

ATTACHMENT F

MISSION BAY SOUTH
PERMIT TO ENTER

THIS PERMIT TO ENTER ("Permit") dated for reference purposes only as of _____, _____, is made by and between the [Insert the appropriate entity: the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California; the CITY AND COUNTY OF SAN FRANCISCO, a charter City and County; or the CITY AND COUNTY OF SAN FRANCISCO, acting by and through its PORT COMMISSION] ("Licensor"), and [Insert the appropriate entity: CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation, or its agents, designees or successors; or insert name of a permitted Transferee under the North OPA or South OPA, or its agents, designees or successors] (the "Permittee"). The capitalized terms used in this Agreement shall have the meanings set forth in the North OPA (hereinafter defined) or South OPA (hereinafter defined), as the context may require, unless otherwise defined herein.

THE PARTIES ENTER INTO THIS PERMIT based upon the following facts, understandings and intentions:

- A. The City and County of San Francisco ("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 on November 2, 1998 ("Mission Bay South Redevelopment Plan") and a Redevelopment Plan for the Mission Bay North Redevelopment Project by Ordinance No. 327-98 adopted on Oct. 26, 1998 ("Mission Bay North Redevelopment Plan") (the Mission Bay South Redevelopment Plan and the Mission Bay North Redevelopment Plan are sometimes hereinafter collectively referred to as the "Redevelopment Plans" and individually as a "Redevelopment Plan"). In cooperation with the City, pursuant to the Interagency Cooperation Agreements for each of the Mission Bay North and South Plan Areas ("Interagency Cooperation Agreements"), the Agency is in the process of implementing the Redevelopment Plans and the Plan Documents (as defined in the Redevelopment Plans) referred to in each of the Redevelopment Plans.
- B. Permittee and the Redevelopment Agency of the City and County of San Francisco ("Agency") have entered into (i) that certain Mission Bay North Owner Participation Agreement ("North OPA") approved by Agency Commission resolution No. 188-98 on 9/17/98 and (ii) that certain Mission Bay South Owner Participation Agreement ("South OPA") approved by Agency Commission resolution No. 193-98 on 9/17/98, regarding the redevelopment of the Mission Bay North and South Plan Areas, as more particularly described therein. The North OPA and the South OPA are hereinafter collectively referred to as the "OPAs" and individually as an "OPA."
- C. Permittee, when and if required by the OPAs, will construct open space, parks, streets and other Infrastructure on land owned or to be owned by the City or Port, and in the case of open space and parks, land leased by the City or Port to the Agency. In addition, the OPAs and Land Transfer Agreements (hereinafter defined) obligate Permittee to perform

certain environmental obligations with respect to City and Port owned property and with respect to certain property to be donated to the Agency for the development by the Agency or Qualified Affordable Housing Developers of Affordable Housing Units.

- D. Permittee, the City and the City and County of San Francisco acting by and through the Port Commission ("Port") have also entered into (i) that certain Amended and Restated City Land Transfer Agreement ("Amended CLTA") approved by Ordinance No. 330-98 of the Board of Supervisors on Oct. 26, 1998, (ii) that certain Amended and Restated Mission Bay Port Land Transfer Agreement ("Amended PLTA") approved by Ordinance No. 331-98 of the Board of Supervisors of the City on Oct. 26, 1998, and (iii) that certain Amended and Restated Agreement Concerning the Public Trust ("Amended ACTPT") to which the State of California is also a party, approved by Ordinance No. 332-98 of the Board of Supervisors of the City on Oct. 26, 1998. The Amended CLTA, Amended PLTA and Amended ACTPT are hereinafter collectively referred to as the "Land Transfer Agreements." The Land Transfer Agreements provide for the exchange of certain lands between Permittee and the City and Port, as applicable.
- E. The OPAs, the Interagency Cooperation Agreements and the Land Transfer Agreements all contemplate that from time to time the Agency, as tenant, and the City or Port, as applicable, as Landlord, will enter into or modify the Agency Lease for the purpose of facilitating the construction in phases of the public open space and parks contemplated under the OPAs, Redevelopment Plan and Plan Documents.
- F. The OPAs, Land Transfer Agreements, Interagency Cooperation Agreements and Agency Lease all contemplate that from time to time the Agency, City or Port, as applicable, shall, upon Permittee's request, enter into permits to enter affecting property owned by or leased to the City, Port or Agency, as applicable, for the purposes of allowing Permittee to (i) perform environmental investigations and geotechnical testing, investigations and other physical inspections, (ii) perform Remediation and Responses, and (iii) construct Infrastructure, all as contemplated by the OPAs, and the Redevelopment Plans and Plan Documents.
- G. Permittee has requested that Licensor enter into this Permit for the purposes hereinafter specified in Section 2, covering the property described in Exhibit A attached hereto and incorporated herein ("Permit Area"), as contemplated by the **[OPAs, Land Transfer Agreements, Interagency Cooperation Agreements or Agency Lease; specify applicable document]**, upon the terms and conditions hereinafter provided.

