financing Plan and subject to applicable law. The Agency finds and agrees that the components of Infrastructure described in Exhibit D attached to this Financing Plan and the Infrastructure to be built within the South Plan Area are of primary benefit to the South Plan Area.

2.B. Community Facilities Districts.

2.B.i. All CFDs used in furtherance of this Financing Plan will be established by the Commission under and pursuant to the Act. Only land within the South Plan Area will be included in any CFD, and no Special Taxes will be levied on any Exempt Land. Special Taxes levied in maintenance CFDs will also be used to pay ongoing maintenance expenses of each Open Space Parcel, upon completion of the open space improvements thereon and acceptance of such improvements by the City, as provided in Section 7 of this Financing Plan.

2.B.ii. All CFDs will be formed and administered according to the general principles expressed in this Financing Plan, and otherwise in accordance with the requirements of the Act, applicable law and the Goals for CFDs. It is expected that the annual levy of Special Taxes and the indebtedness of any CFDs (other than (i) Special Taxes and CFDs used for maintenance of Open Space Parcels, as described in Section 7. below, or (ii) any portion of indebtedness of a CFD which financed Infrastructure outside of, and not of primary benefit to, the South Plan Area) will be reduced and refunded, respectively, over time by using Net Available Increment and Tax Allocation Debt to pay directly or indirectly for Infrastructure constructed within or of primary benefit to the South Plan Area, to the extent that sufficient Net Available Increment is generated during the term of the Mission Bay South Redevelopment Plan.

2.B.iii. In the event that, because of material changes to the Act occurring after the effective date of the South OPA, CFD financing is not available for reimbursement of costs of the Infrastructure or any significant portion thereof, the Agency and the Owner will negotiate in good faith as to a substitute public financing program equivalent in nature and function to CFDs, to be used for purposes of this Financing Plan in lieu of future CFDs.

2.B.iv. In the event that the South OPA is terminated in accordance with its terms prior to the end of its term, the Agency agrees to use reasonable efforts to lower the maximum rates of Special Taxes on any property (i) in any then outstanding CFD established to build Infrastructure, subject to the constraints of Section 53331(b) of the Act, to only such rates as are necessary or appropriate to pay debt service on bonded indebtedness of the CFD and administrative costs of the CFD and (ii) in any then outstanding CFD established to pay for maintenance expenses of Open Space Parcels, to an amount necessary to cover the then annual maintenance costs (allowing for periodic increases in respect to maintenance cost inflation) and administrative costs of the CFD. Any such reduction shall be applied first to reduce Special Taxes on undeveloped property and then developed property consistent with any applicable requirements of the Act and the applicable Taxing Formula. The Agency shall evidence any

such reduction by recording or causing to be recorded an appropriate instrument in the Official Records of the City and County of San Francisco.

2.B.v. The Owner may include in any CFD formed hereunder (except the maintenance CFD) all or any portion of the contribution made pursuant to the Infrastructure Plan to address the sewer odor conditions of the Southeast Water Pollution Control Plant; provided, however, notwithstanding anything to the contrary contained herein, Net Available Increment shall not be applied to pay or reimburse any portion of such contribution by the Owner. At the request of the Owner, the Agency agrees to meet and discuss in good faith other mutually acceptable financing alternatives for the Owner to pay for or reduce the CFD debt that paid for any such improvements to the Southeast Treatment Plant, consistent with the other terms and conditions of this Financing Plan.

2.C. Tax Increment.

2.C.i. Tax increment revenues to be used towards the payment of the costs of Infrastructure constructed within or of primary benefit to the South Plan Area will be limited to Net Available Increment. This Financing Plan is intended to create an "indebtedness" of the Agency under Section 33670(b) of the Redevelopment Law which is secured by an Agency pledge of Net Available Increment, and, under the Tax Allocation Agreement, the City has acknowledged that the Agency's obligations hereunder are subject to repayment from an ongoing Agency pledge of Net Available Increment.

2.C.ii Subject to the requirements of this Section 2.C.ii., the Agency shall be entitled to establish a "Determination Date" following which Net Available Increment shall be required to be used solely for purposes of repayment of Public Financings, the proceeds of which financed or will finance Infrastructure built or to be built within or of primary benefit to the South Plan Area, and not for the direct reimbursement to the Owner for the costs of such Infrastructure. Following a Determination Date, the Agency shall have the option in its sole and absolute discretion to apply Net Available Increment not needed to repay such Public Financings to such direct reimbursement. The Determination Date shall be established subject to the following requirements:

1. The determination shall be based, in part, upon information provided by the Owner Representative as described in Section 4.B.i. and this 2.C.ii. after the Agency has met and conferred with the Owner Representative as to the methodology and assumptions used by the Agency to make such determination.

2. The Agency must determine that there will be sufficient Net Available Increment in the then current Fiscal Year and in all future Fiscal Years to repay all present and future Public Financings (assuming a debt coverage ratio of 110% regardless of the actual debt coverage required under the documents governing the applicable Public Financing) issued or reasonably expected to be issued in order to pay for all costs of the Infrastructure built or to be built within, or determined to be of primary benefit to, the South Plan Area (the "Infrastructure Costs").

3. The Agency shall assume that following the Determination Date there will be no use of Special Taxes levied on any property within the South Plan Area other than with respect to maintenance CFDs.

4. In calculating Net Available Increment, the Agency shall assume the assessed valuation shown on the most recent property tax rolls issued with respect to the South Plan Area will increase based on (a) an annual inflation rate equal to 2% per annum, (b) improvements for which construction has been completed, and not yet

reflected on the South Plan Area property tax roll, and (c) with respect to all property other than that on blocks X3 and X4 as shown on the Land Use Plan for the South Plan Area attached to the South OPA, the Agency's reasonable estimation of the value and timing of building improvements remaining to be constructed in the South Plan Area based on the Owner's reasonable assumptions regarding market absorption rates and product mix it will construct in accordance with the most recent Major Phase and Project approvals.

5. In calculating the Infrastructure Costs, the Agency shall take into account all Infrastructure built as of such date with the proceeds of a Public Financing and assume that (a) the remaining Infrastructure will be built to accommodate the phased absorption of the remaining improvements based on the timeline estimated in clause 4(c) and on the Infrastructure improvement and phasing obligations outlined in the Infrastructure Plan, and (b) all Public Financings expected to be issued will be subject to reasonable and fiscally prudent terms (provided the Agency shall continue to have the sole discretion in establishing the actual terms of any Tax Allocation Debt under this Financing Plan).

6. No Determination Date shall occur until the later of (a) a Fiscal Year in which the Net Available Increment for such Fiscal Year exceeds the then current annual debt service (including a debt service coverage of 110%) on all then outstanding Public Financings and (b) January 1, 2010.

2.C.iii. "Excess Increment" means as of the last day of each Fiscal Year (i) prior to the Determination Date, any Net Available Increment arising in such Fiscal Year and not required to be used during such Fiscal Year to pay debt service on a Public Financing and not needed to directly pay the Owner for costs of the Infrastructure built (or to be completed on or before the end of the next Fiscal Year) within or otherwise of primary benefit to the South Plan Area, and (ii) from and after the Determination Date, any Net Available Increment arising in such Fiscal Year and not required to be used during such Fiscal Year to pay debt service on a Public Financing. Any Excess Increment from the South Plan Area shall be used by the Agency for affordable housing purposes to the extent necessary to fulfill the Agency's affordable housing program consistent with the objectives of the Mission Bay North and South Redevelopment Plans and statutory requirements for the North and South Plan Areas, and thereafter for any lawful purpose under the Redevelopment Law. Such Excess Increment shall be added to and become part of the Housing Increment to the extent it is to be used for the purpose of fulfilling the Agency's affordable housing program in the North Plan Area as provided above, pursuant to Section 33334.2 of the Redevelopment Law.

2.C.iv. Net Available Increment for any Fiscal Year will be used to directly pay for the costs of Infrastructure constructed within or of primary benefit to the South Plan Area pursuant to Section 2.C.iii. of this Financing Plan only after amounts have been paid or otherwise set aside for payment of debt service due during the calendar year that begins in such Fiscal Year on Public Financings secured by or payable from Net Available Increment.

2.C.v. Without limiting the Tax Allocation Agreement and the other provisions of this Financing Plan, the Agency hereby covenants to expend or encumber Housing Increment in a manner so as to avoid the sanctions referred to in clauses (a)(2) and (e) of Section 33334.12 of the Redevelopment Law. The Agency may use Housing Increment from the South Plan Area to develop Agency Sponsored Affordable Housing Units in the North Plan Area on such terms and conditions as the Agency shall determine, consistent with fulfilling the affordable housing objectives in the Mission Bay South and North Redevelopment Plans. Similarly, under the Financing Plan for the North Plan Area, the Agency may use Housing Increment from the North Plan Area to develop Agency Sponsored Affordable Housing Units in the South Plan Area on

such terms and conditions as the Agency shall determine, consistent with fulfilling the affordable housing objectives in the Mission Bay South and North Redevelopment Plans.

2.D. Limitation on Agency Participation.

2.D.i. Other than the use of Special Taxes and Net Available Increment as described in this Financing Plan, no funds of the Agency shall in any way be obligated towards the payment of the costs of the Infrastructure. In no event shall any general funds of the Agency, or any tax increment revenues arising from an Agency redevelopment project area other than the South Plan Area be obligated for any debt or other obligation of the Agency under this Financing Plan or any reimbursement or other agreement implementing this Financing Plan except as provided in Section 2.C.v. with respect to the development of Agency Sponsored Affordable Housing Units. Except as otherwise provided in the South OPA, the lack of Public Financing proceeds, Special Taxes or Net Available Increment to finance all or any portion of costs of the Infrastructure shall not alter the obligations of the Owner under the South OPA including the Infrastructure Plan or any other Plan Documents (subject, however, to the termination rights of the Owner under Section 12.2(a)(1) of the South OPA).

2.E. Consultants.

2.E.i. The Agency, following consultation with the Owner Representative, will select all consultants necessary to implement this Financing Plan, including the formation of any CFD and the issuance of any Public Financing. These consultants may include, but are not limited to, special tax consultants, tax increment fiscal consultants, appraisers, financial advisors, bond underwriters, absorption consultants, bond counsel, bond trustees, escrow agents and escrow verification agents. The costs of any such consultants engaged by the Agency and any Agency administrative expenses related to the implementation of this Financing Plan (including any Public Financing) shall be paid or reimbursed, as applicable, from the proceeds of a Public Financing or, if no such proceeds are available, from advances by the Owner; provided, however, that any such advances by the Owner shall be reimbursed as soon as practicable from available proceeds of a Public Financing to the extent permissible under the Act or the Redevelopment Law, as applicable, and under any applicable federal tax laws or regulations. The Owner may engage its own consultants to advise it on matters related to this Financing Plan or any Public Financing and, subject to the prior written approval of the Agency, any advances made by the Owner and any costs to the Owner of such consultants shall be reimbursed from the proceeds of a Public Financing to the extent permitted under the Act, the Redevelopment Law and federal tax laws or regulations, as applicable, and otherwise to the extent of proceeds of the Public Financing available for such purpose.

3. CFD FINANCING

3.A. Formation of CFDs.

3.A.i. All CFDs established to implement this Financing Plan will be formed by the Commission, acting as the legislative body for the CFDs under the Act. Only land in the South Plan Area will be included in any CFD, and no Special Taxes will be levied on any Exempt Land.

3.A.ii. The Owner may petition the Agency from time to time to establish one or more CFDs pursuant to Section 53318(c) of the Act. Following receipt by the Agency of any such petition and within the time period required by the Act, the Agency will adopt a resolution of intention to form the respective CFD and call for a public hearing thereon as required by the Act, subject to the provisions of Section 3.A.iii. below. The Agency will take all actions necessary, subject to the provisions of the Act, to permit the Owner and any other owners of

land within a prospective CFD to vote on the formation of the CFD, and, if such vote is in favor of the formation of the CFD by at least the minimum required under Section 53328 of the Act, the Agency will take all actions necessary under the Act to confirm the vote and form the CFD. The Owner will cooperate with the Agency in connection with the formation of any CFD for which a petition is submitted by the Owner.

3.A.iii. The Owner may suggest the appropriate boundaries for and specific Infrastructure to be financed by any CFD in its petition to form the CFD. In forming any CFD, the Agency will use the boundaries and Infrastructure specifically suggested by the Owner, unless the Agency determines that they are inconsistent with applicable provisions of this Financing Plan, the Goals for CFDs or the Act or, based upon the public interest or necessity, some other boundaries or Infrastructure for a CFD are more appropriate in the circumstances. The Agency will provide the Owner with a written explanation of any such determination. Any CFD may include separate improvement areas and may provide for separate methodology for the Taxing Formula for the respective CFD.

3.A.iv. Under the requirements of the Act, the Agency will be required to enter into a joint community facilities agreement with any public agency that will own or operate any Infrastructure to be financed with CFD bond proceeds. The Agency and the City have agreed that the Interagency Cooperation Agreement is a joint community facilities agreement for purposes of the Act with respect to all of the Infrastructure to be owned or operated by the City or any City Agency.

3.B. Bonded Indebtedness Limitation.

3.B.i. In connection with the formation of any CFD, the Owner may suggest to the Agency the appropriate bonded indebtedness limit for the respective CFD and the Agency will use such bonded indebtedness limit unless the Agency determines that such limit is inconsistent with the applicable provisions of this Financing Plan, the Goals for CFDs or the Act or, based upon the public interest or necessity, some other indebtedness limit is more appropriate in the circumstances. The Agency will provide the Owner with a written explanation of any such determination. It is expected that the bonded indebtedness limit for any CFD shall be sufficient to pay or reimburse the costs of the Infrastructure to be financed by the CFD, including direct and indirect costs as permitted by the Act, and incidental expenses related to the bonded indebtedness as permitted by the Act (including, but not limited to, those described in Section 2.E.i. above). It is hereby acknowledged that the costs of the Infrastructure (including the estimated costs of the Public Financings and applicable reserve funds) are not expected to exceed \$350,000,000, and that the aggregate bonded indebtedness limit of all CFDs established under this Financing Plan is expected to be at least equal to such amount. The establishment of a bonded indebtedness limit by the Agency for any CFD shall in no way separately obligate the Agency to issue bonds up to the amount of such limitation.

3.C. Scope of Facilities.

3.C.i. The facilities authorized to be financed by any CFD shall be consistent with the Infrastructure Plan and may only include Infrastructure and the associated costs described below, unless otherwise requested in writing by the Owner and approved by the Agency in its discretion, may be limited by applicable federal tax laws and regulations, and in any event must be financeable under the Act. Facilities to be financed by a CFD may include all costs related to the construction of the Infrastructure (and other improvements, if any, requested in writing by the Owner and approved by the Agency to be financeable by a CFD), such as costs of design, engineering, construction monitoring, subdivision improvement bonds, demolition, environmental remediation, reasonable developer overhead and profit (consistent with the definition of "Actual Costs" in the Acquisition Agreement), and, subject to the limitations

contained in Section 6.A.v. of this Financing Plan, construction financing costs, as determined by the Agency to be consistent with the Act and federal tax laws and regulations, as applicable, and otherwise based upon the suggestions of the Owner in connection with its petition to form a CFD and the applicable Acquisition Agreement. Whether or not included in the cost of the Infrastructure, a CFD may finance costs related to its formation, including those referred to in Section 2.E. above.

3.D. Rate and Method of Apportionment of Special Taxes.

3.D.i. The Taxing Formula for any CFD shall be developed by the Agency's special tax consultant, following consultation with Agency staff and consultants and the Owner Representative, and shall be subject to the approval of the Commission in the resolution of formation of the respective CFD. As provided in Section 3.A.i., no Special Taxes shall be levied on any Exempt Land. Projected Special Taxes on any parcel of land shall not exceed any applicable maximum rate specified in the Goals for CFDs, unless otherwise specifically approved by the Agency. The Owner Representative shall have the opportunity to comment upon and provide input with respect to the Taxing Formula for any CFD. In no event shall any Special Tax rate on residential property exceed any maximum rate specified in the Act.

3.D.ii. The Taxing Formula for any CFD shall provide for an amount necessary to pay all estimated costs of administering the CFD, and for debt service coverage consistent with the then market for newly-issued bonds of community facilities districts under the Act. It is expected that any Taxing Formula will, to the extent practicable, have consistent yearly Special Tax levies on any developed For-Sale residential property, with the Special Tax on undeveloped property and developed property (other than For-Sale residential property) to vary based upon the pace of development in the respective CFD. Any Special Tax lien on any parcel in a CFD will only be released upon payment or legal defeasance of any bonded indebtedness of the CFD secured by a pledge of Special Taxes, or prepayment of the Special Tax obligation of the parcel in accordance with the Taxing Formula. Notwithstanding the foregoing, the Agency may advise any landowner of any reduction in Special Taxes that may be levied in a CFD by reason of Net Available Increment that may be available for the payment of debt of the CFD. If the maximum Special Tax Rate is permanently reduced, the Agency shall timely record an appropriate instrument in the Official Records of the City and County of San Francisco evidencing any such permanent reduction in maximum Special Taxes. Each Taxing Formula shall reflect that the Infrastructure will be built as part of a phased development and the Net Available Increment will be available to pay for all or part of such Infrastructure including debt service on bonded indebtedness of CFDs. In setting the applicable maximum Special Tax, each Taxing Formula shall also take into account amounts reasonably expected to be contributed to pay for the costs of Infrastructure by the owners of other property located in the South Plan Area. It is the expectation of the parties that each Taxing Formula will generally reflect a first priority for the levy of Special Taxes on improved property in the CFD and thereafter on undeveloped property in the CFD.

3.D.iii. Special Taxes to be levied in a CFD may be offset by Net Available Increment available for the payment of the related CFD debt, as determined pursuant to Section 4.B.i. below, but only with respect to the portion of the CFD debt (and allocable costs) relating to Infrastructure constructed or to be constructed within or of primary benefit to the South Plan Area. The distribution of any Special Taxes collected by the Agency will be set forth in a Fiscal Agent Agreement (as defined in the Acquisition Agreement) or bond indenture for indebtedness of the related CFD, and will be consistent with any requirements of the Act, federal tax laws and regulations, as applicable, and the Goals for CFDs.

3.D.iv. The Agency will covenant with any CFD debtholders to foreclose the lien of delinquent Special Taxes. Any such covenant shall be consistent with the general practice for

community facilities districts in California and otherwise as determined by the Agency based upon consultation with the underwriter or financial advisor to the Agency (if any) for the CFD indebtedness and other Agency consultants. Any foreclosure action in respect of a CFD shall be subject to the requirements of the Act, and may be negotiated by the Agency within the parameters of the CFD debt covenants and the Act, as determined by the Agency as in the best interests of the debtholders and the Agency.

4. TAX INCREMENT FINANCING

4.A. Net Available Increment.

4.A.i. The Agency hereby agrees to use Net Available Increment to pay or reimburse the costs of the Infrastructure constructed or to be constructed within or of primary benefit to the South Plan Area, in accordance with the provisions hereof. As provided in Section 2.C.i, this Financing Plan is intended to create an indebtedness of the Agency under Redevelopment Law, and under the Tax Allocation Agreement the City has acknowledged the Agency's obligations hereunder and its pledge of Net Available Increment. The Agency hereby pledges the Net Available Increment for the purposes of this Financing Plan, subject to the approval by the City of the Tax Allocation Agreement, such pledge constituting a first priority pledge of the Net Available Increment. The Agency shall take all actions necessary under the Tax Allocation Agreement with the City to assure the Net Available Increment will be available for purposes of this Financing Plan, including the filing of any Statement of Indebtedness and other actions of the Agency described in the Tax Allocation Agreement. No tax increment revenues arising from any other redevelopment project area of the Agency shall in any way be obligated to pay costs of the Infrastructure or any obligation of the Agency under this Financing Plan (subject to Section 2.C.v. above with respect to Agency Sponsored Affordable Housing Units).

4.A.ii. Any Net Available Increment shall be used, consistent with the South OPA, this Financing Plan and the Redevelopment Law, to make payments on indebtedness of CFDs to the extent such indebtedness financed Infrastructure or other Improvements constructed or to be constructed within or of primary benefit to the South Plan Area, make payments on Tax Allocation Debt the proceeds of which are used to pay or reimburse the costs of the Infrastructure constructed or to be constructed within or of primary benefit to the South Plan Area or to refund or defease such indebtedness of CFDs prior to maturity, or, subject to Section 4.B.i. below, to pay or reimburse directly the costs of such Infrastructure. Net Available Increment may be used to offset Special Tax levies in CFDs, but will not be used to reimburse any Special Taxes paid by the Owner or any other Person or the portion of any Special Taxes that pertain to payment for or indebtedness incurred to finance Infrastructure not constructed within or of primary benefit to the South Plan Area. Any Net Available Increment in excess of that needed for the foregoing purposes in any Fiscal Year (as determined pursuant to Section 2.C. ii) will be free of any commitment or restriction in this Financing Plan, the South OPA and the Tax Allocation Agreement.

4.A.iii. The Agency agrees to provide to the Owner Representative, so long as any Infrastructure Costs have not been financed by Net Available Increment, copies of its annual Statement of Indebtedness and audited financial statements as soon as practicable following their approval by the Agency. The Agency will maintain records, in reasonable detail, with respect to any Agency Costs deducted from tax increment revenues in arriving at Net Available Increment, and, upon written request of the Owner Representative, will make such records available for inspection by the Owner Representative, at a mutually agreeable time.

4.A.iv. If, after the Agency issues any Tax Allocation Debt, ad valorem property tax revenues levied on any property owned by Catellus, any Resulting Entity, Transfer Entity or any Non-Qualifying Transferee are reduced due to a reassessment or for any reason other than a

reduction in a tax override as debt to which it pertains matures, Catellus (with respect to property it owns and property owned by any such Non-Qualifying Transferee) or the Transfer Entity or Resulting Entity, as to property each owns, as applicable, shall pay an amount to the Agency annually (the "Additional Payments") not to exceed in each such year the lesser of (i) the portion of the reduction in property tax revenues attributable to the property in the South Plan Area owned by Catellus, a Transfer Entity, Resulting Entity or Non-Qualifying Transferee, as applicable, that would have constituted Net Available Increment in such year had such reduction not occurred, or (ii) the amount of the difference between Net Available Increment in such year and the amount necessary to pay the debt service due and payable in such year on the Tax Allocation Debt. To further evidence its obligations under this Section 4.A.iv., Catellus shall enter into the Mission Bay South Tax Allocation Debt Promissory Note in substantially the form attached as Exhibit B to this Financing Plan (the "Tax Allocation Debt Promissory Note") or, upon a Transfer to a Non-Qualifying Transferee, the Mission Bay South Tax Allocation Debt Guaranty Agreement in substantially the form attached as Exhibit C to this Financing Plan (the "Guaranty Agreement"), prior to the issuance of any Tax Allocation Debt. The Owner shall require that any Transfer Entity, Resulting Entity and any Affiliate with a Net Worth equal to or greater than Twenty Five Million Dollars (\$25,000,000) execute a similar Tax Allocation Debt Promissory Note prior to the completion of any Transfer of land in the South Plan Area to any such Transfer Entity, Resulting Entity or Affiliate, as applicable. The obligation under the Tax Allocation Debt Promissory Note or the Guaranty Agreement, as applicable, to make Additional Payments shall terminate as to the property Transferred to a Qualifying Transferee, on and after the date of such Transfer, except to the extent any such obligation has arisen and is not satisfied on the date of Transfer, and subject to the requirements, if any, for a Tax Allocation Debt Promissory Note or Guaranty Agreement, as applicable, with respect to the property so Transferred as provided above. Notwithstanding the foregoing, if, after the Agency issues a Certificate of Completion for a Major Phase or Project that includes Improvements that do not comprise a Residential Project (all or the relevant portion of such Major Phase or Project is referred to in this Section below as a "Completed Commercial Project"), Catellus Transfers the Completed Commercial Project to a Non-Qualifying Transferee (other than an Affiliate), then Catellus' obligation under a Tax Allocation Debt Promissory Note or Guaranty Agreement, as applicable, to make Additional Payments shall terminate as to the Completed Commercial Project which is Transferred on and after the date of such Transfer, except to the extent any such obligation has arisen and is not satisfied on the date of Transfer provided that upon Transfer the following conditions are met: (1) such Non-Qualifying Transferee has a Net Worth of at least Twelve Million Dollars (\$12,000,000) and duly executes and delivers to the Agency a Tax Allocation Debt Promissory Note as to the Completed Commercial Project that is Transferred or (2) such Non-Qualifying Transferee has a Net Worth of less than Twelve Million Dollars (\$12,000,000) but either (A) Catellus demonstrates to the reasonable satisfaction of the Agency that the Non-Qualifying Transferee has the financial wherewithal to make Additional Payments that could arise under the Tax Allocation Debt Promissory Note with respect to the Completed Commercial Project taking into account relevant facts and circumstances (such as, without limitation, debt coverage or other terms and conditions of any outstanding Tax Allocation Debt) and such Non-Qualifying Transferee executes and delivers to the Agency a Tax Allocation Debt Promissory Note as to the Completed Commercial Project or (b) Catellus or such Non-Qualifying Transferee provides such other assurances against Additional Payments with respect to the property Transferred as are reasonably acceptable to the Agency (including, without limitation, bond insurance), again taking into account relevant facts and circumstances (such as, without limitation, debt coverage or other terms and conditions of any outstanding Tax Allocation Debt).

4.B. Use of Net Available Increment.

4.B.i. On or about November 15 of each year commencing in 1999 and for so long as (a) the Owner has not been fully reimbursed for all Infrastructure Costs (with respect to

Infrastructure constructed within or of primary benefit to the South Plan Area) or (b) any Public Financing secured by a pledge of Special Taxes remains outstanding (provided such Public Financing has not been legally defeased), the Owner Representative shall provide the Agency with a good faith estimate of any costs of Infrastructure to be incurred by it in the next Fiscal Year, and a list of any costs of Infrastructure incurred but not yet reimbursed from the proceeds of a Public Financing or Net Available Increment, as well as any new development expected to occur or that is occurring in the South Plan Area and the assessed value of which is expected to be included on the secured real property tax roll for the next Fiscal Year and any Transfers of property that are expected to occur and the assessed value of which is expected to be included on the secured real property tax roll for the next Fiscal Year. On or about each succeeding December 10th, the Agency staff shall meet and confer with the Owner Representative with respect to the amount of any Net Available Increment expected to be received by the Agency during the next Fiscal Year. The Agency shall provide the Owner Representative with a good faith estimate, for the succeeding Fiscal Year, of (i) Agency Costs chargeable to tax increment revenues from the South Plan Area, (ii) Net Available Increment (based, in part, upon information provided by the Owner Representative as to any new development and Transfers of property as provided above), and (iii) the amount of any debt service on Public Financings secured by a pledge of and expected to be paid from Net Available Increment. Based upon the foregoing information provided by the Owner and the Agency, the Agency shall budget the expenditure of the expected Net Available Increment for the payment of debt service due in the next Fiscal Year on any Public Financing issued or to be issued, the payment of costs of Infrastructure directly to the Owner, all in amounts determined to be reasonable by the Agency (and only with respect to Infrastructure constructed or to be constructed within or of primary benefit to the South Plan Area). The Agency shall use its best efforts to obtain any necessary appropriation of Net Available Increment from the Board of Supervisors of the City for the foregoing purposes under the Tax Allocation Agreement, and shall apply any Net Available Increment so appropriated to such purposes, subject to the provisions of the documents pursuant to which any such Public Financing is issued and the provisions of this Financing Plan. The November 15th and December 10th dates referred to in this Section 4.B.i. are based upon the current budget process of the City and the Agency, and the Owner and the Agency shall adjust such dates as appropriate if the timing of such budget process is altered by the City and the Agency in the future.

4.B.ii. The Agency acknowledges that it is the intent of the parties to the South OPA that all Net Available Increment be used in each Fiscal Year for the foregoing purposes; however, so long as the Agency is fully discharging its duties under the South OPA, the Interagency Cooperation Agreement and the Tax Allocation Agreement, the Agency shall have no liability to the Owner or any other Person by reason of a failure by the Board of Supervisors of the City to appropriate all or any portion of the Net Available Increment for such purposes in any Fiscal Year, or for any shortfall in Net Available Increment actually received by the Agency in any Fiscal Year to pay all of such budgeted costs and expenses. Any Infrastructure Costs (related to Infrastructure constructed within or of primary benefit to the South Plan Area) incurred by the Owner in any Fiscal Year and not reimbursed from Net Available Increment or the proceeds of a Public Financing shall be eligible for such reimbursement in the next Fiscal Year or future Fiscal Years, until reimbursed, subject to the term of the South OPA and any applicable federal tax law or regulations.

4.B.iii. The Agency hereby agrees to use Housing Increment and Excess Increment for the payment of the costs of predevelopment, development or construction of Agency Sponsored Affordable Housing Units developed or to be developed by the Agency or Qualifying Housing Developers within the North and South Plan Areas as provided herein and in the Tax Allocation Agreement, to the extent such Housing Increment is necessary to finance the development of such units in accordance with the Housing Program, and to obtain the necessary

appropriation from the Board of Supervisors under the Tax Allocation Agreement for such purposes.

5. PAYMENTS FOR INFRASTRUCTURE

5.A. Construction.

5.A.i. The Owner shall construct all Infrastructure in accordance with the Infrastructure Plan, the South OPA and this Financing Plan including the Acquisition Agreement to be executed by the Agency and the Owner in substantially the form attached hereto as Exhibit A (the "Acquisition Agreement"). Each Acquisition Agreement entered into under this Financing Plan shall be consistent with the South OPA, including this Financing Plan, the Interagency Cooperation Agreement and the applicable City Regulations thereunder.

5.B. Acquisition and Payment.

5.B.i. The Agency shall acquire the Infrastructure and pay the costs of Infrastructure in accordance with the terms of the Acquisition Agreement. The price to be paid by the Agency for any Infrastructure shall be as described in the Acquisition Agreement, and shall be payable solely from the Acquisition Funds (as that term is described in the Acquisition Agreement).

6. PUBLIC FINANCINGS

6.A. Timing of Debt Issuances.

6.A.i. Any and all CFD debt for purposes of this Financing Plan shall be issued at such times, in such amounts and subject to such terms as shall be requested in writing by the Owner Representative consistent with the provisions of this Section 6, unless determined by the Agency as inconsistent with the South OPA, this Financing Plan, the Goals for CFDs, the Act or applicable federal tax law or regulations, or based upon the public interest or necessity, the timing or amount of the proposed CFD debt is inappropriate in the circumstances. The Agency shall provide the Owner with a written explanation of any such determination. Any and all Tax Allocation Debt for purposes of this Financing Plan shall be issued at such times and in such amounts as shall be determined by the Agency subject to the provisions of this Section 6, Section 4.A. and Section 4.B.

6.A.ii. Any debt issued by the Agency pursuant to this Financing Plan shall be secured solely by a pledge of Special Taxes or of Special Taxes and Net Available Increment (in the case of CFD debt), or of Net Available Increment (in the case of Tax Allocation Debt), by the funds and accounts established under the debt issuance instrument and, upon the written request of the Owner and with the consent of the Agency, collateral (which may be in the form of a letter of credit or guarantee) provided by the Owner. The fee for any collateral provided by the Owner (and any draw or other use of the collateral for the purpose of paying debt service and other annual expenses) shall be subject to reimbursement solely from Special Taxes or Net Available Increment, on a basis subordinate to any debt service and other annual expenses for any related outstanding Public Financing.

6.A.iii. From time to time, so long as any of the Infrastructure has not been completed or the costs of Infrastructure have not been reimbursed to the Owner from the proceeds of Net Available Increment or Tax Allocation Debt, the Owner Representative may submit a written request that the Agency issue CFD debt or Tax Allocation Debt. Any such request shall be accompanied by a description of the costs of Infrastructure to be financed with the proceeds of the debt obligations, the completion date or estimated completion date for the related Infrastructure, and the then current construction schedule for any other improvements to be

made by the Owner. Following the receipt of any such written request, Agency staff and appropriate Agency consultants shall meet and confer with the Owner Representative as to the amount and timing of the proposed bond issue pursuant to the procedures set forth in Section 4.B.i.

6.A.iv. The Agency acknowledges that one of the costs of Infrastructure to be reimbursed to the Owner is the reasonable cost of construction financing for the Infrastructure (subject to the limitations contained in Section 6.A.v.) and that it is intended that the Infrastructure Costs be fully reimbursed from Net Available Increment or proceeds of Tax Allocation Debt to the extent the Infrastructure is constructed within or of primary benefit to the South Plan Area. With the foregoing in mind, the Agency shall determine the principal amount, use of proceeds and date of issuance of any Tax Allocation Debt under this Financing Plan. It is expected that CFD financing will be used to refinance the costs Infrastructure initially financed with construction financing obtained by the Owner, that Tax Allocation Debt will be used to refinance CFD debt or the Infrastructure Costs initially financed with construction financing obtained by the Owner, and that all Public Financings issued by the Agency under this Financing Plan will be tax exempt to the greatest extent feasible as further provided in Section 6.B.iv. below.

6.A.v. Notwithstanding the foregoing, the Agency shall not be obligated to issue any such CFD debt or Tax Allocation Debt if (i) Catellus, any of its Affiliates, any Transfer Entity or any Resulting Entity is then in default in the payment of any ad valorem or Special Taxes levied in the South Plan Area, (ii) the Owner or any Affiliate, Transfer Entity or Resulting Entity is in Material Breach under the South OPA or any other Plan Documents, including, without limitation, any failure to execute and deliver the Guaranty Agreement or Tax Allocation Debt Promissory Note, as applicable, (iii) the Owner, any Affiliate, any Transfer Entity or any Resulting Entity fails to cooperate with the Agency as necessary to form any CFD requested by the Owner Representative to be formed or otherwise under federal securities laws or Internal Revenue Code provisions applicable to any such Public Financing, or (iv) in the opinion of the Agency, based upon the advice of Agency staff and consultants, market conditions or conditions in the South Plan Area (such as, without limitation, tax delinquencies, assessment appeals, damage or destruction of improvements or litigation) are such that it would not be fiscally prudent or feasible to incur such indebtedness at the time. The Agency shall not be obligated to reimburse the financing costs (consisting of interest carry and lender fees) on any construction financing obtained by the Owner in respect of the Infrastructure in excess of commercially prevailing rates or accruing during any period that the Owner or any Affiliate is in Material Breach under the South OPA or any other Plan Document or is in default in the payment of Special Taxes, or to the extent any such financing costs applies to any period later than ninety (90) days following the date on which the City has inspected the related Infrastructure and found it to be complete in accordance with the Acquisition Agreement. Net Available Increment will not be used to reimburse Special Taxes paid by the Owner or another Person, but may be used to offset Special Taxes to be levied in the future to pay CFD debt obligations.

6.B. Terms of the Public Financings.

6.B.i. The terms and conditions of any CFD debt or Tax Allocation Debt, including, without limitation, whether the interest thereon will be payable at a fixed or variable rate, bond maturities and redemption provisions, debt service reserve and capitalized interest sizing, and permitted investments and debt service coverage levels, shall be determined by the Agency (i) consistent, in the case of the CFD debt, with the provisions of the first sentence of Section 6.A.i. above, and (ii) in the case of Tax Allocation Debt, in the sole and absolute discretion of the Agency. Agency staff and consultants shall meet and confer with the Owner Representative prior to the sale of any Tax Allocation Debt to discuss the terms of any such proposed debt

issue, but the final terms thereof shall be determined by the Agency in its sole and absolute discretion as provided herein.