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING, the parties hereby enter into this Permit, upon the terms and conditions hereinafter set forth:

1. **License.** Licensor hereby confers to Permittee and its agents, employees, officers, contractors and representatives ("Agents") a personal (except as hereinafter specifically provided), non-exclusive (except as hereinafter provided) and non-possessory right and license to enter upon and use the Permit Area for the purposes and subject to the terms,

conditions and restrictions set forth below; provided that, with respect to Open Space Parcels and New Street Parcels, no other Person shall be entitled to utilize the Permit Area, or shall be entitled to possession thereof during the term of this Permit (other than existing rights under nonexclusive easements for utilities) to the extent such utilization or possession would interfere with Permittee's activities hereunder. This Permit gives Permittee a license only and notwithstanding anything to the contrary herein, this Permit does not constitute a grant by Licensor of any ownership, leasehold, easement or other similar property interest or estate whatsoever in the Permit Area, or any portion thereof. The license granted by this Permit is irrevocable, except as specifically hereinafter provided.

2. **Use of Permit Area.** Permittee shall enter and use the Permit Area for the sole purpose of [insert appropriate clause: (i) installing and constructing Infrastructure in the Permit Area, in accordance with the terms of the applicable OPA, Redevelopment Plan and Plan Documents; (ii) performing environmental Responses or Remediation in the Permit Area in accordance with the terms of the Land Transfer Agreements, OPAs and/or Agency Lease, as applicable; or (iii) performing physical inspections and testing of the Permit Area, including, without limitation, environmental Investigations and geotechnical testing, investigations and inspections] (the "Permitted Acts"), as more particularly described on Exhibit B attached hereto and incorporated herein. If Permittee performs any inspections, studies, testing or investigation pursuant to this Permit, Permittee shall provide to Licensor a copy of any written reports received by Permittee documenting the results of such inspections, testing, investigations or studies.
3. **Installation of Facilities.**
 - (a) **Permits and Approvals.** Before beginning any work in the Permit Area, Permittee shall obtain any and all permits, licenses and approvals (collectively, "Approvals") of all City Agencies, if any, and any other governmental agencies having or claiming jurisdiction over the Permit Area, that are required to commence the Permitted Acts, and thereafter shall obtain all Approvals required to complete the Permitted Acts, and also shall comply with the applicable requirements of the Financing Plan (if applicable) in connection with such work. Promptly upon receipt of such Approvals, if any, Permittee shall deliver copies of all Approvals to Licensor, to the extent Licensor was not the entity issuing the applicable Approvals. Licensor shall cooperate with Permittee, at no cost to Licensor, to the extent necessary to obtain such Approvals, subject to the limitations of the OPAs and the Interagency Cooperation Agreements, as applicable.
 - (b) **Exercise of Due Care.** Permittee shall use, and shall cause its Agents to use, due care at all times in performing the Permitted Acts to avoid any damage or harm to Licensor's property and any facilities, in, under, or on the Permit Area, unless

such property or facilities are to be demolished, removed or replaced in connection with the Permitted Acts.

4. **Term of Permit.** The license conferred to Permittee pursuant to this Permit shall commence on the Effective Date (as defined in Section 25 below) and shall expire on _____, _____ **[insert reasonable period to complete Permitted Acts]**; provided, however, that the term of this Permit shall automatically be extended for such additional period as may be required by Permittee, if Permittee is diligently proceeding with the Permitted Acts and if the failure to complete the Permitted Acts is the result of Unavoidable Delay, or, in the case of Infrastructure, if such Infrastructure has not yet been acquired by the City or other public agency that will own or operate such Infrastructure pursuant to the Interagency Cooperation Agreements and the applicable OPA (including the Financing Plan). If Permittee fails to comply with any of the terms or conditions of this Permit and cure such noncompliance within ten (10) business days after receipt of written notice of noncompliance by Permittee (or in the case of Permittee's failure to comply with any obligation that cannot reasonably be cured within such period, in the event Permittee does not commence a cure within such period and diligently pursue such cure to completion), Licensor may, without limiting any of its other rights and remedies, revoke this Permit. Upon termination or revocation of this Permit, Permittee shall surrender the Permit Area to Licensor in the condition required under Section 9.

5. **Insurance.**

(a) **Coverages.** Permittee shall maintain or cause its Agents performing the Permitted Acts to maintain or cause to maintain, throughout the term of this Permit, at no cost to Licensor, insurance as follows:

(i) Comprehensive or commercial general liability insurance with limits not less than One Million Dollars (\$1,000,000) each occurrence combined single limit for bodily injury and property damage, including contractual liability, independent contractors, broad-form property damage, personal injury, products and completed operations.

(ii) Workers' compensation insurance with employers' liability not less than \$1,000,000 each accident.

(iii) Comprehensive or business automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned, non-owned and hired vehicles, if Permittee uses or causes to be used vehicles in connection with its use of the Permit Area.

(b) **General Requirements.** All insurance provided for under this Permit shall be effected under valid enforceable policies issued by insurers of recognized responsibility having a rating of at least A-:VII in the most current edition of Best's Insurance Reports, or otherwise acceptable Licensor.

(i) Should any of the required insurance be provided under a claims-made form, Permittee or Permittee's Agents performing the Permitted Acts shall maintain or cause to be maintained such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Permit, to the effect that, should occurrences during the term give rise to claims made after expiration or revocation of this Permit, such claims shall be covered by such claims-made policies.

(ii) Should any of the required insurance be provided under form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified.

(iii) General and automobile liability insurance policies shall be endorsed or otherwise provide the following:

(1) Show Permittee or Permittee's Agents performing the Permitted Acts as the named insured and **[insert applicable party: the City, the Agency or the Port; if Agency is issuing party, and property is City or Port Property, City or Port should also be named]** and its commissions, boards, departments, officers, agents and employees, as additional insureds, as their respective interests may appear hereunder.

(2) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Permit, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(3) All policies shall be endorsed to provide thirty (30) days' advance written notice to Licensor of cancellation mailed to the address(es) for Licensor set forth in Section 23, except in the case of cancellation for nonpayment of premium, in which case cancellation shall not take effect until ten (10) days prior written notice has been given. Permittee covenants and agrees to give Licensor reasonable notice in the event that it learns or has any reason to believe that any such policy may be canceled or that the coverage of any such policy may be reduced.

(c) **Proof of Insurance.** Permittee shall deliver to Licensor certificates of insurance in form reasonably satisfactory to Licensor, evidencing the coverages required hereunder, on or before the Effective Date of this Permit ("Evidence of

Insurance”), and Permittee shall provide Licensor with Evidence of Insurance thereafter before the expiration dates of expiring policies. In addition, Permittee shall deliver to Licensor complete copies of the relevant policies upon request therefor from Licensor. If Permittee shall fail to procure such insurance, or fails to deliver Evidence of Insurance as required herein, and such failure continues for more than ten (10) days following written notice from Licensor to Permittee, Licensor may, at its option, procure the same for the account of Permittee, and the reasonable cost thereof shall be paid to Licensor within thirty (30) days after delivery to Permittee of bills therefor. Licensor shall notify Permittee within thirty (30) days of its receipt of Evidence of Insurance whether Evidence of Insurance is not acceptable to Licensor.

- (d) Notwithstanding anything to the contrary in this Permit, Permittee’s compliance with this Section 5 shall in no way relieve or decrease liability of Permittee under Section 12 below, or any other provision of this Permit.

6. **Compliance with Laws.** Permittee shall, at its expense, conduct and cause to be conducted all Permitted Activities on the Permit Area in a safe and reasonable manner and in compliance with all Laws (including, without limitation, the Americans with Disabilities Act) whether presently in effect or subsequently adopted and whether or not in the contemplation of the parties. Nothing contained in this Section 6 shall, however, be deemed to modify or expand Permittee’s obligations under Section 13 of this Permit with respect to Hazardous Substances or any of Permittee’s obligations under the Environmental Investigation and Response Programs (“EIRPs”) attached to the OPAs, and to the extent of any inconsistency between this Section 6 and Section 13 and the EIRPs, Section 13 and the EIRPs shall control. In addition, to the extent of any inconsistency between Section 13 and the EIRPs, the EIRPs shall control. Permittee shall, at its sole expense, procure and maintain in force at all times during its use of the Permit Area any and all Approvals necessary to conduct the activities allowed hereunder. Permittee understands and agrees that Licensor is entering into this Permit in its capacity as a property owner with a proprietary interest or as a tenant with a leasehold interest in the Permit Area and not as a regulatory agency with police powers. Permittee further understands and agrees that no approval by Licensor for purposes of this Permit shall be deemed to constitute approval of any federal, state, City Agency (except for the specific approvals expressly granted by Licensor herein) or other local regulatory authority with jurisdiction).
7. **Covenant to Maintain Permit Area.** In connection with its use hereunder, Permittee shall at all times, at its sole cost, maintain the Permit Area in a safe and secure condition, to the extent the Permit Area may be affected by Permittee’s activities hereunder.
8. **Signs.** Except for construction signs (which may include informational signs identifying Permittee as the developer of the applicable Improvements, if any; provided that any such informational signage shall be subject to the approval of Licensor, not to be unreasonably withheld, conditioned or delayed), temporary safety and warning signs, or any signs

contemplated by the OPAs, Redevelopment Plan or Plan Documents, or otherwise approved by City Agencies or the Agency in connection with the Approvals, Permittee shall not place, erect or maintain any sign, advertisement, banner or similar object on the Permit Area.