6.B.ii. Notwithstanding any other provision hereof, any CFD debt shall be consistent with this Financing Plan, the Act, the Goals for CFDs, applicable federal tax law and regulations and any Acquisition Agreement executed by the Agency and the Owner. Any Tax Allocation Debt issued by the Agency shall be consistent with this Financing Plan, applicable federal tax law and regulations, the Redevelopment Law and any other applicable law, and, notwithstanding anything to the contrary contained in this Financing Plan, shall have terms (such as, without limitation, debt service coverage levels, credit enhancements and other Agency covenants) determined by the Agency in its sole and absolute discretion. Without limiting the foregoing, in exercising its discretion as to Tax Allocation Debt, the Agency shall not be constrained in setting the terms thereof even if the result is a decrease in net bond proceeds available for the purposes of this Financing Plan. In no event shall the Agency be obligated to pay any debt incurred pursuant to this Financing Plan, or any obligation related thereto under any debt instrument (including any note, bond, indenture or fiscal agent agreement), from its general funds or any tax increment revenues arising from any redevelopment project area other than the South Plan Area, and then only from Net Available Increment (subject to Section 2.C.v. with respect to development of Agency Sponsored Affordable Housing Units).

6.B.iii. Catellus shall comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any Public Financing, and any Transferee shall comply with all of the obligations applicable to it. Catellus acknowledges that a condition to the issuance of any Public Financing shall be the execution of such agreement and the then compliance by Catellus or any such Transferee with its respective obligations under such agreement, including the accuracy of any representations and warranties made therein.

6.B.iv. The Owner and the Agency shall cooperate to maximize the tax-exempt treatment of any Public Financing provided that nothing herein is intended to imply that all Public Financings must be tax-exempt.

7. MAINTENANCE CFDs

7.A.i. The Agency agrees to undertake proceedings to form, and the Owner agrees to petition and vote in favor of, a CFD for the purpose of providing monies to pay for ongoing maintenance of Open Space Parcels, including but not limited to landscaping in public plazas and public parks within the South Plan Area and the portion of the Bayfront Park located on Port property adjacent to the South Plan Area, but excluding the UCSF Open Space. Costs to be funded shall be in amounts and for such purposes as determined by the Agency, and shall include all personnel or third party costs related to such maintenance, costs of maintaining irrigation systems and other equipment directly related to such maintenance, maintenance or replacement as needed of landscape areas, water features, bathrooms, trash receptacles, park benches, planting containers, picnic tables and other equipment or fixtures installed in areas to be maintained, insurance costs and any other related overhead costs, along with Agency personnel, administrative and overhead costs related to such maintenance or to contracting for and managing third parties in connection with such maintenance, all to the end that the Agency or the City will not need to expend their own funds to maintain open space areas in the South Plan Area so long as the CFD is in place.

7.A.ii. With and to the extent available from the proceeds of Special Taxes levied in CFDs (and any monies paid by The Regents if pursuant to an agreement between the Agency and The Regents consistent with Agreement for Contribution of Real Property, dated as of September 24, 1997, between the Owner and The Regents, as amended by the First Amendment

to Agreement for Contribution of Real Property between such parties dated as of June 11, 1998, or by any other agreement between the Agency and the property owners of blocks X3 and X4 collected and made available for maintenance purposes, the Agency shall operate, maintain and repair, or cause to be operated, maintained and repaired, the Open Space Parcels (excluding the UCSF Open Space) in good order, condition and repair including, without limitation, the following: (i) remove all papers, debris, graffiti, refuse and surface waters from all improvements and wash or thoroughly sweep paved areas as required; (ii) maintain, replace and repair all Improvements, landscaping, directional signs, markers and other signs in a clean and attractive condition (including as to landscaping, the removal of dead plants, weeds and foreign matter, and necessary fertilizing, pruning, replanting and replacement) and furnish necessary mosquito and other pest abatement controls; (iii) clean lighting fixtures, relamp, and reballast, as needed; (iv) empty all trash, rubbish and garbage containers as necessary and wash them at intervals sufficient to maintain the same in a clean and sanitary condition, and otherwise maintain and keep them in an attractive and good working condition; and (v) provide appropriate security. No dumpster, dumpster-type or oversized containers, temporary or otherwise, shall be utilized except as reasonably required in connection with necessary maintenance, repair or reconstruction unless screened from public view or located in areas not generally accessible to the public. The Open Space Parcels and any Improvements installed thereon shall be repaired, replaced and maintained with the same quality of materials as originally installed by the Owner, or if such materials are not reasonably available, with materials of a quality at least equal to quality, appearance and durability of the materials originally utilized.

7.A.iii. The term of the CFD and the authorization to levy Special Taxes for maintenance costs and expenses shall be for a period of 45 years from the effective date of the Board of Supervisors ordinance approving the Mission Bay South Redevelopment Plan. Any CFD for maintenance may be combined, at the discretion of the Agency, with any CFD for reimbursement of costs of Infrastructure; provided that maintenance costs shall be payable from the proceeds of Special Taxes and pursuant to contractual commitments acceptable to the Agency, and not from Net Available Increment. The parties acknowledge that neither the Agency nor the City shall be responsible for the maintenance or operation of UCSF Open Space.

7.A.iv. The Owner shall establish covenants, conditions and restrictions, reasonably acceptable to the Agency, applicable to the real property in the South Plan Area to be recorded in the Official Records of the City and County of San Francisco prior to the sale of any parcels, to the end that every property owner will be obligated to pay an amount equivalent to Special Taxes that would be levied in such CFD for maintenance expenses if for any reason such CFD or its taxing powers are ever eliminated or reduced for any reason, including but not limited to any vote of the qualified electors in the CFD.

7.A.v. The Agency and the Owner shall take into account any Special Taxes to be levied to pay maintenance costs and expenses in sizing and suggesting the sizing of, respectively, any CFD debt to be issued to finance costs of Infrastructure. Agency staff and consultants shall meet and confer with the Owner Representative as to the Taxing Formula, and appropriate maximum Special Taxes, to be levied for maintenance expenses, but such matters shall be subject to applicable provisions of the Act, including any necessary vote of the qualified electors of the respective CFD, and Agency approval. If for any reason the Agency is unable to form a CFD for payment of such maintenance costs, or is otherwise unable to levy Special Taxes in an amount sufficient for such purpose, the property owners in the South Plan Area shall be responsible for payment of such maintenance costs.

8. EXHIBITS

8.A. List of Exhibits.

8.A.i. Attached to this Financing Plan are the following exhibits:

Exhibit A - Acquisition Agreement

Exhibit B - Mission Bay South Tax Allocation Debt Promissory Note

Exhibit C - Mission Bay South Allocation Debt Guaranty Agreement

Exhibit D - Description of Infrastructure outside of the South Plan Area that is of primary benefit to the South Plan Area

EXHIBIT A
SOUTH FINANCING PLAN

ACQUISITION AGREEMENT

dated as of _____

by and between the

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

and

CATELLUS DEVELOPMENT CORPORATION
[or substitute the name of the Developer entering into this Agreement if a Transferee
permitted under the Section 14.1(a)(1), (2) or (3) of the South OPA]

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LIST OF EXHIBITS:

EXHIBIT A FORM OF PAYMENT REQUEST
EXHIBIT B DESCRIPTION OF ACQUISITION FACILITIES AND APPLICABLE
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EXHIBIT B-1 COMPONENTS OF ACQUISITION FACILITIES
EXHIBIT C SCHEDULE OF REIMBURSEMENTS
EXHIBIT D FORM OF NOTICE OF FAILURE TO NOTIFY

THIS ACQUISITION AGREEMENT, dated as of _____ is by and between the Redevelopment Agency of the City and County of San Francisco, a public body, corporate and politic of the State of California (the "Agency"), and Catellus Development Corporation, a Delaware corporation [or substitute the name of the Developer entering into this Agreement if a Transferee permitted under the Section 14.1(a)(1), (2) or (3) of the North OPA] (the "Developer"). Capitalized terms used in the following recitals have the meanings given such terms in Section 1.1 hereof.

RECITALS;

A. Financing Plan. The Agency and the Developer have agreed to the Financing Plan for the financing of, among other things, the acquisition, construction and installation of Infrastructure, as more particularly described in the Infrastructure Plan.

B. Development. The Developer, together with others, is developing land within the South Plan Area, which is expected to be included in the boundaries of one or more CFDs.

C. Infrastructure. The Infrastructure is to be constructed with respect to the South Plan Area, and the Agency and the Developer will benefit from a coordinated plan of design, engineering and construction of the Infrastructure and the development of the land in the South Plan Area.

D. Financings. The Developer and the Agency wish to finance the acquisition of the Infrastructure as set forth in the Financing Plan, and to provide for the payment therefor by entering into this Acquisition Agreement for the acquisition of the Infrastructure and payment for Components thereof as set forth herein with Acquisition Funds.

E. Bonds. Pursuant to the Financing Plan, the Agency is proceeding with the establishment of one or more CFDs under the Act and the issuance of one or more Public Financings, the proceeds of which shall be used, in part, to finance the acquisition of all or a portion of the Infrastructure . Except as provided in this Acquisition Agreement or the Financing Plan, the execution by the Agency of this Acquisition Agreement in no way obligates the Agency to issue any Public Financing, or to acquire any Infrastructure with proceeds of any Public Financing or other Acquisition Funds.

AGREEMENTS

In consideration of the mutual promises and covenants set forth herein, and for other valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Agency and the Developer agree that the foregoing recitals, as applicable to each, are true and correct and further make the agreements set forth below:

1. DEFINITIONS

1.1 Definitions. The following terms shall have the meanings ascribed to them in this Section 1.1 for purposes of this Acquisition Agreement. Unless otherwise indicated, any other capitalized terms when used herein shall have the meanings ascribed to them in the South OPA (including the Financing Plan), the Redevelopment Plan or the Interagency Cooperation Agreement, as applicable.

"Acceptable Title" means title to real property or interest therein free and clear of all liens, taxes, assessments, leases, easements and encumbrances, whether or not recorded, except

for any permitted exceptions as described in any of the Land Transfer Agreements and in the Housing Program.

“Acceptance Date” means the date the City (or such other public entity which is to own a an Acquisition Facility) takes final action to accept dedication of or transfer of title to an Acquisition Facility and such Acquisition Facility has been so accepted.

“Acquisition Agreement” means this Acquisition Agreement, together with any Supplement hereto.

“Acquisition Facilities” means the Infrastructure shown in Exhibit B hereto, as such Exhibit is amended or supplemented from time to time in accordance with the provisions of this Acquisition Agreement.

“Acquisition Funds” means: (i) proceeds of Public Financings available for the purchase of Infrastructure, (ii) proceeds of Special Taxes collected by the Agency for a CFD levied to pay the costs of Infrastructure and not otherwise needed to pay debt service on a Public Financing or CFD administrative expenses, (iii) Net Available Increment to be used under the provision of the Financing Plan to pay the Acquisition Price of Infrastructure and not otherwise needed to pay debt service on any Public Financing, (iv) amounts received by the Agency for the construction of Infrastructure from any other owner of property within the South Plan Area, (v) interest earnings on all of the foregoing available for purposes of this Agreement and (vi) amounts received by the Agency for the construction of Infrastructure from The Regents of the University of California, if any, but only if the Agency and The Regents enter into a mutually acceptable agreement consistent with that certain Agreement for Contribution of Real Property, dated as of September 27, 1997, between Catellus Development Corporation and The Regents, as the same may be amended.

“Acquisition Price” means the amount paid by the Agency for an Acquisition Facility and/or any Components thereof determined in accordance with Article 4 hereof, being an amount equal to the Actual Cost of such Acquisition Facility or Component, but subject to the limitations and reductions provided for in Article 4.

“Act” means the Mello-Roos Community Facilities Act of 1982, Sections 53311 et seq. of the California Government Code, as amended.

“Actual Cost” means the substantiated, reasonable cost of an Acquisition Facility or a Component, which costs shall consist of the following, without duplication: (i) the “hard” costs incurred by the Developer for the construction of such Acquisition Facility or Component and associated demolition, environmental investigation, remediation and response activities pursuant to the South OPA, including the South Environmental Investigation and Response Program attached as Attachment K thereto, (ii) out-of-pocket costs incurred by the Developer in preparing the Plans for such Acquisition Facility or Component and the related costs of environmental evaluations of the Acquisition Facility or Component, (iii) fees paid to governmental agencies for obtaining permits, licenses or other governmental approvals for such Acquisition Facility or Component, including inspection fees payable pursuant to Section 4.1 of this Acquisition Agreement, (iv) a construction and project management fee to be retained by the Developer or by or paid to any Affiliate of not to exceed four percent (4%) of the costs described in clause (i) above incurred for the construction of such Acquisition Facility or Component, (v) professional costs incurred by the Developer, the City or the Agency associated with such Acquisition Facility or Component, such as design, engineering, architectural, legal, accounting, inspection, construction staking, materials testing, consulting and similar professional services excluding cost of any such services provided directly by the Developer or any Affiliate; (vi) out-of-pocket costs directly related to the construction and/or acquisition of

an Acquisition Facility or Component, such as costs of security, safety signage, payment, performance and/or maintenance bonds, and insurance costs (including costs of any title insurance required under the North OPA or the Land Transfer Agreements), (vii) costs of land or right-of-way acquisitions from unrelated third parties and condemnation of the Required Infrastructure Lands pursuant to the South OPA or Interagency Cooperation Agreement, and (viii) construction financing costs (consisting of interest expense and lender fees related to such financing), with respect to any construction loan obtained by the Developer with respect to the Infrastructure provided that such financing costs shall not be included within the definition of Actual Cost to the extent such financing costs are in excess of commercially prevailing rates or accrue during any period that the Developer or any Affiliate is in Material Breach under the South OPA or any other Plan Document or is in default in the payment of Special Taxes, or to the extent such financing costs apply to any period that is more than ninety (90) days following completion of the related item of Infrastructure as approved pursuant to the inspection described in Section 4.1 of this Agreement.

“Affiliate” means a Person in which the Developer directly or indirectly owns and controls (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of equity interests (including rights to acquire such interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty percent (50%) or more) of each class of interests that have a right to nominate, vote for or otherwise select the members of the board or other governing body that directs or causes the direction of substantially all of the management and policies of that Person.

“Agency Account” means an account of that name in an Improvement Fund used by the Agency to pay or reimburse Agency Costs.

“Agency Costs” means the reasonable costs and expenses actually incurred and paid by the Agency not inconsistent with the purposes of this Acquisition Agreement and the South OPA, including reasonable costs and fees of third-party professionals necessary for the Agency to perform its duties hereunder and under the South OPA, costs incurred and paid by the Agency to City Agencies (excluding costs included in any City permit application or processing fees paid directly by the Developer to the City) excluding therefrom (i) general and administrative costs of overhead of the Agency except for costs directly attributable to staff time allocable to implementation of the development contemplated under the South OPA, (ii) any costs incurred prior to the effective date of the South OPA, (iii) fees or costs incurred in connection with an amendment of the Redevelopment Plan or Plan Documents not consented to by the Developer in accordance with the South OPA, and (iv) litigation costs otherwise potentially recoverable pursuant to Section 19.6 of the South OPA.

“Budgeted Cost” means the estimated cost of an Acquisition Facility or Component as shown on Exhibit B hereto, as amended from time to time pursuant to Section 4.6A.

“City” means the City and County of San Francisco.

“City Agency/Agencies” includes all City departments, agencies, boards, commission and bureaus with subdivision or other permit, entitlement, or approval authority or jurisdiction over development within the South Plan Area, or any portion thereof, including, without limitation, the Port Commission, the City Administrator, the Public Works Department, the Public Utilities Commission, the Planning Commission, the Public Transportation Commission, the Parking and Traffic Commission, the Building Inspection Commission, the Public Health Commission, the Fire Commission, the Police Commission, together with any successor City Agency, department or officer designated by or pursuant to law.

"City Regulations" means (i) those City land use codes, including those of its Port Commission (including, without limitation, the Planning and Subdivision Codes, the City General Plan and Waterfront Land Use Plan), (ii) those ordinances, rules, regulations and official policies adopted thereunder (including the Mission Bay Subdivision Ordinance and Regulations), and (iii) all those ordinances, rules, regulations, official policies and plans governing zoning, subdivisions and subdivision design, land use, rate of development, density, building size, public improvements and dedications, construction standards, new construction and use, design standards, permit restrictions, development fees or exactions, terms and conditions of occupancy, or environmental guidelines or review, including those relating to hazardous substances, pertaining to the South Plan Area, as adopted and amended by the City from time to time.

"Component" means a component of an Acquisition Facility that the Director of Public Works has agreed can be separately identified, inspected and completed, and be the subject of a Payment Request hereunder. The Components of the Acquisition Facilities are shown on Exhibit B-1 hereto. Upon written request of the Developer delivered to the Agency to the effect that other Infrastructure should be included in Exhibit B for funding hereunder, the Components of such other Infrastructure to be financed following the financing of the Acquisition Facilities shall be determined by the Director of Public Works following consultation with the Developer, and shall be identified in a Supplement executed by the parties hereto, as further provided in Section 2.1(c) hereof.

"Construction Documents" means the Final Construction Documents and the applicable Design Documents.

"Design Documents" means Concept Plans, Basic Concept Design Documents, Schematic Design Documents, and Design Development Documents, all of which have the meanings set forth in the Design Review and Document Approval Procedure, and specifically excludes any contracts between the Developer and any contractor, subcontractor, architect, engineer, consultant or Mortgagee.

"Design Review and Document Approval Procedure" means the Design Review and Document Approval Procedure attached as Attachment G to the South OPA.

"Developer" has the meaning given in the first paragraph of this Acquisition Agreement.

"Director of Public Works" or "Director" means the Director of Public Works of the City, or his or her written designee (or any successor official designated by applicable law) acting as such under this Acquisition Agreement or with respect to any specific action of the Director under this Agreement.

"Final Construction Documents" has the meaning set forth in the Design Review and Document Approval Procedure.

"Financing Plan" means the Financing Plan attached as Attachment E to the South OPA.

"Fiscal Agent" means the entity acting as fiscal agent under the Fiscal Agent Agreement, or any successor thereto acting as fiscal agent under a Fiscal Agent Agreement, as used in Section 2.3 of this Agreement.

"Fiscal Agent Agreement" means an agreement by that name between the Agency and the Fiscal Agent, providing for, among other matters, the issuance of a Public Financing payable

from Special Taxes, and the establishment of an Improvement Fund, as it may be amended from time to time.

“Goals for CFDs” means the Agency’s Local Goals and Policies for Community Facilities Districts, in the form provided to the Owner on the date of the South OPA (and to be adopted in substantially such form by the Commission), and as thereafter amended but, with respect to the CFD(s) formed under the Financing Plan, solely to the extent required under the Act or other controlling federal or state law or as otherwise agreed to by the Owner, in its discretion.

“Housing Program” means the Housing Program attached as Attachment C to the South OPA.

“Improvement Fund” means an Improvement Fund established by a Fiscal Agent Agreement, or other document providing for the issuance of a Public Financing, each of which is expected to include an acquisition account and an Agency Account.

“Infrastructure” means those items identified in the Infrastructure Plan, including (1) the open space (including, among other items, park improvements and restrooms), streets, rails and rail line bridges, sewer and storm drainage systems, water systems, street improvements (including freeway ramps or other demolition), traffic signal systems, acquisition of Required Infrastructure Lands, dry utilities, and other improvements any of which are to be constructed in or for the benefit of the South Plan Area or any other matters described in the Infrastructure Plan.

“Infrastructure Plan” means the Infrastructure Plan attached as Attachment D to the South OPA, as it may be amended from time to time.

“Interagency Cooperation Agreement” means the Mission Bay South Interagency Cooperation Agreement, dated as of November 16, 1998, between the City and the Agency.

“Land Transfer Agreements” mean those certain agreements between Catellus Development Corporation, the City, the City acting by and through its Port Commission and the State Lands Commission, as applicable, generally referred to as the Amended and Restated City Land Transfer Agreement, Amended and Restated Port Land Transfer Agreement and Amended and Restated Agreement Concerning the Public Trust.

“Material Breach” means a default or breach by the Developer or any Affiliate that materially affects the ability of the Agency or any other party to a Plan Document (other than the Developer or any Affiliate) to timely proceed without substantially increased costs.

“Mission Bay Subdivision Ordinance” means the Subdivision Code of the City and County of San Francisco for the Mission Bay Project Area, also referred to as the Mission Bay Subdivision Code in the Design Review and Document Approval Procedure.

“Mission Bay Subdivision Ordinance and Regulations” means the Mission Bay Subdivision Ordinance, together with the Mission Bay Subdivision Regulations adopted by City Department of Public Works Order No. ____, approved _____.

“Net Available Increment” means the tax increment revenues arising under the Redevelopment Plan and received by the Agency, exclusive of: (i) Housing Increment (calculated solely at 20% of the total tax revenues received by the Agency pursuant to the Redevelopment Plan), (ii) tax increment revenues required by Redevelopment Law to be paid to other taxing agencies (initially, 20% of the total tax increment revenues received by the Agency, and

otherwise pursuant to the Redevelopment Law and the Redevelopment Plan), and (iii) tax increment revenues needed to pay Agency Costs (as defined in the Financing Plan) not otherwise paid from other sources.

“Owner” means Catellus Development Corporation, a Delaware corporation, and its Transferees as permitted under the South OPA, except as otherwise provided in Section 3.9, Section 5.3, Article 6, Article 10 and Section 12.2 of the South OPA and the Program in Diversity/Economic Development Program.

“Payment Request” means a document, substantially in the form of Exhibit A hereto, to be used by the Developer in requesting payment of an Acquisition Price.

“Permit to Enter” means the Permit to Enter attached as Attachment F to the South OPA.

“Person” means any natural person, corporation, firm, partnership, association, joint venture, governmental or political subdivision or agency or any similar entity.

“Plan Documents” means the Redevelopment Plan and its implementing documents including, without limitation, any owner participation agreements, the Mission Bay South Design for Development and the Mission Bay Subdivision Ordinance and regulations adopted thereunder.

“Plans” means the Construction Documents, specifications, schedules and related construction contracts for the Acquisition Facilities or any Components thereof approved pursuant to the Design Review and Document Approval Procedure, applicable City Regulations (consistent with the Redevelopment Plan and Interagency Cooperation Agreement), or any other applicable standards of the entity (if other than the City or the Agency) that will own, operate or maintain the Acquisition Facilities when completed and acquired.

“Required Infrastructure Lands” has the meaning set forth in Section 5.4 of the South OPA.

“Program in Diversity/Economic Development Program” means the Mission Bay South Program in Diversity/Economic Development Program attached as Attachment H to the South OPA.

“Public Financing” means a debt obligation of the Agency the net proceeds of which are used to finance or refinance Infrastructure.

“Redevelopment Plan” means the Mission Bay South Redevelopment Plan for the Mission Bay South Redevelopment Project, approved pursuant to Ordinance No. 335-98, adopted by the Board of Supervisors of the City on November 2, 1998.

“South OPA” means the Mission Bay South Owner Participation Agreement, entered into as of November 16, 1998, between the Agency and Catellus Development Corporation.

“South Plan Area” means the land described in Attachment A to the South OPA.

“Special Taxes” means special taxes authorized to be levied in a CFD under the Act and the proceedings to establish such CFD.

“State” means the State of California.

“Supplement” means a written document amending, supplementing or otherwise modifying this Acquisition Agreement and any exhibit hereto, including (i) any amendments to the list of Components in Exhibit B-1 and the list of reimbursements in Exhibit C, and/or (ii) the addition to Exhibit B of additional Acquisition Facilities (and Components) to be acquired hereunder.

“Transfer” means to sell, assign, convey, lease, sublease, mortgage, hypothecate or otherwise alienate, excluding therefrom any grant of occupancy rights for permanent improvements such as space leases or granted in connection with existing improvements within the South Plan Area.

“Transfer Entity” means any Person to whom a Transfer of all or substantially all of the undeveloped property in the South Plan Area has been effected by a Transfer permitted under the South OPA.

“Unavoidable Delay” means a delay in the performance of any term or condition of this Agreement that is caused by strikes or other labor disputes, acts of God, shortage of or inability to obtain labor or materials, damage to works in progress by any casualty, except to the extent caused by the negligence of the Person claiming the benefit of the Unavoidable Delay, lawsuits brought by plaintiffs unaffiliated with the Person claiming the benefit of Unavoidable Delay, restrictions imposed or mandated by governmental or quasi-governmental entities (other than the party claiming the unavoidable delay or delays by City Agencies) in issuing requisite approvals or consents, enemy action, civil commotion, fire, flood, earthquake or any other unforeseeable event beyond the reasonable control of a Person.

2. FUNDING

2.1 Agency Proceedings; Acquisition Facilities; Supplements to Exhibit B and B-1.

(a) Upon petition by the Developer, the Agency shall conduct all necessary proceedings under the Act to form one or more CFDs in accordance with the Financing Plan, and otherwise for the issuance, sale and delivery of Public Financings; provided, however, that nothing herein shall be construed as requiring the Agency to issue a Public Financing except to the extent provided for in the Financing Plan.

(b) The Agency shall be obligated to purchase from the Developer under this Acquisition Agreement only the Acquisition Facilities listed in Exhibit B hereto, as such Exhibit may be amended and/or supplemented by any Supplement in accordance with Section 2.1(c) below.

(c) Upon the written request of the Developer, accompanied by a list of Acquisition Facilities and proposed Components thereof to be acquired hereunder, together with the proposed Budgeted Costs thereof, the Director of Public Works shall meet with representatives of the Developer to establish mutually acceptable supplements to Exhibit B and Exhibit B-1 to this Acquisition Agreement consistent with the Financing Plan and Interagency Cooperation Agreement. The Director of Public Works shall be deemed to have accepted any proposed supplement of the Developer unless, within sixty (60) days of the submittal thereof, the Director of Public Works shall send the Developer a written objection to all or any portion thereof. Such objection must be based upon the following grounds (the determination of which shall be made in good faith): (i) the unacceptability of any Component because it is not a complete, functional portion of an Acquisition Facility or a proposed Acquisition Facility is not included in the Infrastructure, (ii) the Budgeted Cost of an Acquisition Facility or Component appears to be unreasonable in the circumstances or otherwise in excess of the reasonably expected Actual Cost thereof or (iii) it is not permissible under the Act or the South OPA

(including the Financing Plan). The Developer may resubmit any proposed supplement to Exhibit B [or B-1] (or portion thereof) to which a written objection is made by the Director of Public Works, and the Director of Public Works shall have thirty (30) days to review any such resubmittal. The Developer shall provide any supporting materials reasonably requested by the Director of Public Works in writing relative to an analysis of the proposed supplement, and the applicable time periods mentioned in the preceding sentences shall be tolled until such materials have been provided to the Director. Any proposed supplement to Exhibit B and B-1 (or any resubmittal thereof) not subject to a written objection by the Director of Public Works within the applicable period shall be deemed to be a part of Exhibit B and B-1, as applicable, hereof for all purposes of this Acquisition Agreement.

2.2 Source of Funds for Acquisition Prices.

(a) The Agency shall not be obligated to pay the Acquisition Price of any Acquisition Facility or any Components thereof under this Agreement except from Acquisition Funds. The Agency shall establish one or more accounts into which it shall deposit, upon receipt, Acquisition Funds pending their use for purposes of this Acquisition Agreement or as otherwise provided in the Financing Plan.

(b) The Developer acknowledges that a portion of the proceeds of some Public Financings may be deposited in an escrow fund established as necessary to comply with the Act, the Goals for CFDs or for credit concerns, and would become Acquisition Funds only upon satisfaction of the requirements and otherwise in the amounts specified in the applicable document authorizing the issuance of the Public Financing. The Agency agrees that, upon written request of the Developer, it will take all reasonable actions necessary to make the determinations and present the documents necessary under any such authorizing document to cause the release of funds from an escrow fund.

(c) While the Agency now expects to issue Public Financings, the Agency shall be under no obligation to issue any Public Financing except to the extent provided in the Financing Plan and makes no warranty, express or implied, that the proceeds thereof, together with other Acquisition Funds, will be sufficient to pay for all of the Infrastructure, including the Acquisition Facilities.

2.3 Public Financing Proceeds.

(a) The proceeds of any Public Financing shall be deposited, held, invested, reinvested and disbursed as provided in the instrument providing for the issuance thereof, all in a manner not inconsistent with the Financing Plan and this Agreement. A portion of the proceeds of each Public Financing may be used to fund reserves for debt service and pay costs of issuance and therefore would not constitute Acquisition Funds.

(b) The Developer agrees that the Agency alone shall direct the investment of the funds on deposit in the funds and accounts established by or pursuant to any Public Financing authorizing document, and that the Developer has no right whatsoever to direct any such investment. The Agency shall invest such funds in a manner consistent with the Agency's investment policies for similar financings and otherwise in accordance with all applicable laws and the Fiscal Agent Agreement. The Agency shall have no responsibility whatsoever to the Developer with respect to any investment of Acquisition Funds prior to their use for purposes of this Acquisition Agreement, including any loss of all or a portion of the principal invested or any penalty for liquidation of an investment. Any such loss may diminish the amounts available as Acquisition Funds.

(c) The Developer acknowledges that its obligation as an owner of real property in a CFD to pay Special Taxes levied in the CFD is not in any way dependent on: (i) the availability of Acquisition Funds to pay for all or any portion of the Acquisition Facilities or Components thereof hereunder, or (ii) the alleged or actual misconduct of the Agency in the performance of its obligations under this Acquisition Agreement, any Fiscal Agent Agreement, the South OPA, or any agreement to which the Developer or the Agency is a signatory.

(d) The Developer and the Agency hereby acknowledge that any lack of availability of Acquisition Funds to pay the Acquisition Price of Infrastructure or any Components thereof, in and of itself, shall in no way modify any rights or obligations of the Developer under the South OPA.

(e) The Agency may establish a separate Agency Account and deposit a portion of the proceeds of any Public Financing therein, to the extent it reasonably identifies Agency Costs incurred or to be incurred by the Agency or the City in discharging their obligations hereunder. The Agency may draw on such funds as necessary to pay such Agency Costs.

2.4 Reimbursements.

(a) The Agency acknowledges that, in addition to its acquisition of Facilities and payment for Components thereof hereunder, it will use a portion of the proceeds of the Public Financings to reimburse the Developer, to the extent permitted under the Act, for certain costs for which the Developer has advanced its own funds, including (i) CFD formation costs eligible to be financed by a CFD, (ii) certain freeway demolition costs, (iii) contributions by the Developer for Infrastructure constructed by others, such as contributions referred to in Section 2.B.v. of the Financing Plan related to sewer odor conditions and contributions for railway improvements, and (iv) other costs incurred by the Developer in anticipation of reimbursement from the proceeds of a Public Financing, such as advances pursuant to Section 2.E.i. of the Financing Plan in respect of consultant costs. The Agency shall use a portion of the proceeds of Public Financings issued by the Agency to reimburse the Developer for such advances pursuant to the Financing Plan, as described in Exhibit C.

(b) The Agency and the Developer agree to amend Exhibit C hereto from time to time to add additional items, to be reimbursed from the proceeds of future Public Financings, that are eligible for such reimbursement as described in Section 2.4(a) but were not included on Exhibit C at the time of execution of this Agreement.

2.5 Priority for Police/Fire Facility Funding. The Developer and the Agency acknowledge and agree that under the provisions of Section 4.4(b) of the South OPA, upon satisfaction of the conditions set forth in clauses (i) and (ii) of the first sentence of said Section 4.4(b) (the "Conditions"), the City may obtain CFD funds in the amounts specified in said sentence. In order to implement the provisions of Section 4.4 of the South OPA, the Developer and the Agency hereby agree that, notwithstanding any other provision of this Agreement, upon satisfaction of the Conditions, the Agency shall have the right to use all available CFD Funds permitted under the applicable bond documents to make payments directly to the City required under Section 4.4(b) of the South OPA, and following the date on which the Conditions have been satisfied and until the obligation to the City under said Section 4.4(b) has been fully satisfied and provided that the Agency shall have expeditiously proceeded to obtain such funds, no Acquisition Funds will be used to pay Acquisition Prices of Acquisition Facilities or Components not theretofore paid under this Acquisition Agreement.

3. CONSTRUCTION OF INFRASTRUCTURE

3.1 Plans. To the extent that it has not already done so, the Developer shall prepare and obtain applicable governmental approval of all Plans for the Acquisition Facilities in accordance with the South OPA and the City Regulations or, as applicable, regulations of any other public entity that will own and operate the Acquisition Facilities. Copies of all Plans shall be provided by the Developer to the Director of Public Works upon request therefor, and, in any event, as built drawings and a written assignment (provided that the same can be reasonably obtained) of the Plans for any Acquisition Facility shall be provided to the City prior to its acceptance of a related Facility.

3.2 Duty of Developer to Construct.

(a) All Acquisition Facilities shall be constructed by or at the direction of the Developer in accordance with the South OPA and the applicable Construction Documents. The Developer shall perform all of its obligations hereunder and shall conduct all operations with respect to the construction of Infrastructure in a good, workpersonlike and commercially reasonable manner, with the standard of diligence and care normally employed by duly qualified persons utilizing their good faith efforts in the performance of comparable work and in accordance with generally accepted practices appropriate to the activities undertaken. The Developer shall employ adequate staff or consultants with the requisite experience necessary to administer and coordinate all work related to the design, engineering, acquisition, construction and installation of the Acquisition Facilities.

(b) To the extent required under the South OPA, the Developer shall be obligated (i) to construct and convey to the City (or other applicable governmental agency) all Acquisition Facilities and Components thereof, and (ii) to use its own funds to pay all costs thereof in excess of the Acquisition Prices thereof to be paid therefor hereunder, subject in all events to the terms of the Financing Plan.

(c) Except as otherwise provided in the South OPA, the Developer shall not be relieved of its obligation to construct each Acquisition Facility and Component thereof and convey each such Acquisition Facility in accordance with the terms hereof, even if, (i) because of the limitations imposed by Section 4.6 hereof, the Acquisition Price for such Component or Acquisition Facility is less than the Actual Cost, or cost to the Developer, of such Component or Acquisition Facility, or (ii) there are insufficient Acquisition Funds then available to pay the Acquisition Prices thereof at the time the Developer submits a Payment Request therefor.

3.3 Relationship to Public Works Contracting Requirements.

(a) This Acquisition Agreement is for the acquisition by the City of the Acquisition Facilities and payment for Components thereof from time to time, from Acquisition Funds and is not intended to be a public works contract. The Agency and the Developer acknowledge and agree that the Infrastructure is of local, and not state-wide concern, and that the provisions of the California Public Contract Code shall not apply to the construction of the Infrastructure. The Agency and the Developer further acknowledge and agree that City public works contracting requirements are not applicable to the construction and acquisition of Infrastructure. The Agency and the Developer agree that the Developer shall award all contracts for the construction of the Acquisition Facilities and the Components thereof, and that this Acquisition Agreement is necessary to assure the timely and satisfactory completion of the Acquisition Facilities and that compliance with the Public Contract Code and such City requirements with respect to the Acquisition Facilities would work an incongruity and would not produce an advantage to the Agency or any CFD.