9. **Surrender.** Except as specifically provided in this Section 9, upon the expiration of this Permit or within ten (10) days after any sooner revocation or other termination of this Permit, Permittee shall surrender the Permit Area, **[insert the appropriate language: (i) if the Permit is for environmental Investigation or Response Measures, insert “in substantially the condition the Permit Area was in prior to the Effective Date, including but not limited to (i) closing wells in accordance with applicable Environmental Laws, (ii) filling in borings, and (iii) removal, or other disposition consistent with the Risk Management Plans and the EIRPs, of stockpiles of soil created by Permittee under the Permit, except for (x) conditions created or exacerbated by any person or entity other than Permittee or its Agents, (y) any monitoring wells required by the RWQCB to remain in the Permit Area as part of obtaining Final Site Clearance, or (z) any other measures, structures, or changes to the Permit Area contemplated by the [Redevelopment Plan] or as required by the Risk Management Plan or the RWQCB to remain in place on the Permit Area, or (ii) if the Permit is for construction of Infrastructure, insert “in a good, clean and slightly condition, free from hazards and clear of all debris, with all property of Permittee (other than Infrastructure) removed and all damage caused by the removal repaired.”]** Notwithstanding the foregoing, Permittee shall have no obligation to restore any damage resulting from reasonable wear and tear, casualty not caused by Permittee or its Agents, or condemnation. The obligations of Permittee under this Section 9 shall survive the termination of this Permit.
10. **Licensor’s Right to Cure Defaults by Permittee.** If Permittee fails to perform its obligations, if any, under this Permit to restore the Permit Area, or to repair damage to the Permit Area, or if Permittee defaults in the performance of any of its other obligations under this Permit, then Licensor may, at its sole option, remedy such failure for Permittee’s account and at Permittee’s expense by providing Permittee ten (10) business days’ prior written notice of Licensor’s intention to cure such default (except that no such prior notice shall be required in the event of an emergency as reasonably determined by Licensor), except in the case of the construction of Infrastructure, if such remedy would be inconsistent with the remedies in or terms and conditions of any subdivision improvement agreement regarding such Infrastructure. Such action by Licensor shall not be construed as a waiver of any rights or remedies of Licensor under this Permit, and nothing herein shall imply any duty of Licensor to do any act that Permittee is obligated to perform. Permittee shall pay to Licensor within ten (10) days following Licensor’s written demand, all reasonable, out of pocket costs and expenses incurred by Licensor, including, without limitation, reasonable attorneys’ fees, in remedying or attempting to remedy such default, and Permittee’s obligation to pay such sums shall not be limited by

the provisions of Section 26 of this Permit. Permittee's obligations under this Section 10 shall survive the termination of this Permit.

11. **No Costs to Licensor.** Except as otherwise provided in the OPAs, Redevelopment Plan or Plan Documents, Permittee shall bear all costs or expenses of any kind or nature in connection with its use of the Permit Area. Permittee shall keep the Permit Area free and clear of any liens or claims of lien arising out of or in any way connected with Permittee's use of the Permit Area.

12. **Indemnity.**

(a) **General Indemnification.**

(i) Except as hereinafter specifically provided, Permittee shall indemnify, defend and hold harmless Licensor, its commissions, departments, boards, officers, agents, employees, permittees and contractors and each of them, from and against any and all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the Licensor of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the Licensor to take any action (collectively, "Indemnified Claims") arising in any manner out of (a) any injury to or death of any person or damage to or destruction of any property occurring in, on or about the Permit Area, or any part thereof, whether the person or property of Permittee or its Agents, their invitees, guests or business visitors (collectively, "Invitees"), or third persons, resulting from any use or activity by Permittee or its Agents under this Permit, (b) any failure by Permittee to faithfully observe or perform any of the terms, covenants or conditions of this Permit, or (c) the use of the Permit Area or any activities conducted thereon under this Permit by Permittee, its Agents or Invitees. The foregoing indemnity shall exclude any Indemnified Claims to the extent they result from the negligence or willful or other actionable misconduct of Licensor or its Agents or Invitees. Permittee's obligations under this Section 12 shall survive the expiration or other termination of this Permit. The Owner 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.

(ii) The agreement to indemnify, defend and hold harmless set forth in Section 12(a) is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which Permittee may have to Licensor in the OPAs, the Land Transfer Agreements or this Permit, at common law or

otherwise except as same may be limited by the provisions of the OPAs, Land Transfer Agreements or this Permit.

- (iii) Licensor agrees to give prompt notice to Permittee with respect to any suit or claim initiated or threatened against Licensor, and in no event later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such claim, which Licensor has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to Permittee, then Permittee's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify Permittee shall not affect the rights of Licensor or the obligations of Permittee hereunder unless Permittee is prejudiced by such failure, and then only to the extent of such prejudice. Permittee, at its option but subject to the reasonable consent and approval of Licensor, shall be entitled to control the defense, compromise or settlement of any such matter through counsel of Permittee's own choice; provided, however, that in all cases Licensor shall be entitled to participate in such defense, compromise or settlement at its own expense. If Permittee shall fail, however, in Licensor's reasonable judgment, within a reasonable time following notice from Licensor alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, Licensor shall have the right promptly to hire counsel at Permittee's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to Licensor upon receipt by Permittee of a properly detailed invoice therefor.
- (b) Permittee shall not permit any mechanics' or materialmen's liens to be levied against the Permit Area for any labor or material furnished to Permittee or claimed to have been furnished to Permittee or to Permittee's Agents in connection with the installation of Infrastructure by Permittee and Permittee shall hold Licensor free and harmless from any and all mechanics' or materialmen's liens connected with or arising from the installation of Infrastructure.
- (c) For purposes of Section 12(a), Permittee's operations and activities include but are not limited to those of its Agents.
- (d) Nothing in this Section 12 or elsewhere in this Permit shall require Permittee to defend, indemnify or hold harmless Licensor or any of its commissions, departments, boards, officers, agents or employees from any Indemnified Claims resulting from the discovery or disclosure of Hazardous Substances on, in, under or about the Permit Area or shall serve to modify or increase any obligations of Permittee or Licensor under Section 13 or the EIRPs with respect to any Hazardous Substances on, about or under the Permit Area, it being the intention of the Parties, that Section 13 and the EIRPs shall govern the rights and obligations of the Parties with respect to Remediation and Response measures for Hazardous Substances in, on or about the Permit Area in connection with the Permitted Acts.