(b) Notwithstanding the foregoing, the Developer shall award all contracts for construction of the Acquisition Facilities, and materials related thereto by means of a bid process consistent with this Section 3.3(b) or otherwise acceptable to the Director of Public Works, in each case consistent with the requirements of the South OPA and applicable City Regulations (including but not limited to the Program in Diversity/Economic Development Program, and prevailing wage requirements contained therein). The Developer shall establish a list of written criteria acceptable to the Director of Public Works (including experience, ability to perform on schedule and financial ability) to determine qualified general contractors for any contract. Such general contractors shall comply with any applicable provisions of the South OPA (including but not limited to the Program in Diversity/Economic Development Program and prevailing wage requirements, provided that nothing in this Agreement shall modify the remedy provisions of the Program in Diversity/ Economic Development Program). Formal bids shall be requested from those entities on the list of qualified contractors.

The Developer shall prepare bid packages, including engineering reports and estimates, for each of the Acquisition Facilities, and shall submit such packages to the Director of Public Works, reasonably in advance of the anticipated bid, for review. Upon agreement by the Director of Public Works and the Developer on the content of such bid packages and a schedule of bid prices, plus an acceptable margin of variance, the Developer may proceed to take bids on the applicable Acquisition Facilities. The Agency shall meet with the qualified general contractors to discuss the applicable requirements of the Program in Diversity/ Economic Development Program. At the reasonable request of the Developer, the Director of Public Works shall also meet with the qualified general contractors to discuss the requirements of the particular contract to be bid.

Bids for each Component shall be submitted to the Developer prior to the time and date prescribed for bid opening. If a bid is within the constraints of the approved bid package, the Developer shall award the applicable contract to the lowest responsible bidder. If all bids are in excess of the bid parameters, the Developer shall obtain the consent of the Director of Public Works prior to awarding the contract. Upon written request of the Director, the Developer shall provide an analysis of bids for construction and materials for the Acquisition Facilities, constructed or to be constructed by or under the supervision of the Developer indicating how the winning bid was determined and how it was consistent with the applicable bid package.

(c) The Developer shall develop or cause to be developed and shall maintain or cause to be maintained a cost-loaded project schedule, using the critical path method, providing for all major project elements included in the construction of the Acquisition Facilities to be acquired hereunder, so that the whole project is scheduled in an efficient manner. The Developer shall provide the Director of Public Works with complete copies of the schedule and each update to the schedule for the Director's review.

(d) From time to time at the request of the Director, representatives of the Developer shall meet and confer with the Director of Public Works and Agency staff, consultants and contractors regarding matters arising hereunder with respect to the Acquisition Facilities, Components and the progress in constructing and acquiring the same, and as to any other matter related to the Acquisition Facilities or this Acquisition Agreement. The Developer shall advise the Director of Public Works in advance of any coordination and scheduling meetings to be held with contractors relating to the Acquisition Facilities, in the ordinary course of performance of an individual contract. The Director of Public Works shall have the right to be present at such meetings, and to meet and confer with individual contractors if deemed advisable by the Director of Public Works to resolve disputes and/or ensure the proper completion of the Acquisition Facilities, and, at the request of the Developer, shall attend such meetings.

3.4 Independent Contractor.

(a) In performing this Acquisition Agreement, the Developer is an independent contractor and not the agent or employee of the Agency, the City or any CFD. Except as otherwise provided in this Acquisition Agreement, none of the Agency, the City or any CFD shall be responsible for making any payments to any contractor, subcontractor, agent, consultant, employee or supplier of the Developer.

(b) The Agency has determined that it would obtain no advantage by undertaking the construction by the Agency directly of the Infrastructure, and that the provisions of this Acquisition Agreement require that the Acquisition Facilities be constructed by the Developer as if they had been constructed under the direction and supervision of the Agency.

3.5 Performance and Payment Bonds. Subject to the provisions of the South OPA and the Interagency Cooperation Agreement, the Developer agrees, in accordance with applicable City Regulations, to post performance and payment bonds with respect to the construction of Acquisition Facilities to the extent that the projected Acquisition Funds are reasonably determined by the Agency to be insufficient (in time or amount) to pay the expected Acquisition Prices of the Acquisition Facilities; provided that to the extent not otherwise required by the applicable City Regulations, the Developer shall require all contractors and/or subcontractors it employs in connection with the construction of Acquisition Facilities to provide labor and materials and performance bonds (the premiums for which shall constitute Actual Costs of the related Acquisition Facilities) which name the Agency and the City as additional insureds.

3.6 Contracts and Change Orders. The Developer shall be responsible for entering into all contracts and any supplemental agreements (commonly referred to as "change orders") required for the construction of the Acquisition Facilities, and all such contracts and supplemental agreements shall be submitted to the Director. Prior approval of supplemental agreements by the Director of Public Works shall only be required for such change orders which in any way materially alter the quality or character or expected future maintenance costs of the subject Acquisition Facilities, or which involve an amount equal to the greater of five percent (5%) of the amount of the bid for the Acquisition Facility involved or \$50,000. The Director of Public Works shall approve or deny all such contracts or supplements submitted to it (any such denial to be in writing, stating the reasons for denial and the actions, if any, that can be taken to obtain later approval) within ten (10) business days of receipt by the Director of Public Works thereof. Any such contract or supplemental agreement properly submitted to the Director of Public Works and not denied in writing by the Director of Public Works within such 10 day period shall be deemed to be approved in the form submitted for all purposes of this Acquisition Agreement.

3.7 Time for Completion. The Developer acknowledges and agrees that the reasonably anticipated time for the completion of the Acquisition Facilities or Components thereof must satisfy the requirements of applicable federal tax laws and regulations with respect to the use of bond proceeds to finance such Acquisition Facilities or Components, and the Developer shall provide the Agency with such reasonably requested certificates or other assurances as may be required in connection therewith.

3.8 School Facilities and Rail Facilities. Pursuant to Sections 4.5 and 5.3 of the South OPA, Infrastructure, for purposes of this Acquisition Agreement, may include certain costs related to school facilities and rail facilities. It is hereby acknowledged that any such facilities will be eligible for funding with CFD Public Financing or Special Tax proceeds only to the extent permitted under Sections 53313.9 and 53316.2, as applicable, of the Act or as otherwise permitted under applicable law.

4. ACQUISITION AND PAYMENT

4.1 Inspection. No payment hereunder shall be made by the Agency to the Developer for an Acquisition Facility or Component thereof until the Acquisition Facility or Component thereof has been inspected and found by the Director of Public Works to be completed substantially in accordance with the approved Plans and otherwise consistent with the South OPA, the Interagency Cooperation Agreement and any applicable City Regulations. The Agency shall cooperate with the Developer in obtaining applicable approvals consistent with the terms of the South OPA. Except as otherwise provided in the South OPA, the Developer agrees to pay all inspection, permit and other similar fees of the Agency or the City applicable to construction of the Acquisition Facilities, not otherwise paid from an Agency Account, subject to reimbursement as a component of the Acquisition Price of the related Acquisition Facilities.

4.2 Agreement to Sell and Purchase Facilities. The Developer hereby agrees to sell the Acquisition Facilities listed in Exhibit B hereto, as amended from time to time, to the Agency (or other applicable public agency that will own an Acquisition Facility), and the Agency hereby agrees to use Acquisition Funds when available to pay the Acquisition Prices thereof to the Developer, subject to the terms and conditions hereof and of the Financing Plan. The Agency shall not be obligated to purchase any Acquisition Facility until the Acquisition Facility is completed and the Acceptance Date for such Acquisition Facility has occurred; provided that the Agency has agreed hereunder to make payments to the Developer for certain Components of Acquisition Facilities expressly shown in Exhibit B-1 hereto, as it may be supplemented by any Supplement prior to completion of the Acquisition Facility or the transfer of title to the property underlying it to the applicable governmental agency or utility. The Developer acknowledges that the Components have been identified for payment purposes only, and that the City (or other applicable public agency that will own an Acquisition Facility) shall not be obligated to accept an Acquisition Facility of which a Component is a part until the entire Acquisition Facility has been completed. The Agency acknowledges that the Components do not have to be accepted by the City (or other applicable public agency that will own an Acquisition Facility) as a condition precedent to the payment of the Acquisition Price therefor, but any such payment shall not be made until the Component has been completed in accordance with the Plans therefor and any City Regulations applicable thereto, as determined in accordance with the Interagency Cooperation Agreement. After the Developer has met the inspection requirements set forth in Section 4.1, the Agency shall use good faith efforts to cause the City to make the Acceptance Date for a final Component to occur by causing the City to accept dedication of any Infrastructure or Open Space Parcels required to be dedicated to the City, in accordance with the Interagency Cooperation Agreement.

4.3 Payment Requests. In order to receive the Acquisition Price for a completed Acquisition Facility or Component thereof, inspection thereof under Section 4.1 shall have been made and the Developer shall deliver to the Director of Public Works: (i) a Payment Request in the form of Exhibit A hereto for such Acquisition Facility or Component, together with all attachments and exhibits required by Exhibit A and this Section 4.3 to be included therewith, in an organized manner, and (ii) if payment is requested for a completed Acquisition Facility, (a) if the property on which the Acquisition Facility is located is not owned by the Agency (or other applicable public agency that will own the Acquisition Facility) at the time of the request, a copy of the recorded documents conveying to the Agency (or other applicable public agency that will own the Acquisition Facility) Acceptable Title to the real property on, in or over which such Acquisition Facility is located, as described in Section 5.1 hereof, (b) a copy of the recorded notice of completion of such Acquisition Facility (if applicable), (c) an assignment of any warranties and guaranties for such Acquisition Facility, in a form acceptable to the Agency and (d) an assignment to the Agency of any reimbursements from third parties that may be

payable with respect to the Acquisition Facilities, such as utility or other reimbursements, to be used by the Agency to repay Public Financings or to be added to the Acquisition Funds (or if the same are not so assigned, any such amounts shall be deducted from the determination of Actual Cost).

4.4 Processing Payment Requests. Upon receipt of a Payment Request (and all accompanying documentation), the Director of Public Works shall conduct a review in order to confirm that such request is complete, that such Component or Acquisition Facility identified therein was constructed substantially in accordance with the requirements of Section 4.1 of this Agreement, and to verify and approve the Actual Cost of such Component or Acquisition Facility specified in such Payment Request. The Developer agrees to cooperate with the Director of Public Works in conducting each such review and to provide the Director of Public Works with such additional information and documentation as is reasonably necessary for the Director of Public Works to conclude each such review. For any Acquisition Facilities to be acquired by a public entity or utility other than the City or the Agency, the Developer shall provide evidence acceptable to the Director of Public Works that such Acquisition Facilities are acceptable to such entity or utility. Within ten (10) business days of receipt of any Payment Request, the Director of Public Works shall diligently attempt to complete his or her review of the request for completeness and notify the Developer whether such Payment Request is complete, and, if not, what additional documentation must be provided. The Director of Public Works shall provide a written approval or denial (specifying the reason for any denial) of each completed Payment Request within 30 days of its submittal. Failure of the Director of Public Works to notify the Developer that a Payment Request is incomplete on or before ten (10) days after the Developer first notifies the Director that the Developer has not received notification within the 10-business day period therefor as provided above (by delivery by the Developer of a written notice in the form of Exhibit D hereto), shall be deemed to mean that the Payment Request is complete. All requests for payment for the costs of any Component or Acquisition Facility contained in a Payment Request that are not specifically denied by the Director of Public Works within thirty (30) days after the Developer first notifies the Director of failure to respond within the applicable 30-day period for review specified above, shall be deemed to be approved in the form submitted for all purposes of this Agreement.

4.5 Payment.

(a) Upon approval or deemed approval of the Payment Request by the Director as provided in Section 4.4 above, the Director of Public Works shall sign the Payment Request and forward the same to the Deputy Executive Director, Finance Administration of the Agency. In the event of the deemed approval of a Payment Request, the Developer shall have the right to forward to the Payment Request directly to the Deputy Executive Director, Finance Administration of the Agency, with a copy thereof delivered to the Director of Public Works. Upon receipt of the reviewed and fully signed Payment Request (or a Payment Request that is deemed approved pursuant to Section 4.4 above), the Deputy Executive Director, Finance Administration of the Agency shall, within the then current Agency financial accounting payment cycle but in any event within fifteen (15) business days of receipt of such Payment Request, cause the same to be paid by the Agency from available Acquisition Funds. The source of Acquisition Funds on which to draw to meet any Payment Request shall be determined in accordance with the procedures set forth in the Financing Plan. Any such Payment Request not paid in full due to an insufficiency of Acquisition Funds, shall be paid promptly following the availability of additional Acquisition Funds.

(b) Once paid in full, the Acquisition Price paid for any Acquisition Facility or Component shall constitute payment in full for such Acquisition Facility or Component, as applicable, including, without limitation, payment for all labor, materials, equipment, tools and services used or incorporated in the work, supervision, administration, overhead, expenses and

any and all other things required, furnished or incurred for completion of such Acquisition Facility or Component, as specified in the Plans.

4.6 Restrictions on Payments. Notwithstanding any other provisions of this Acquisition Agreement, the following restrictions shall apply to any payments made to the Developer under Sections 4.2 and 4.5(a) hereof:

A. Amounts of Payments.

(i) Subject to the following paragraphs of this Section 4.6, payments for each Component or Acquisition Facility will be made only in the amount of the Acquisition Price for the respective Component or Acquisition Facility, not to exceed the Budgeted Cost thereof, except as provided in the remainder of this Section 4.6A(i). The Budgeted Cost for each Component or Acquisition Facility shall be the budgeted cost for such item set forth on Exhibit B as increased by (i) the increase, if any, between the amount of any contract awarded pursuant to Section 3.3(b) and the Budgeted Cost for such Acquisition Facility and (ii) the cost of any change orders approved by the Director of Public Works or (iii) any amount otherwise permitted pursuant to Section 3.6. To the extent the Actual Cost of a Component or Acquisition Facility exceeds the Budgeted Cost therefore, the Acquisition Price shall equal the Actual Cost to the extent that: (i) the Director of Public Works reasonably concludes that the increase was due to changes that were necessary and appropriate, and (ii) the Agency reasonably expects there will be sufficient Acquisition Funds during the life of the Redevelopment Plan to pay for the reasonably expected costs of all remaining Infrastructure.

(ii) Nothing herein shall require the Agency in any event to pay more than the Actual Cost of an Acquisition Facility or Component. The parties hereto acknowledge and agree that all payments to the Developer for the Acquisition Prices of Acquisition Facilities or Components are intended to be reimbursements to the Developer for monies already expended or for immediate payment by the Developer (or directly by the Agency) to third parties in respect of such Acquisition Facilities and/or Components.

B. Joint or Third Party Payments. The Agency may make any payment jointly to the Developer and any mortgagee or trust deed beneficiary, contractor or supplier of materials, as their interests may appear, or solely to any such third party, if the Developer so requests the same in writing or (unless the Developer provides sureties, undertakings, securities and/or lien bonds of the Developer or appropriate contractors or subcontractors that are deemed satisfactory by the Agency to assure payment of such claims) as the Agency otherwise determines such joint or third party payment is necessary to obtain lien releases.

C. Withholding Payments.

(i) The Agency shall be entitled, but shall not be required, to withhold any payment hereunder for a Component or an Acquisition Facility if the Developer or any Affiliate is delinquent in the payment of ad valorem real property taxes, special assessments or taxes, possessory interest taxes, or Special Taxes levied in the CFD. In the event of any such delinquency, the Agency shall only make payments hereunder directly to contractors or other third parties employed in connection with the construction of the Acquisition Facilities or a Transfer Entity, until such time as the Developer provides the Director of Public Works with evidence that all such delinquent taxes and assessments have been paid.

(ii) The Agency shall withhold final payment for any Acquisition Facility (but not for any Component thereof) constructed on land, until Acceptable Title to such land has been conveyed to the public entity that will own the respective Facility (if such property is not already owned by the City or any other such public entity), as described in Article V hereof.

(iii) The Agency shall be entitled to withhold any payment hereunder for a Component that is the subject of a Payment Request until it is satisfied that any and all claims for labor and materials have been paid by the Developer for the Component that is the subject of a Payment Request, or conditional lien releases have been provided by the Developer for such Component. The Agency shall waive this limitation upon the provision by the Developer of sureties, undertakings, and/or lien bonds of the Developer or appropriate contractors or subcontractors and deemed satisfactory by the Director of Public Works to assure payment of such claims.

(iv) The Agency shall be entitled to withhold payment for the final Component of any Acquisition Facility until: (a) the Director of Public Works determines that the Acquisition Facility is ready for its intended use and has been constructed substantially in accordance with all applicable City Regulations, (b) the Acceptance Date for the Acquisition Facility has occurred and the requirements of Section 5.1, if applicable to such Acquisition Facility, have been satisfied, and (c) general lien releases (conditioned solely upon payment from Acquisition Funds to be used to acquire such Acquisition Facility or final Component) have been submitted to the Director of Public Works for the Acquisition Facility. The Agency hereby agrees that the Developer shall have the right to post or cause the appropriate contractor or subcontractor to post a bond with the Agency to indemnify the Agency and the City for any losses sustained by the Agency or the City because of any liens that may exist at the time of acceptance of such an Acquisition Facility, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director. The Agency shall be entitled to withhold payment for the final Component of any Acquisition Facility to be owned by governmental entities other than the City, until the Developer provides the Director of Public Works with evidence that the governmental entity has accepted dedication of and/or title to the Acquisition Facility. The Director of Public Works shall promptly determine whether an Acquisition Facility is ready for intended use and is in compliance with applicable City Regulations under (a) above and shall so notify the Developer as soon as reasonably practicable in writing of his or her determination. If such determination is that an Acquisition Facility does not meet such requirements, the Director shall, in such notice, identify with particularity the reason(s) therefor.

(v) Nothing in this Acquisition Agreement shall be deemed to prohibit the Developer from contesting in good faith the validity or amount of any mechanics or material man's lien nor limit the remedies available to the Developer with respect thereto so long as such delay in performance shall not subject the Acquisition Facilities or any Component thereof to foreclosure, forfeiture or sale. In the event that any such lien is contested, the Developer shall only be required to post or cause the delivery of a bond in an amount equal to the amount in dispute with respect to any such contested lien, so long as such bond is drawn on an obligor and is otherwise in a form acceptable to the Director.

D. Retention. The Agency shall be entitled to withhold from the amounts payable pursuant to any Payment Request such amounts as are authorized by applicable City Regulations. The Agency shall be obligated to release any such retention for each Component in accordance with applicable City Regulations.

E. Frequency. Unless otherwise agreed to by the Director, no more than one Payment Request shall be submitted by the Developer in any calendar month.

F. Restrictions on Escrowed Funds. The Developer acknowledges that the provisions of a Public Financing authorizing document may require that Public Financing proceeds deposited to an escrow fund be used to redeem a portion of the Public Financing, and in such event will not be available as Acquisition Funds. The Developer agrees to assist the Agency in releasing funds from any such escrow fund as requested by the Agency.

4.7 Defective or Nonconforming Work. If any of the work done or materials furnished for a Facility or Component are found by the Director of Public Works to be defective or not in accordance with the applicable Plans and City Regulations: (i) and such finding is made prior to payment for the Acquisition Price of such Facility or Component hereunder, the Agency may withhold payment therefor until such defect or nonconformance is corrected to the satisfaction of the Director, or (ii) and such finding is made after payment of the Acquisition Price of such Facility or Component, the Agency and the Developer shall act in accordance with applicable City Regulations, and the Interagency Cooperation Agreement and the Infrastructure Plan.

4.8 City Cooperation. The Agency shall use all reasonable efforts to obtain the compliance by the City with the provisions of the Interagency Cooperation Agreement, as they affect the acceptance by the City of Acquisition Facilities.

5. OWNERSHIP AND TRANSFER OF FACILITIES

5.1 Conveyance of Land, Title. The transfer of, maintenance of and right of entry with respect to all land on, in or over which any Infrastructure will be located shall be governed by the South OPA, the Interagency Cooperation Agreement and the City Regulations.

6. INSURANCE

6.1 Insurance Requirements. The Developer shall, at all times prior to the final Acceptance Date of any Acquisition Facilities comply with the insurance requirements set forth in any Permit to Enter issued by the Agency in accordance with the South OPA or by the City in accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations.

6.2 Evidence of Insurance. The Developer shall furnish to the Agency and the City, from time to time upon request of the Agency or the City's Risk Manager, a certificate of insurance (and/or, upon request by the Agency or the City's Risk Manager, a complete copy of any policy) regarding each insurance policy required to be maintained by the Developer under any Permit to Enter issued by the Agency in accordance with the South OPA or by the City in accordance with the Interagency Cooperation Agreement, or otherwise in accordance with any other applicable City Regulations.

7. REPRESENTATIONS, WARRANTIES AND COVENANTS

7.1 Representations, Covenants and Warranties of the Developer. The Developer represents and warrants for the benefit of the Agency as follows:

A. Organization. The Developer is a corporation duly organized and validly existing under the laws of the State of Delaware, is in compliance with the laws of such State, and has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated.

B. Authority. The Developer has the power and authority to enter into this Acquisition Agreement, and has taken all action necessary to cause this Acquisition Agreement to be executed and delivered, and this Acquisition Agreement has been duly and validly executed and delivered by the Developer.

C. Financial Records. Until the final Acceptance Date for each Acquisition Facility, the Developer covenants to maintain proper books of record and account for the construction of

such Acquisition Facility and all costs related thereto. Such accounting books shall be maintained in accordance with generally accepted accounting principles.

D. Land Sales. The Developer agrees that in the event that it sells any land owned by it within the boundaries of a CFD, the Developer will (i) notify the purchaser in writing prior to the closing of any such sale of the existence of this Acquisition Agreement, and (ii) notify the purchaser in writing of the existence of the CFD and the special tax lien in connection therewith, and otherwise comply with any applicable provision of Section 53341.5 of the Act.

E. Additional Information. The Developer agrees to cooperate with all reasonable written requests for nonproprietary information by the original purchasers of any Public Financing or the Agency related to the status of construction of improvements within the CFD, the anticipated completion dates for future improvements, and any other matter material to the investment quality of the respective Public Financing.

F. No Misrepresentation. The Developer shall not make any material misrepresentation or omission in any written materials furnished to the Agency for use in connection with any preliminary official statement, official statement, bond purchase contract or continuing disclosure certificate or agreement used in connection with the sale of any Public Financing.

G. Continuing Disclosure. The Developer agrees to comply with all of its obligations under any continuing disclosure agreement executed by it in connection with the offering and sale of any Public Financing. The Developer acknowledges that a condition to the issuance of any Public Financing will be the then compliance by the Developer with its obligations under such agreement.

I. Allocation of Sales Taxes. The Developer shall cooperate reasonably with the Agency and the City in investigating the feasibility of a program to maximize the capture of sales taxes for the City with respect to any construction contracts and subcontracts for Acquisition Facilities or Components and other Improvements, provided that the Developer shall not be unreasonable in declining to implement such a program if it would incur other than immaterial costs in such implementation and such costs would not be reimbursed. Such a program could include, by way of example only, use of a purchasing agent. Before commencing construction of Acquisition Facilities under this Agreement, the Developer, the Agency and the City shall meet and confer in good faith to evaluate the feasibility of implementing any such program and the relative financial benefits and burdens to the City and the Developer.

7.2 Indemnification and Hold Harmless. The Developer acknowledges and agrees that the indemnities of the Owner contained in the South OPA and in the consent to the Interagency Cooperation Agreement include, without limitation, any and all Losses (as defined therein) arising out of the breach of this Agreement by the Developer, the Developer's or any of its contractor's, agents', consultants' or representatives' negligent or defective construction of the Acquisition Facilities or any Components acquired from the Developer under this Agreement, the Developer's non-payment under contracts between the Developer and its consultants, engineers, advisors, contractors, subcontractors or suppliers in the provision of such Acquisition Facilities or Components or any claims of persons employed by the Developer or its contractors, agents, consultants or representatives to construct such Acquisition Facilities or Components, all subject to the terms, conditions, exceptions (including, without limitation, the exception for negligence or willful acts or omissions of the indemnified party) and limitations contained in the South OPA and the Interagency Cooperation Agreement, as applicable and further provided that any demand for indemnification hereunder with respect to negligent or defective construction must be brought, if at all, within two (2) years after the related Acquisition Facilities or Components are determined to be complete in accordance with the inspection described in Section 4.1 hereof.

8. TERMINATION

8.1 Mutual Consent. This Acquisition Agreement may be terminated by the mutual, written consent of the Agency and the Developer, in which event the Agency may let contracts for any remaining work related to the Acquisition Facilities not previously acquired from the Developer hereunder, and use all or any portion of the Acquisition Funds to pay for same, and in such event the Developer shall have no claim or right to any further payments for the Acquisition Price of Acquisition Facilities or Components hereunder, except for Acquisition Facilities or Components which have been completed but not yet paid for from Acquisition Funds or as otherwise may be provided in such written consent.

8.2 Agency Election for Cause.

(a) The following events shall constitute grounds for the Agency, at its option, to terminate this Acquisition Agreement, without the consent of the Developer:

(i) The Developer shall voluntarily file for reorganization or other relief under any Federal or State bankruptcy or insolvency law.

(ii) The Developer shall have any involuntary bankruptcy or insolvency action filed against it, or shall suffer a trustee in bankruptcy or insolvency or receiver to take possession of the assets of Developer, or shall suffer an attachment or levy of execution to be made against the property it owns within the CFD unless, in any of such cases, such circumstance shall have been terminated or released within ninety (90) days thereafter.

(iii) The Developer or any of its Affiliates shall at any time challenge the validity of a CFD established in accordance with, or any Public Financing issued in accordance with the Financing Plan, or the levy of Special Taxes within such a CFD, other than on the grounds that such levy was not made in accordance with the terms of the Rate and Method of Apportionment of the Special Taxes for such CFD.

(b) If any such event described in Section 8.2(a) occurs, the Agency shall give written notice of its knowledge thereof to the Developer, and the Developer shall agree to meet and confer with the Director of Public Works and other appropriate Agency staff and consultants as to options available to assure timely completion of the Acquisition Facilities and Infrastructure not yet constructed. Such options may include, but not be limited to the termination of this Acquisition Agreement by the Agency. If the Agency elects to terminate this Acquisition Agreement, the Agency shall first notify the Developer (and any mortgagee or trust deed beneficiary specified in writing by the Developer to the Agency to receive such notice) of the grounds for such termination and allow the Developer a minimum of thirty (30) days to eliminate or mitigate to the satisfaction of the Director of Public Works the grounds for such termination. Such period may be extended, at the sole discretion of the Agency, if the Developer, to the satisfaction of the Agency, is proceeding with diligence to eliminate or mitigate such grounds for termination. If at the end of such period (and any extension thereof), as determined solely by the Agency, the Developer has not eliminated or completely mitigated such grounds, to the satisfaction of the Agency, the Agency may then terminate this Acquisition Agreement.

(c) Notwithstanding the foregoing, so long as any event listed in Section 8.2(a) has occurred, notice of which has been given by the Agency to the Developer, and such event has not been cured or otherwise eliminated by the Developer, the Agency may in its discretion cease making payments for the Acquisition Price of Acquisition Facilities or Components under Article 4 hereof to the Developer; provided that the Developer shall receive payment of the

Acquisition Price of any Component or Acquisition Facility that was completed at the time of the occurrence of an event listed in Section 8.2(a) above upon submission of the documents and compliance with the other applicable requirements of this Acquisition Agreement.

8.3 Force Majeure. A party who is subject to Unavoidable Delay in the performance of an obligation hereunder, or in the satisfaction of a condition to the other party's performance hereunder, shall be entitled to a postponement of the time for performance of such obligation or satisfaction of such condition during the period of enforced delay attributable to an event of Unavoidable Delay, subject to the provisions of this Section 8.3.

The Unavoidable Delay provisions of this Section shall not apply unless (i) the party seeking to rely upon such provisions shall have given notice to the other party, within thirty (30) days after obtaining knowledge of the beginning of an enforced delay, of such delay and the cause or causes thereof, to the extent known, and (ii) a party claiming the Unavoidable Delay must at all times be acting diligently and in good faith to avoid foreseeable delays in performance, and to remove the cause of the delay or to develop a reasonable alternative means of performance.

9. MISCELLANEOUS

9.1 Limited Liability of Agency and City. Except as otherwise provided in the South OPA, the Developer agrees that any and all obligations of the Agency and/or the City arising out of or related to this Acquisition Agreement are special and limited obligations of the Agency and the City, as applicable, and the Agency and City's obligations to make any payments hereunder are restricted entirely to available Acquisition Funds and from no other source. No member of the Board of Supervisors, the Commission, or Agency staff member, employee or agent shall incur any liability hereunder to the Developer or any other party in their individual capacities by reason of their actions hereunder or execution hereof. It is understood and agreed that no commissioners, members, officers, agents, or employees of the Agency or the City (or of either of its successors or assigns) shall be personally liable to the Developer nor shall any officers, directors, shareholders, agents or employees of the Developer (or of its successors or assigns) be personally liable to the Agency or the City in the event of any default or breach of this Agreement by the Agency or the Owner or for any amount which may become due to the Owner or the Agency or the City, as the case may be, hereunder or for any obligations of the parties under this Agreement.

9.2 Audit. The Director of Public Works and the Deputy Executive Director of Public Works-Finance Administration of the Agency, or their respective representatives, shall have the right, during normal business hours and upon the giving of reasonable prior written notice to the Developer, to review all books and records of the Developer pertaining to costs and expenses incurred by the Developer related to any of the Components and Acquisition Facilities, and any bids taken or received for the construction thereof or materials therefor.

9.3 Attorney's Fees. Should either party hereto institute any action or proceeding in court or other dispute resolution mechanism (DRM) to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Agreement, the prevailing party shall be entitled to receive from the losing party court or DRM costs or expenses incurred by the prevailing party including, without limitation, expert witness fees, document copying expenses, exhibit preparation costs, carrier expenses and postage and communication expenses, and such amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services rendered the prevailing party in such action or proceeding. Attorneys' fees under this Section 9.3 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys' fees shall be entitled to all other reasonable costs and expenses incurred in connection with such action.

For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for the Agency or the Developer shall be based on the fees regularly charged by private attorneys with an equivalent number of years of professional experience in the subject matter area of the law for which the Agency's or the Developer's in-house counsel's services were rendered who practice in the City in law firms with approximately the same number of attorneys as employed by the City, or, in the case of the Developer's in-house counsel, as employed by the outside counsel for the Developer.

9.4 Notices.

(a) A notice or communication under this Acquisition Agreement by either party to the other (or by or to the Director of Public Works) shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication to the Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Mission Bay North
Telefacsimile: (415) 749-2565

With copies to:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Mission Bay Project Manager
Reference: Mission Bay North
Telefacsimile: (415) 749-2585

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay North
Telefacsimile: (415) 749-2575

- (ii) In the case of notice or communication to the Director of Public Works:

Director of Public Works
City and County of San Francisco
875 Stevenson Street, Room 410
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Telefacsimile: (415) 554-9844

With copies to:

Office of the Mayor
City and County of San Francisco
City Hall
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay North
Telefacsimile: (415) 554-4058

Office of the City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102
Attn: Jesse C. Smith
Reference: Mission Bay North
Telefacsimile: (415) 554-3808

(iii) And in the case of a notice or communication to the Developer at:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: Mission Bay Development Office
Telefacsimile: (415) 974-3724

[OR INSERT
INFORMATION FOR
PERMITTED
TRANSFEREE
DEVELOPER]

With a copies to:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: General Counsel
Telefacsimile: (415) 974-4613

And to:

O'Melveny & Myers
400 South Hope Street
Los Angeles, CA 90071
Attn: Kathryn Sanders
Telefacsimile: (213) 430-6407

Coblentz, Patch, Duffy & Bass, LLP
222 Kearny Street, 7th Floor
San Francisco, California 94108
Attn: Pamela S. Duffy
Telefacsimile: (415) 989-1663

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Acquisition Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

(i) the Section of this Acquisition Agreement pursuant to which the notice is given and the action or response required, if any;

(ii) if applicable, the period of time within which the recipient of the notice must respond thereto;

(iii) if approval is being requested, shall be clearly marked "Request for Approval under the Mission Bay South Acquisition Agreement"; and

(iv) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

(b) Any mailing address or telefacsimile number 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 Acquisition Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile.

(c) Any notice or request for review, consent or other determination or action by the Agency or the Director of Public Works that could be subject to deemed approval under any provision of this Agreement shall display prominently on the envelope enclosing such request (if any) and the first page of such request, substantially the following words: "MISSION BAY INFRASTRUCTURE: IMMEDIATE ATTENTION REQUIRED; FAILURE TO RESPOND COULD RESULT IN DEEMED APPROVAL."

9.5 Successors and Assigns. This Acquisition Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto. This Acquisition Agreement shall not be assigned by the Developer, except to a Transferee in connection with a Transfer permitted under the South OPA and upon such Transfer, the Developer shall be released from its obligations hereunder to the extent provided in the South OPA. In any event, any such assignment shall be in writing and shall clearly identify the scope of the rights and/or obligations assigned.

9.6 Other Agreements. The obligations of the Developer hereunder shall be those of a party hereto and not as an owner of property in the South Plan Area. Nothing herein shall be construed as affecting the Agency's or the Developer's rights, or duties to perform their respective obligations, under the South OPA, the Interagency Cooperation Agreement and other Plan Documents and any applicable City Regulations. This Acquisition Agreement shall not confer any additional rights, or waive any rights given, by either party hereto under any development or other agreement to which they are both a party.

9.7 Waiver. Failure by a party to insist upon the strict performance of any of the provisions of this Acquisition Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist upon and demand strict compliance by the other party with the terms of this Acquisition Agreement thereafter.

9.8 Parties in Interest. Nothing in this Acquisition Agreement, expressed or implied, is intended to or shall be construed to confer upon or to give to any person or entity other than the Agency, the City and the Developer any rights, remedies or claims under or by reason of this Acquisition Agreement or any covenants, conditions or stipulations hereof; and all covenants, conditions, promises, and agreements in this Acquisition Agreement contained by or on behalf of the Agency or the Developer shall be for the sole and exclusive benefit of the Agency, the City

and the Developer. The City is an intended third party beneficiary of this Acquisition Agreement.

9.9 Amendment. This Acquisition Agreement may be amended, from time to time, by written Supplement hereto and executed by both the Agency and the Developer. Such amendment may provide for additional Acquisition Facilities (including Components thereof) to be added to Exhibit B hereto and, if applicable, Exhibit B-1 hereto pursuant to Section 2.1(c), and/or the additional reimbursements to be added to Exhibit C hereto pursuant to Section 2.4.

9.10 Counterparts. This Acquisition Agreement may be executed in counterparts, each of which shall be deemed an original.

9.11 Interpretation of Agreement. Unless otherwise provided in this Agreement, whenever approval, consent or satisfaction is required of the Developer or the Agency pursuant to this Agreement, it shall not be unreasonably withheld or delayed. Captions used in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Acquisition Agreement as of the day and year first-above written.

Authorized by Agency Resolution No. _____, adopted September 17, 1998.