13. **Implementation of Environmental Investigation and Response Measures.**

(a) **Definitions.** As used in this Section 13, the following terms shall have the following meanings:

- (1) "Claims" means all claims, costs, damages (including consequential damages, fines, judgments, penalties, losses, demands, liabilities or expenses including, without limitation, personal injury claims; payment of liens; sums paid in settlement of claims; fees of attorneys, consultants, and experts; the capital and operating costs of any Investigation or Remediation; loss of use or damages; loss of profits, rentals or other business opportunities or property losses; increased development costs; and damages to natural resources or to property.
- (2) "Community Facilities Parcels" shall mean the School/Fire Station, the School Site and the School Play Yard.
- (3) "Construction" means construction of the Initial Permanent Improvements, starting with groundbreaking in connection with the commencement of physical construction of such improvements and ending with the completion of physical construction for Open Space and Street Parcels and issuance of a Certificate of Occupancy for the Affordable Housing Parcels.
- (4) "Environmental Laws" means all federal, state and local laws, regulations, ordinances, and judicial and administrative directives, orders and decrees dealing with or pertaining to solid or hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substances use or storage, and community right-to-know requirements related to the work being performed under this Permit.
- (5) "Existing Street Parcels" means those existing (public or private) streets or portions thereof in the South Plan Area and the North Plan Area, as more particularly described in the North OPA and the South OPA which the City owns, that will remain streets and whose ownership will not be transferred under the Land Transfer Agreements. Existing Street Parcels are those portions of the following streets existing on August 1, 1998 that will not be transferred: Third Street, Fourth Street, Berry Street, Townsend Street, King Street, Seventh Street, a portion of Sixteenth Street, a portion of Terry Francois Boulevard, Mariposa Street, Pennsylvania Street, a portion of Owen Street, a portion of Illinois Street, and a portion of Mission Rock Street, as more particularly identified on Exhibit C.
- (6) "Final Site Clearance" means a written statement from the RWQCB providing that the environmental condition of a parcel is appropriate for its designated uses as set forth in the Redevelopment Plan and Plan Documents, and that no

further Investigation or Response is required other than that specified in the RMP or is imposed in a recorded Environmental Covenant and Restriction under the Cal. Civ. Code §1471 or other institutional controls approved by the RWQCB. An environmental Certification of Completion issued by the RWQCB under Cal. Health & Safety Code §25264 shall be deemed to be the equivalent of Final Site Clearance; provided, however, that Final Site Clearance may be issued by the RWQCB in the absence of a Certificate of Completion.

- (7) "Hazardous Substance(s)" means any substance, material or waste that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or to the environment, including, but not limited to petroleum, petroleum-based products, natural gas, or any substance, material, or waste that is or shall be listed, regulated or defined by federal, state or local statute, regulation, rule, ordinance or other governmental requirement to be hazardous, acutely hazardous, extremely hazardous, toxic, radioactive, biohazardous, infectious, or otherwise dangerous.
- (8) "Investigate" or "Investigation" when used with reference to Hazardous Substances means any activity undertaken to determine the nature and extent of Hazardous Substances that may be located in, on, under or about the property or which have been, are being, or are threatened to be Released into the environment.
- (9) "New Street Parcels" means that portion of Berry Street between King Street and Mall Street (adjacent to Seventh Street), and a portion of the King Street frontage road, to be dedicated as public streets, a portion of Sixteenth Street, South Street, Fourth Street from the South Commons to Mariposa Street, and a portion of Terry Francois Boulevard, as more particularly identified on Exhibit C.
- (10) "Open Space Parcels" means parcels which shall be improved as open space as parks and recreation purposes.
- (11) "Regional Water Quality Control Board" or "RWQCB" means the Regional Water Quality Control Board for the San Francisco Bay Region, its Executive Officer, or staff authorized to make decisions regarding the subject at issue.
- (12) "Release" when used with respect to a Hazardous Substance means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing of the Hazardous Substance into the environment.

- (13)“Response” or “Respond” or “Remediate” when used in a reference to Hazardous Substances means any activity undertaken to cleanup, remove, contain, treat, stabilize, monitor, or otherwise control or manage, including to manage in place, the Hazardous Substance.
- (14)“Risk Management Plan” or “RMP” means a written plan approved by the RWQCB meeting the requisites of Sections 8.2.1 and 8.2.3 of the Amended CLTA.
- (15)“Street Parcels” means the Existing Street Parcels and the New Street Parcels.
- (b) In Permittee’s performance of the Permitted Acts set forth in Exhibit B, Permittee will comply with all applicable Environmental Laws and all applicable sections of the RWQCB-approved RMP and applicable laws, including Article 20 of the Public Works Code. Notwithstanding any other provision of this Permit, Permittee shall have no obligation to perform Investigation or Response measures more extensive or more stringent than those required by the RWQCB to obtain Final Site Clearance.
- (c) Permittee shall defend, hold harmless and indemnify Licensor, and its officers, agents, employees, permittees and contractors and, if Licensor is a tenant, Permittee shall also defend, hold harmless and indemnify the property owner and its officers, agents, employees, permittees and contractors, from and against any and all Claims resulting from any Release or threatened Release of a Hazardous Substance to the extent that such Release or threatened Release is directly created or aggravated by the specific activities undertaken by Permittee pursuant to this Permit or by any breach of or failure to duly perform or observe any term, covenant or agreement in this Permit to be performed or observed by Permittee including, but not limited to, any violation of any Environmental Law caused by Permittee’s performance or any violation by Permittee of the applicable provisions of the RWQCB-approved RMP; provided, however, that Permittee shall have no liability, nor any obligation to defend, hold harmless or indemnify any person for any such Claim resulting (i) from the discovery or disclosure of any pre-existing condition, (ii) from the movement of soil or groundwater or other activity undertaken by Permittee, which concerns Hazardous Substances existing prior to Permittee’s entry upon the Permit Area so long as such movement or activity is consistent with the RMP, or (iii) resulting from the negligence or willful or other actionable misconduct of Permittee or its agents or invitees. Permittee’s obligations under this Section 13(c) shall survive the expiration or other termination of this Permit. In addition, the terms and conditions of Sections 12(a)(ii) and (iii) of this Permit shall govern the indemnity set forth in this Section 13(c), and are incorporated herein by this reference.

(d) **Environmental Releases.**

(i) **Licensor Release.**

The following release extends to any Permit Area which is on an Open Space Parcel, Street Parcel or Community Facilities Parcel to the extent that Licensor has not already provided a release of liability to Permittee in the Amended CLTA or the Catellus Lease. For any particular Permit Area, the release shall take effect for such Permit Area upon the issuance of a Permit to Enter from the Agency or City.

Licensor, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges Permittee and its shareholders, officers, directors, agents, consultants, affiliates, predecessors, successors, lenders, managers, tenants, servants, employees, invitees, guests, and assigns (collectively, "Permittee Entities") from any and all Claims at law or in equity, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of this Permit, which Licensor has or may have in the future, arising out of, or in any way connected with, the environmental or physical condition of the Permit Area, or any law or regulation applicable thereto. Notwithstanding the foregoing, the release set forth in the immediately preceding sentence shall not extend to: (i) any Claim against Licensor arising out of Permittee's failure to perform actions or negligent performance of actions specified in the North EIRP or South EIRP or this Permit for which Permittee has responsibility, (ii) any Claim against Licensor, or its officers, tenants, lenders, managers, employees, agents, consultants, assigns, invitees, and guests (collectively, "Licensor Entities") asserted by any third party alleging injury or damage from acts, omissions, agreements or undertakings by any Permittee Entities, (iii) any Claim arising out of a Hazardous Substance which originates on land owned by Permittee and which first migrates onto the Permit Area after Permittee obtains Final Site Clearance for it, (iv) any Claim asserted against Licensor Entities by any private party in a citizen's suit capacity, (v) any Claim based on or arising from an obligation under a separate written agreement between the Parties, (vi) any Claim asserted against Licensor Entities by any governmental entity or agency, or (vii) any Claim asserted by the City in its regulatory capacity, except that Licensor acknowledges that pursuant to Cal. Health & Safety Code §25264(c), no state or local agency (including Licensor) may take action against Permittee for hazardous materials releases at the Premises once a Certificate of Completion is issued for such parcels under Cal. Health & Safety Code §25264(b) unless provided otherwise in Cal. Health & Safety Code §25264(c).

Except as expressly excluded above, the foregoing release includes all Claims, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the Permit, which arise out of (i) the need or alleged need for

additional Investigation or Remediation on the Permit Area, and (ii) Investigation or Remediation arising from the presence of Hazardous Substances on, or originating on and migrating from, the Permit Area, or other environmental conditions of the Permit Area, whether such conditions or Hazardous Substances existed prior to or subsequent to Permittee's entry. Except as set forth in this Section 13(d), Licensors expressly waives any rights or benefits available to it under the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Licensors hereby specifically acknowledges that it has carefully reviewed this release and discussed its import with legal counsel and that the provisions of this release are a material part of the Permit.

In the event that Permittee is not Catellus Development Corporation, a Delaware corporation, and subject to Catellus Development Corporation's execution of the release of Licensors Entities in Section 13(d)(ii) below, then Licensors, on behalf of itself and its agents, affiliates, successors and assigns, agrees that, in addition to Permittee Entities, the release in this Section 13(d)(i) shall extend also to Catellus Development Corporation and its shareholders, officers, directors, agents, consultants, affiliates, predecessors, successors, lenders, managers, tenants, servants, employees, invitees, guests, and assigns ("Catellus Entities"). Licensors also makes the same express waiver of rights and benefits regarding Claims against Catellus Entities as it does for Claims against Permittee Entities in this Section 13(d)(i).

[Licensors initials]

(ii) Permittee Release.

The following release extends to any Permit Area which is on an Open Space Parcel, Street Parcel or Community Facilities Parcel to the extent that Permittee has not already provided a release of liability to Licensors in the Amended CLTA or the Catellus Lease. For any particular Permit Area, the release shall take effect for such parcel upon the issuance of a Permit to Enter from the Agency or City.