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

By: _____
James B. Morales
Executive Director

Its: _____
Patsy R. Oswald
Assistant Secretary

Approved as to form:

By: _____
David M. Madway
Agency General Counsel

CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation [OR INSERT NAME OF TRANSFEREE DEVELOPER]

By: _____

Title: _____

By: _____

Title: _____

ACQUISITION AGREEMENT

EXHIBIT A

FORM OF PAYMENT REQUEST

PAYMENT REQUEST No. _____

The undersigned (the "Developer"), hereby requests payment in the total amount of \$ _____ for the Acquisition Facilities (as defined in the Acquisition Agreement for Mission Bay South (the "Agreement") between the Redevelopment Agency of the City and County of San Francisco (the "Agency") and the Developer), or Components thereof (as described in Exhibit B-1 to that Agreement), all as more fully described in Attachment 1 hereto. In connection with this Payment Request, the undersigned hereby represents and warrants to the Agency as follows:

1. He (she) is a duly authorized officer of the Developer, qualified to execute this Payment Request for payment on behalf of the Developer and is knowledgeable as to the matters set forth herein.
2. To the extent that this payment request is with respect to a completed Acquisition Facility, the Developer has submitted or submits herewith to the City as-built drawings or similar plans and specifications for the items to be paid for as listed in Attachment 1 hereto with respect to any such completed Acquisition Facility, and such drawings or plans and specifications, as applicable, are true, correct and complete. To the extent that this payment request is for a Component, the Developer has in his construction office a marked set of drawings or similar plans and specifications for the Components to be acquired as listed in Attachment 1 hereto, which drawings or plans and specifications, as applicable, are current and show all changes or modifications which have been made to date.
3. All costs of the Acquisition Facilities or Components thereof for which payment is requested hereby are Actual Costs (as defined in the Agreement) and have not been inflated in any respect. The items for which payment is requested have not been the subject of any prior payment request submitted to the Agency.
4. Supporting documentation (such as third party invoices) is attached with respect to the costs for which payment is requested.
5. There has been compliance with applicable provisions of the South OPA (as defined in the Agreement) relating to prevailing wages or otherwise for the work to construct the Acquisition Facilities or Components thereof for which payment is requested.
6. The Acquisition Facilities or Components thereof for which payment is requested were constructed in accordance with all applicable City Regulations (as defined in the Agreement), and in accordance with the as-built drawings or plans and specifications, as applicable, referenced in paragraph 2 above.
7. The Developer is in compliance with the terms and provisions of the Agreement and no portion of the amount being requested to be paid was previously paid.

8. The Acquisition Price for each Acquisition Facility or Component (a detailed calculation of which is shown in an Attachment 2 hereto for each such Acquisition Facility or Component), has been calculated in conformance with the terms of Section 4.6 of the Acquisition Agreement.

9. Neither the Developer nor any Affiliate (as defined in the Agreement) is in default in the payment of ad valorem real property taxes, possessory interest taxes or special taxes or special assessments levied in the South Plan Area (as defined in the Agreement), except as follows: _____.

I hereby declare under penalty of perjury that the above representations and warranties are true and correct.

DEVELOPER:

[insert name of Developer]

By: _____
Authorized Representative
of the Developer

Date: _____

Payment Request Approved for
Submission to Finance Director

By: _____
Director of Public Works of
of the City, or designee

Date: _____

ATTACHMENT 1
TO EXHIBIT A

[list here all Acquisition Facilities or Components thereof for which payment is requested, and attach support documentation]

[To be completed prior to submission of related Payment Request]

ATTACHMENT 2
TO EXHIBIT A

CALCULATION OF ACQUISITION PRICE

[Use a separate sheet for each Acquisition Facility or Component
for which payment is being requested]

1. Description (by reference to Exhibit B or B-1 to the Acquisition Agreement) of the Acquisition Facility or Component _____
2. Actual Cost (list here total of supporting invoices and/or other documentation supporting determination of Actual Cost): \$ _____
3. Budgeted Cost: \$ _____
4. Permitted Additions to Budgeted Cost (to the extent, and only to the extent, that Actual Cost exceeds Budgeted Cost):
 - A. Increase, if any, between amount of contract awarded pursuant to Section 3.3(b) of the Acquisition Agreement and the Budgeted Cost \$ _____
 - B. Costs of change orders approved by the Director of Public Works pursuant to Section 3.6 of the Acquisition Agreement \$ _____
 - C. Costs of change orders permitted under Section 3.6 of the Acquisition Agreement for which prior approval of the Director of Public Works was not required \$ _____
 - D. Proposed additions, not otherwise included in A., B. or C. above, that were necessary or appropriate (subject to review by Director of Public Works as to necessity and appropriateness, and Agency as to expectation of sufficient Acquisition Funds for remaining Infrastructure costs, pursuant to last sentence of Section 4.6 A.(i) of the Acquisition Agreement) \$ _____
5. Subtractions from Purchase Price:
 - A. Holdback for lien releases (see Section 4.6 C.(iii) of the Acquisition Agreement) \$ _____
 - B. Retention (see Section 4.6 D. of the Acquisition Agreement) \$ _____
6. Total disbursement requested (Amount listed in 3, plus amounts, if any, listed in 4 (total of amounts in 3 and 4 not to exceed amount listed in 2), less amounts, if any, listed in 5) \$ _____

ACQUISITION AGREEMENT

EXHIBIT B

DESCRIPTION OF ACQUISITION FACILITIES AND APPLICABLE BUDGETED COSTS

[To be completed prior to execution of Acquisition Agreement]

ACQUISITION AGREEMENT

EXHIBIT B-1

DISCRETE COMPONENTS OF ACQUISITION FACILITIES

[To be completed prior to execution of Acquisition Agreement]

ACQUISITION AGREEMENT

EXHIBIT C

SCHEDULE OF REIMBURSEMENTS

Amounts shown to be drawn from available Public Financing proceeds are entirely dependent on the availability of the proceeds of a Public Financing for such purpose, if and when any such Public Financing is issued.

<u>Source of</u> <u>Obligation</u>	<u>From First</u> <u>Public Financing</u>	<u>Purpose</u>	<u>From Later</u> <u>Public Financings</u>	<u>Purpose</u>
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ACQUISITION AGREEMENT

EXHIBIT D

FORM OF NOTICE OF FAILURE TO NOTIFY

RESPONSE REQUIRED TO AVOID DEEMED COMPLETION

_____, ____ [insert date of Notice]

Director of Public Works
City and County of San Francisco
875 Stevenson Street, Room 410
San Francisco, California 94102
Attn: Mission Bay Project Manager

Re: Payment Request No. ____ – Mission Bay South Acquisition Agreement, dated as of _____, by and between the Redevelopment Agency of the City and County of San Francisco and Catellus Development Corporation [or substitute the name of the Developer entering into this Agreement if a Transferee permitted under the Section 14.1(a)(1), (2) or (3) of the South OPA]

Dear Director of Public Works:

This notice is being delivered pursuant to Section 4.4 of the above-referenced Agreement (the "Agreement"). On _____, ____ the undersigned (the "Developer") submitted to you Payment Request No. ____ (the "Payment Request"). The purpose of this notice is to inform you, in accordance with Section 4.4 of the Agreement, that the Developer has not received notice from you, within ten (10) business days after submittal of the Payment Request, that the Payment Request is complete or what, if any, additional documentation is needed to complete the Payment Request.

Section 4.4 of the Agreement provides that a failure by you to notify the Developer that the Payment Request is incomplete on or before ten (10) business days after your receipt of this notice shall be deemed to mean that the Payment Request is complete.

If you have any questions regarding this notice or the Payment Request, please contact

CATELLUS DEVELOPMENT
CORPORATION, a Delaware corporation
[OR INSERT NAME OF TRANSFEREE
DEVELOPER]

By: _____

Title: _____

By: _____

Title: _____

cc: Office of the Mayor
City and County of San Francisco
City Hall
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay South

Office of the City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102
Attn: Jesse C. Smith
Reference: Mission Bay South

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

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Mission Bay Project Manager
Reference: Mission Bay South

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay South

EXHIBIT B

SOUTH FINANCING PLAN

**MISSION BAY SOUTH TAX ALLOCATION DEBT
PROMISSORY NOTE**

San Francisco, California

Date: _____

FOR VALUE RECEIVED, the undersigned, Catellus Development Corporation, a Delaware corporation [OR INSERT NAME OF QUALIFYING TRANSFEREE OR APPLICABLE PROMISSOR] (the "Promisor"), promises to pay, on demand, to the order of the Redevelopment Agency of the City and County of San Francisco (the "Payee"), at 770 Golden Gate Avenue, San Francisco, California 94102, Attention: Director of Finance (or such other place or to such other party as the Payee may from time to time designate in writing), for the benefit of the Payee and the City and County of San Francisco (the "City"), the "Additional Payments" as defined in the Financing Plan attached as Exhibit E (the "Financing Plan") to the Mission Bay South Owner Participation Agreement dated as of November 16, 1998, between the Promisor and the Payee, as the same has or may be amended pursuant to its terms (the "South OPA"), with no interest other than as specified below. Unless otherwise defined in this Note, all capitalized terms shall have the meanings given them in the South OPA.

The Additional Payments shall be due and payable within thirty (30) days after written demand therefor from the Payee to the Promisor. In no event shall the Payee be entitled to demand payment more than sixty (60) days before any debt service payment is then due and payable on the applicable Tax Allocation Debt.

If any payment obligation under this Note is not paid when due, the Promisor shall promptly pay all costs, including, without limitation, collection charges and Attorneys' Fees and Costs (as defined below), incurred by the Payee in connection with the enforcement of its rights under this Note, whether or not suit is filed (collectively, the "Reimbursement Amount"), and the Promisor hereby waives to the fullest extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder. The past due payment obligation and the Reimbursement Amount shall be accompanied by interest on such amounts at the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the date due through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed).

All payments on this Note shall be applied first to accrued interest then due, if any, and the balance shall be applied to principal.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in lawful currency of the United States of America and in immediately available funds, including certified check and wire transfer of funds. The Promisor hereby waives presentment for payment, diligence, demand, protest and notice of protest for non-payment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Payee under this Note, or assignment by the Payee of this Note shall in any way affect the liability of the Promisor. All rights and remedies of the Payee under this Note are cumulative and may be exercised independently or consecutively at the Payee's option. The rights and remedies provided under this Note are in addition to any rights or remedies provided under the South OPA or any agreements contemplated thereby.

Promisor agrees to indemnify, defend and hold the Payee and the City and their respective officers, directors, commissioners, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees and Costs as hereinafter defined) arising in connection with any investigative, administrative or judicial proceeding, that may be imposed on, incurred by or asserted against such Indemnified Party, in any manner relating to or arising out of or in connection with the payment or enforcement of this Note (collectively, the "Indemnified Liabilities"). Notwithstanding the foregoing, Indemnified Liabilities shall not include (a) liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements to the extent caused by or resulting from the willful misconduct or negligence of such Indemnified Party, including, without limitation, a willful breach of any obligations of the City under the Tax Allocation Agreement or the Payee under the Financing Plan or (b) consequential damages arising from any actual losses related to an indemnified claim. Promisor shall defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

"Attorney's Fees and Costs" means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to: expert witness fees and costs, travel time and associated costs; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding; fees and costs associated with execution upon any judgment or order; and costs on appeal and any collection efforts. For purposes of this Note, the reasonable fees of attorneys and any in-house counsel for the City, the Payee and the Promisor shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience in the subject matter area of the law for which the City's, the Payee's or the Promisor's in-house counsel's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City or the Payee or, in the case of the Promisor, as employed by outside counsel for the Promisor.

The Indemnified Parties agree to give prompt notice to the Promisor with respect to any suit or claim initiated or threatened against the Indemnified Parties, at the address for notices of the Promisor set forth in the South OPA, and in no event later than the earlier of (a) ten (10) days after valid service of process as to any suit or (b) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the Indemnified Party has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to the Promisor, then the Promisor's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Promisor shall not prejudice the rights of the Indemnified Party hereunder unless the Promisor is prejudiced by such failure, and then only to the extent of such prejudice. The Promisor shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Promisor's

own choice; provided, however, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Promisor shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel at the Promisor's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Party upon receipt by the Promisor of a properly detailed invoice therefor. The indemnities set forth above shall survive any termination of the Financing Plan as to matters that arise during the term hereof.

This Note is not secured by any real property or interests therein.

Any failure of the Payee to exercise any rights under this Note shall not constitute a waiver of the right to the later exercise thereof.

This Note may not be changed, amended or modified orally, and may only be amended or modified by an instrument in writing which by its express terms refers to this Note and is duly executed by the Promisor and accepted in writing by the Payee.

Notice may be given to the Payee or to the Promisor at the address for such parties and in the manner set forth in the South OPA.

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

Time is of the essence with respect to each and every term and provision of this Note.

The terms of this Note shall bind the Promisor and inure to the benefit of the Payee and the City and their respective successors and assigns.

This Note shall terminate and be of no further force or effect, upon (a) the Transfer of any property in the South Plan Area to a Transferee for which this Note is not required under the South OPA, including the Financing Plan, provided such obligations shall be relieved only as to the property so Transferred, or (b) the latest of (i) payment in full of this Note together with any and all other amounts payable by Promisor under this Note (including any Reimbursement Amounts), (ii) payment for all Infrastructure under the terms of the Financing Plan, and (iii) payment in full of the Tax Allocation Debt; provided, however, any obligations that Promisor has under this Note that arose and were not satisfied before such date shall survive any such termination. Nothing herein shall limit Promisor's obligation to execute and deliver a Tax Allocation Bond Guaranty for certain Additional Payments if the same is required under the South OPA, including the Financing Plan, upon a Transfer of any portion of the South Plan Area to a Non-Qualified Transferee.

Duly authorized and executed this _____ day of _____, in San Francisco, California.

Promisor:

CATELLUS DEVELOPMENT CORPORATION,
a Delaware corporation [OR INSERT NAME OF QUALIFYING TRANSFEREE OR APPLICABLE PROMISSOR]

By _____

Its _____

By _____

Its _____

EXHIBIT C

SOUTH FINANCING PLAN

MISSION BAY SOUTH TAX ALLOCATION DEBT GUARANTY AGREEMENT

*[To Be Executed upon Transfer to a Non-Qualifying Transferee
Pursuant to the Financing Plan]*

THIS GUARANTY AGREEMENT (this "Guaranty") dated as of _____, 1998, is made by CATELLUS DEVELOPMENT CORPORATION, a California corporation [OR INSERT NAME OF OTHER QUALIFYING TRANSFEREE] ("Guarantor"), to and for the benefit of the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (the "Agency") and the CITY AND COUNTY OF SAN FRANCISCO ("City"). Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the South OPA (as described in Paragraph D of the Recitals, below).

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

A. In accordance with the Community Redevelopment Law of California (Health & Safety Code Section 33000 et seq.), the City, acting through its Board of Supervisors, has approved a Redevelopment Plan for the Mission Bay South Redevelopment Project by Ordinance No. 335-98 adopted by the Board of Supervisors on November 2, 1998. The Redevelopment Plan, as it may be amended, is referred to as the "Mission Bay South Redevelopment Plan."

B. The Mission Bay South Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by the China Basin Channel and Seventh Street, Interstate 280, Mariposa Street, Terry Francois Boulevard (as it is to be relocated to the west of its existing location) and Third Street and containing approximately two hundred thirty eight (238) acres of land, as more particularly described in such plan (the "South Plan Area"). At the center of the South Plan Area is an approximately forty three (43)-acre biomedical campus for the University of California at San Francisco, containing approximately two million six hundred fifty thousand (2,650,000) square feet of instruction, research and administration space, plus associated parking and loading uses. The Mission Bay South Redevelopment Plan describes a mixed-use development on property owned by Owner, the Agency and the City comprised of up to approximately three thousand ninety (3,090) units of housing, including both market-rate and affordable rental and for-sale units, approximately thirty-five (35) acres of public open space (including approximately two (2) acres on Port property immediately to the east of the South Plan Area that would be required to be improved in conjunction with adjacent development in the South Plan Area), up to approximately three hundred two hundred thirty thousand (230,000) square feet of retail space, up to approximately five million (5,000,000) Leasable square feet of mixed research and development, office and light manufacturing uses, an approximately five-hundred (500) room hotel and related facilities such as banquet and conference rooms, and parking and loading uses. In addition, approximately thirty thousand (30,000) Leasable square feet of local serving retail uses could be developed on Agency Affordable Housing Parcels and approximately thirteen thousand six hundred (13,600) Leasable square feet of retail uses could be constructed on Port property in a portion of the new Bayfront park. The Mission Bay South Redevelopment

Plan further provides for development of a new public elementary or secondary school on an approximately two and two tenths (2.2) acre site within the UCSF campus area and construction of a new combined City police and fire facility on an approximately one and five tenths (1.5) acre site east of Third Street. In addition to the approximately thirty-five (35) acres of open space described above, the Mission Bay South Redevelopment Plan provides for approximately eight (8) acres of public open space in the UCSF campus area. The project description and land use plan for the South Plan Area are attached as Exhibit A to this Agreement.

C. Section 500 of the Mission Bay South Redevelopment Plan authorizes the Agency to use tax increment funds to finance the redevelopment of the South Plan Area, including, without limitation, the issuance of Tax Allocation Debt secured by a pledge of property tax increments from the South Plan Area.

D. In order to facilitate the implementation of the Mission Bay South Redevelopment Plan, the Agency and Catellus Development Corporation, a Delaware corporation (the "Owner") are entering into or have entered into a Mission Bay South Owner Participation Agreement (the "South OPA"), dated as of November 16, 1998, regarding the development of the property within the South Plan Area owned by the Owner. The South OPA includes a Financing Plan, annexed to the South OPA as Attachment E (the "Financing Plan"), under which the Agency has incurred certain executory financial obligations, including the obligation to pledge Net Available Increment and issue Tax Allocation Debt (as such terms are defined in the Financing Plan), at the request of the Guarantor for the construction of Infrastructure, subject to the terms and conditions set forth therein, including the Agency's sole discretion to determine the terms of any such Tax Allocation Debt as further described in the Financing Plan.