The Permittee, for itself and its agents, affiliates, successors and assigns, hereby releases and forever discharges the Licensor Entities from any and all Claims at law or in equity, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of this Permit, which Permittee has or may have in the future, arising out of, or in any way connected with, the environmental or physical condition of the Permit Area, or any law or regulation applicable thereto. Notwithstanding the foregoing, the release set forth in the immediately preceding sentence shall not extend to: (i) any Claim against Permittee arising out of the failure of Licensor Entities to perform actions or negligent performance of actions specified in this Permit for which the Licensor Entities have responsibility, (ii) any Claim against Permittee Entities asserted by any third party alleging injury or damage from acts, omissions, agreements or undertakings by any Licensor Entities, (iii) any Claim arising out of a Hazardous Substance which originates on land owned by a Licensor Entity and which first migrates onto the Permit Area after Permittee obtains Final Site Clearance for it, (iv) any Claim asserted against the Permittee Entity by any private party in a citizen's suit capacity, (v) any Claim based on or arising from an obligation under a separate written agreement between the Parties, (vi) any Claim asserted against the Permittee Entities by any governmental entity or agency, or (vii) any Claim against the Permittee Entities by the Licensor Entities in its regulatory capacity, except that the Licensor acknowledges that pursuant to Cal. Health & Safety Code §25264(c), no state or local agency (including the Licensor) may take action against the Permittee for hazardous materials releases at the Permit Area once a Certificate of Completion is issued for such Permit Area under Cal. Health & Safety Code §25264(b) unless provided otherwise in Cal. Health & Safety Code §25264(c).

Except as expressly excluded above, the foregoing release includes all Claims, whether direct or indirect, foreseen or unforeseen, or known or unknown at the time of the Permit, which arise out of (i) the need or alleged need for additional Investigation or Remediation on the Permit Area, and (ii) Investigation or Remediation arising from the presence of Hazardous Substances on, or originating on and migrating from, the Permit Area, or other environmental conditions of the Permit Area, whether such conditions or Hazardous Substances existed prior to or subsequent to a Licensor Entity's grant of the Permit. Except as set forth in this Section 13(d), the Permittee expressly waives any rights or benefits available to it under the provisions of Section 1542 of the California Civil Code, which provides as follows:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

The Permittee hereby specifically acknowledges that it has carefully reviewed this release and discussed its import with legal counsel and that the provisions of this release are a material part of the Permit.

In the event that Catellus Development Corporation, a Delaware corporation, is not the Permittee, and if Catellus Development Corporation executes the release in this Section 13(d)(ii) by signing below, then Catellus Development Corporation, for itself and its affiliates, successors and assigns, agrees that it is providing the same release to Licensor Entities as Permittee is providing to Licensor Entities in this Section 13(d)(ii). Catellus Development Corporation also makes the same express waiver of rights and benefits regarding Claims against Licensor Entities as provided by Permittee in this Section 13(d)(ii).

[Permittee initials]

Catellus Development Corporation

By: _____

Its: _____

14. **No Assignment.** This Permit is personal (except as hereinafter provided) to Permittee and shall not be Transferred by Permittee under any circumstances, except that this Permit may be Transferred by Permittee in connection with any Transfer permitted under the OPAs or Land Transfer Agreements (including, without limitation, an assignment to a Mortgagee). Any attempt to Transfer this Permit in violation of the immediately preceding sentence shall be null and void and cause the immediate termination and revocation of this Permit.
15. **Non-Liability of Licensor Officials, Employees and Agents.** Notwithstanding anything to the contrary in this Permit, no elective or appointive board, commission, member, officer, employee or agent of Licensor shall be personally liable to Permittee, its successors and assigns, in the event of any default or breach by Licensor or for any obligation of Licensor under this Permit, nor shall any officer, director, shareholder, partner or employee of Permittee be personally liable to Licensor, its successors or assigns, in the event of any default or breach by Permittee or for any obligation of Permittee under this Permit.
16. **No Joint Venturers or Partnership; No Authorization.** This Permit does not create a partnership or joint venture between Licensor and Permittee as to any activity conducted

by Permittee on, in or relating to the Permit Area. Permittee is not a State actor with respect to any activity conducted by Permittee on, in, or under the Permit Area. Except as provided in this Permit, the giving of this Permit by Licensor does not constitute authorization or approval by Licensor of any activity conducted by Permittee on, in or relating to the Permit Area.

[Sections 17, 19, 21 and 22 are to be included only in each Permit to Enter between Permittee and the City and/or the Port and will not appear in any Permit to Enter between Catellus and the Agency.]

17. **MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, *et seq.* The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Permittee acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.
18. **Non-Discrimination.** Permittee shall not, in the operation and use of the Permit Area, discriminate against any person or group of persons solely because of race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or acquired immune deficiency syndrome (AIDS) or AIDS related condition (ARC). The provisions of Chapters 12B and 12C of the San Francisco Administrative Code, relating to nondiscrimination by parties contracting with the City and County of San Francisco, are incorporated herein by reference and made a part hereof as though fully set forth herein. Permittee agrees to comply with all of the provisions of such Chapters 12B and 12C that apply to parties contracting with the City and County of San Francisco.
19. **Tropical Hardwoods and Virgin Redwoods.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood wood product or any virgin redwood or virgin redwood wood product.
20. **Taxes.** Permittee agrees to pay taxes of any kind, including possessory interest taxes, if any, in the event that this Permit creates a possessory interest subject to property taxation, that may be lawfully assessed on Permittee's interest under this Permit or use of the Permit Area pursuant hereto and to pay any other taxes, excises, licenses, permit charges or assessments based on Permittee's usage of the Permit Area that may be imposed upon Permittee by applicable law. Permittee shall pay all such charges when they become due and payable and before delinquency. Nothing in this Section 20 shall be construed as indicating an intent to create a possessory interest subject to taxation, and Licensor agrees that it will cooperate with Permittee in efforts to lawfully minimize or avoid any such assessments.