E. Concurrently herewith, the City and the Agency are entering into the Tax Allocation Agreement, for the benefit of the Guarantor, pursuant to which the City approves the pledge by the Agency of Net Available Increment for the purposes described in the Financing Plan.

F. As further provided in the Financing Plan, no tax increment revenues nor any proceeds of any Tax Allocation Debt will be made available to the Owner for the Mission Bay South project beyond any Net Available Tax Increment generated from development within the South Plan Area. In this way, no tax increment will be drawn for development in the South Plan Area from any other redevelopment project areas in accordance with the South OPA.

G. Guarantor will derive material financial benefit from the development of South Plan Area under the South OPA. As an essential inducement for the Agency to enter into the South OPA, for the Agency and City to enter into the Tax Allocation Agreement and for the City to approve an allocation of tax increment needed for the Agency to issue the Tax Allocation Debt for the project under the South OPA, the Guarantor is entering into this Guaranty, whereby Guarantor agrees to pay certain shortfalls in the available tax increment needed to pay debt service on tax allocation bonds issued by the Agency to finance Infrastructure within or benefiting the South Plan Area. This Guaranty also applies to property in the South Plan Area owned by Catellus' Non-Qualifying Transferees in the South Plan Area, subject to the terms, conditions and limitations set forth in the Financing Plan.

H. The Agency and the City are intended to be a beneficiary of this Guaranty only to the extent of the Guaranteed Obligations (as defined below).

ACCORDINGLY, in consideration of the matters described in the foregoing Recitals, and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the Guarantor agrees as follows:

1. Guaranty

1.1 Guaranty of Obligations. Guarantor unconditionally and irrevocably guarantees to the Agency the due and punctual payment (and not merely the collectability) of the Guaranteed Obligations (as defined in Section 1.2 below), as and when the same shall become due and payable, on the terms provided in this Guaranty. In addition, Guarantor shall pay, and upon request of Agency shall promptly reimburse Agency for, all costs and expenses (including, without limitation, collection charges and Attorneys' Fees and Costs, as defined in Section 9.8 below) incurred by the Agency (collectively, the "Reimbursement Amount") in connection with the enforcement of the Agency's rights, powers, or remedies under this Guaranty, whether or not suit is brought. Any delinquent payment for the Guaranteed Obligations and the Reimbursement Amount shall be accompanied by interest on such amounts at the lesser of ten percent (10%) per annum or the maximum amount permitted by law, from the date due through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed). Guarantor's guaranty of payment of the Guaranteed Obligations shall be discharged and satisfied only as provided in Section 7 relating to termination of this Guaranty.

1.2 Definition of Guaranteed Obligations. For purposes of this Guaranty, "Guaranteed Obligations" shall mean the obligation of _____, a _____ (the "Obligor") [Non-Qualifying Transferee as defined in the Financing Plan] to pay its portion of the "Additional Payments" as defined in the Financing Plan, within thirty (30) days after written demand therefor by the Agency; provided, however, the Agency shall not be entitled to demand any such payment more than sixty (60) days before the applicable debt service payment is due on the applicable Tax Allocation Debt.

1.3 Acknowledgments by Guarantor. Guarantor acknowledges, confirms, and agrees that: (a) it has received fair and adequate consideration for its execution of this Guaranty; (b) it derived material financial benefit from the Agency's execution of the South OPA and continues to derive material financial benefit from such agreement; (c) the City's and the Agency's agreement to enter into the Tax Allocation Agreement and take the actions required in connection therewith is in consideration of, and in reliance upon, the Guarantor's execution and delivery of this Guaranty upon the transfer of its rights and obligations to an Unqualified Affiliate; and (d) there are no conditions to the full effectiveness of this Guaranty other than those expressly set forth in this Guaranty.

1.4 Independent Obligations; Continuing Guaranty. Subject to the provisions of this Guaranty and the Financing Plan relating to Transferees, this Guaranty is a primary and original obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment.

2. Indemnity

2.1 Indemnity. Guarantor agrees to indemnify, defend and hold Agency, City and their respective officers, directors, commissioners, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees and Costs as hereinafter defined) arising in connection with any investigative, administrative or judicial proceeding, that may be imposed on, incurred by or asserted against such Indemnified

Party, in any manner relating to or arising out of or in connection with the payment or enforcement of this Guaranty (collectively, the "Indemnified Liabilities"). Notwithstanding the foregoing, Indemnified Liabilities shall not include (a) liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements to the extent caused by or resulting from the willful misconduct or negligence of such Indemnified Party, including, without limitation, a willful breach of any obligations of the City under the Tax Allocation Agreement or the Agency under the Financing Plan or (b) consequential damages arising from any actual losses relating to an indemnified claim. Guarantor agrees to defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

2.2 Notice. The Indemnified Parties agree to give prompt notice to Guarantor with respect to any suit or claim initiated or threatened against the Indemnified Parties, at the address for notices of Guarantor set forth in the South OPA, and in no event later than the earlier of (a) ten (10) days after valid service of process as to any suit or (b) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the Indemnified Party has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Guarantor, then Guarantor's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Guarantor shall not prejudice the rights of the Indemnified Party hereunder unless the Guarantor is prejudiced by such failure, and then only to the extent of such prejudice. The Guarantor shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Guarantor's own choice; provided, however, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Guarantor shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel at the Guarantor's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Party upon receipt by the Guarantor of a properly detailed invoice therefor.

3. Waivers by Guarantor

3.1 Waivers. Guarantor waives: notice of acceptance of this Guaranty; notice of the amount of the Guaranteed Obligations (subject, however, to Guarantor's right to make inquiry of the Agency to ascertain the then outstanding amount of the Guaranteed Obligations at any reasonable time); notice of any other fact that might increase the Guarantor's risk; and notice of presentment for payment, demand, protest and notice of protest, notice of dishonor, diligence in collection and notice of nonpayment as to any instrument. Guarantor also waives any and all rights, by statute or otherwise, to require the City or the Agency to institute suit against the Obligor or to exhaust any of the City's or the Agency's rights, powers or remedies against such Obligor.

3.2 Waiver of Subrogation. Upon satisfaction in full of all of the Guaranteed Obligations, Guarantor shall be subrogated to the rights of the Agency against the Obligor with respect to the Guaranteed Obligations, and the Agency agrees to take such steps as Guarantor may reasonably request to implement such subrogation (provided Guarantor shall pay Agency Costs incurred with respect thereto pursuant to the South OPA and that the Agency shall not incur any liabilities in taking any such steps).

4. Consents by Guarantor

4.1 Consents; No Discharge of Obligations. Without releasing, discharging, impairing, or otherwise affecting any obligations of Guarantor under this Guaranty or the validity or enforceability of this Guaranty, the City or the Agency may, by action or inaction, in its sole, absolute and unlimited discretion and without notice to Guarantor: compromise, settle, extend the time for payment or performance of all or any part of the Guaranteed Obligations; refuse or fail to enforce all or any portion of the Agency's rights, powers or remedies under any of the documents; and deal in all respects with Guarantor as if this Guaranty were not in effect; provided, however, neither the Agency or the City shall not have the right by agreement with Guarantor otherwise to increase the Guaranteed Obligations without the Guarantor's prior written consent. It is the intent of the parties that Guarantor shall remain liable for the payment and performance of the Guaranteed Obligations and all other obligations guaranteed hereby, notwithstanding any act or thing that might otherwise operate as a legal or equitable discharge of a surety, except as specified in the proviso at the end of the preceding sentence.

4.2 Payments to Other Persons. The City and the Agency shall be under no obligation to marshal any assets in favor of Guarantor or against, or in payment or performance of, any or all of the Guaranteed Obligations. If all or any part of any payment to or for the benefit of the City or the Agency in respect of the Guaranteed Obligations shall be invalidated, declared to be fraudulent or preferential, set aside, or required for any reason to be repaid or paid over to a trustee, receiver or other person under any Insolvency Law or any other law or rule of equity, to the extent of that payment or repayment, the Guaranteed Obligations (or the part thereof) intended to have been satisfied shall be revived and continued in full force and effect as if that payment had not been made, and Guarantor shall be primarily and jointly and severally liable for that obligation.

4.3 Additional Rights. This Guaranty is in addition to, and not in substitution for or in reduction of, any other guaranty by Guarantor or any obligation of Guarantor under the Plan Documents or applicable law that may now or hereafter exist in favor of the City or the Agency. The liability of Guarantor under this Guaranty shall not be contingent upon the enforcement of any lien or realization upon the security, if any, the City or the Agency may at any time possess with respect to the Guaranteed Obligations.

4.4 Recourse. The Agency shall have the right to seek recourse against Guarantor to the full extent provided for in this Guaranty, which right shall be absolute and shall not in any way be impaired, deferred, or otherwise diminished by reason of any inability of the Agency to claim any amount of such Guaranteed Obligation from Guarantor as a result of bankruptcy or otherwise, including, but not limited to, any limitation on the Agency's claim from Guarantor under section 502(b)(6) of the United States Bankruptcy Code, as amended (11 U.S.C. §502(b)(6)). No election to proceed in one form of action or proceeding, or against any person, or on any obligation, shall constitute a waiver of the Agency's right to proceed in any form of action or proceeding or against other persons unless Agency has expressly waived that right in writing.

5. Representations and Warranties of Guarantor

5.1 Representations and Warranties. Guarantor represents, warrants and covenants as follows:

- (a) Guarantor has full power and authority to execute, deliver and perform its obligations under this Guaranty, and that execution, delivery, and performance has been duly authorized by all requisite action on its part.

(b) As of the date of execution and delivery of this Guaranty the fair salable value of Guarantor's assets exceeds the amount of its liabilities.

5.2 Independent Investigation. Guarantor is fully aware of the financial matters relating to the South Plan Area because Guarantor is or was a party to the South OPA.

6. Termination of Guaranty.

Guarantor's liability under this Guaranty shall be discharged and satisfied, and Guarantor shall be relieved of any and all further obligations under this Guaranty, upon (a) the Transfer of any property in the South Plan Area to a Transferee for which this Guaranty is not required under the South OPA, including the Financing Plan, provided such obligations shall be relieved only as to the property so Transferred, or (b) the latest of (i) payment in full of the Guaranteed Obligations together with any and all other amounts payable by Guarantor under this Guaranty (including any Reimbursement Amounts), (ii) payment for all Infrastructure under the terms of the Financing Plan, and (iii) payment in full of the Tax Allocation Debt; provided, however, no such event shall result in termination of this Guaranty unless and until the expiration of any further period within which a trustee or other similar official in an action under any Insolvency Law may avoid, rescind, or set aside any payment of any of the Guaranteed Obligations. Upon Guarantor's request Agency will confirm in writing the fact of termination of this Guaranty if this Guaranty has terminated.

7. Notices

A notice or communication under this Agreement by either party to the other shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

- (i) In the case of a notice or communication to the Agency:

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: Executive Director
Reference: Mission Bay South
Telefacsimile: (415) 749-2565

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102-3102
Attn: General Counsel
Reference: Mission Bay South
Telefacsimile: (415) 749-2575

- (ii) In the case of a notice or communication to the City:

Office of the Mayor
City and County of San Francisco
City Hall
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay South
Telefacsimile: (415) 554-4058

With a copy to:

Office of the City Attorney
1390 Market Street, 6th Floor
San Francisco, CA 94102
Attn: Jesse C. Smith
Reference: Mission Bay South
Telefacsimile: (415) 554-3808

(iii) And in the case of a notice or communication sent to Guarantor:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: Mission Bay Development Office
Telefacsimile: (415) 974-3724

[OR INSERT APPROPRIATE
INFORMATION IF OTHER
QUALIFYING TRANSFEREE]

With a copies to:

Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: General Counsel
Telefacsimile: (415) 974-4613

And to:

Coblentz, Patch, Duffy & Bass, LLP
222 Kearny Street, 7th Floor
San Francisco, California 94108
Attn: Pamela S. Duffy
Telefacsimile: (415) 989-1663

For the convenience of the parties, copies of notice may also be given by telefacsimile.

Every notice given to a party hereto, pursuant to the terms of this Agreement, must state (or must be accompanied by a cover letter that states) substantially the following:

- (a) the Section of this Agreement pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if approval is being requested, shall be clearly marked "Request for Approval under the Mission Bay South Tax Allocation Debt Guaranty Agreement"; and
- (d) if a notice of a disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

Any mailing address or telefacsimile number 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 Agreement shall be deemed given, received, made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt. A party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

8. General Provisions

8.1 Successors and Assigns. This Guaranty shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators and assigns.

8.2 Amendments. Except as otherwise provided herein, this Guaranty may be amended or modified only by a written instrument executed by City, Agency and Guarantor..

8.3 Waivers. No action taken pursuant to this Guaranty by City or Agency shall be deemed to be a waiver by that party of the Guarantor's compliance with any of the provisions hereof. No waiver by the City or Agency of any breach of any provision of this Guaranty shall be construed as a waiver of any subsequent or different breach. No forbearance by City or Agency to seek a remedy for noncompliance hereunder or breach by the Guarantor shall be construed as a waiver of any right or remedy with respect to such noncompliance or breach.

8.4 Continuation and Survival of Covenants. All covenants by Guarantor contained herein shall be deemed to be material and shall survive any termination of the South OPA or portion thereof if the obligations thereunder have arisen and are not satisfied before such date.

8.5 Governing Law; Selection of Forum. This Guaranty shall be governed by and construed in accordance with the laws of the State of California. As part of the consideration for the South OPA, the Guarantor agrees that all actions or proceedings arising directly or indirectly under this Guaranty may, at the sole option of Agency, be litigated in courts having situs within the State of California, and the Guarantor expressly consents to the jurisdiction of any such local, state or federal court, and consents that any service of process in such action or proceeding may be made by personal service upon the Guarantor wherever the Guarantor may then be located, or by certified or registered mail directed to the Guarantor at the address set forth in this Guaranty for the delivery of notices.

8.6 Merger of Prior Agreements. The parties intend that this Guaranty (including all of the attached exhibits and schedules, which are incorporated into this Guaranty by reference) and the Financing Plan shall be the final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. The parties further intend that this Guaranty shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including, without limitation, prior drafts or changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Guaranty.

8.7 Interpretation of Guaranty. The section and other headings of this Guaranty and the table of contents are for convenience of reference only and shall not affect the meaning or interpretation of any provision contained herein. Whenever the context so requires, the use of the singular shall be deemed to include the plural and vice versa, and each gender reference shall be deemed to include the other and the neuter. To the extent the recitals contained herein are inconsistent with the operative provisions of this Guaranty, the operative provisions shall control. This Guaranty has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Guaranty against the party that has drafted it is not applicable and is waived. The provisions of this Guaranty shall be interpreted in a reasonable manner to effect the purposes of the parties and this Guaranty.

8.8 Attorneys' Fees. Should any party institute any action or proceeding in court to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Guaranty, the prevailing party shall be entitled to receive from the losing party court costs or expenses incurred by the prevailing party including, without limitation, expert witness fees and costs, travel time and associated costs; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding; fees and costs associated with execution upon any judgment or order; and costs on appeal and any collection efforts. For purposes of this Guaranty, the reasonable fees of attorneys and any in-house counsel for the City, the Agency and the Guarantor shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience in the subject matter area of the law for which the City's, the Agency's or the Guarantor's in-house counsel's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City or the Agency or, in the case of the Guarantor, as employed by outside counsel for the Promisor.

8.9 Severability. Invalidation of any provision of this Guaranty, or of its application to any Person, by judgment or court order, shall not affect any other provision of this Guaranty or its application to any other Person or circumstance, and the remaining portions of this Guaranty shall continue in full force and effect, unless enforcement of this Guaranty as invalidated would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Guaranty.

8.10 Counterparts. This Guaranty may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

IN WITNESS WHEREOF, Guarantor, being duly authorized, has executed and delivered this Guaranty as of the date first written above.

GUARANTOR

CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation
[OR INSERT NAME OF OTHER QUALIFYING TRANSFEREE]

By _____
Its _____

By _____
Its _____

ACCEPTED AND AGREED:

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By _____
Willie Lewis Brown, Jr., Mayor

APPROVED AS TO FORM:

By _____
Jesse Capin Smith
Deputy City Attorney

REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO

By _____
James B. Morales
Executive Director

APPROVED AS TO FORM:

By _____
David M. Madway
General Counsel

EXHIBIT D TO MISSION BAY SOUTH FINANCING PLAN

Description of Infrastructure Outside the South Plan Area of Primary Benefit to the South Plan Area

Intersection Improvements

1. Owens Street/Mariposa Street/I-280 Off-Ramp: Improvements described in section I.A.1.b.xiv. of the South Infrastructure Plan.
2. I-280 Off-Ramp/Mariposa: Improvements and related right of way land acquisition (including costs of condemnation proceedings, if any) as described in section I.A.1.b.xv. of the South Infrastructure Plan.

Wet Utilities

3. Low Pressure Water System: Improvements required to connect the South Plan Area low pressure water system to the City low pressure water system north of China Basin Channel via a submarine crossing beneath China Basin Channel along the Fourth Street axis, as described in section I.A.2.f. of the South Infrastructure Plan.

Open Space

4. Open Space East of Park Parcel P-22: Open space and park improvements described in section I.B.1.i. of the South Infrastructure Plan.

Other Infrastructure

5. Pedestrian Bridge: The south half of the pedestrian bridge across China Basin Channel along the Fifth Street axis, described in section I.C.1. of the South Infrastructure Plan.