21. **Burma (Myanmar) Business Prohibition.** Permittee is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a “prohibited person or entity” as defined in Section 12J.2(G) of the San Francisco Administrative Code. Licensor reserves the right to terminate this Permit due to a default if Permittee violates the terms of this Section 21. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Permittee to comply with any of its requirements shall be deemed a material breach of this Permit. In the event that Permittee fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Permittee shall be liable for liquidated damages for each violation in the amount of One Thousand Dollars (\$1,000). Permittee acknowledges and agrees that the liquidated damages assessed shall be payable to Licensor upon demand and may be set off against any moneys due to Permittee from Licensor pursuant to any contract with Licensor.
22. **Prohibition of Tobacco Advertising.** Permittee acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City and/or Port, including the property which is the subject of this Permit. This prohibition includes the placement of the name of a company producing, selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.
23. **Notices.** Except as otherwise expressly provided herein, any notices given under this Permit shall be effective only if in writing and given by delivering the notice in person, by sending it first class mail or certified mail with a return receipt requested or overnight courier, addressed as follows:

Licensor:

Permittee: Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: Mission Bay Development Office
Telefacsimile: 415/974-4613

With a copy to: Catellus Development Corporation
201 Mission Street, Second Floor
San Francisco, California 94105
Attn: General Counsel
Telefacsimile: 415/974-4613

and: Coblentz, Patch, Duffy & Bass, LLP
222 Kearny Street, 7th Floor
San Francisco, California 94108
Attention: Pamela S. Duffy, Esq.
Telefacsimile: 415/989-1663

Notices herein shall be deemed given three (3) days after the date when they shall have been mailed if sent by first class or certified mail, one (1) day after the date when sent by overnight courier, or upon the date personal delivery is made.

24. **General Provisions.** (a) This Permit may not be amended or modified except by a written instrument signed by an officer or other authorized representative of all parties hereto. (b) No waiver by any party of any of the provisions of this Permit shall be effective unless in writing and signed by the party granting the waiver, and only to the extent expressly provided in such written waiver. (c) All approvals and determinations of Licensor required or permitted hereunder may be made in the reasonable discretion of Licensor. (d) This instrument and the North OPA, South OPA, Redevelopment Plans, Agency Lease and/or Land Transfer Agreements, as applicable (including the Attachments and Exhibits thereto), contain the entire agreement between the parties concerning this Permit and all prior written or oral negotiations, discussions, understandings and agreements are merged herein. (e) The section and other headings of this Permit are for convenience of reference only and shall be disregarded in the interpretation of this Permit. (f) Time is of the essence. (g) This Permit shall be governed by California law [insert only in Permits issued by Port and City: "and the City's Charter"]. (h) If either party institutes any action or proceeding in court or before an arbitrator to enforce any provision hereof or for damages by reason of an alleged breach of any provision of this Permit, the prevailing party shall be entitled to receive from the other party court or arbitration 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 arbitrator may judge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding. Attorneys' fees under this Section 24 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 Permit, reasonable fees of attorneys and any in-house counsel for Licensor or Permittee 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 Licensor's or Permittee's in-house counsel's services were rendered who practice in the City and law firms with approximately the same number of attorneys as employed by Licensor or in the case of Permittee's in-house counsel, as employed by the outside counsel for Permittee. (i) The obligations of each Permittee hereunder shall be joint and several. (j) Permittee may not record this Permit or any memorandum hereof. (k) Subject to the limitations on assignments or other transfers by Permittee hereunder, this Permit shall be binding upon

and inure to the benefit of the parties and their respective heirs, representatives, successors and assigns. (l) This Permit may be executed in counterparts. [insert if Agency issues Permit: (m) City is an intended third party beneficiary of this Permit, including the indemnification provisions contained herein.]

25. **Effective Date; Approval.** This Permit shall become effective on the date (the "Effective Date") upon which the parties hereto have duly executed and delivered this Permit.
26. **Monetary Damages.** Licensor and Permittee have determined that monetary damages generally are inappropriate and it would be extremely difficult and impractical to fix or determine the actual damages arising to either as a result of a breach or default hereunder and that equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this Permit. Except as otherwise provided herein to the contrary (and then only to the extent of actual damage and not consequential or special damages), neither Licensor nor Permittee would have entered into this Permit if either were to be liable in damages under or with respect to this Permit. Consequently, the parties have agreed that no party shall be liable in damages to the other, to any other Permittee or Transferee, or any other Person, and each covenants not to sue for or claim any damages under this Permit and expressly waives its right to do so; provided, however that damages shall be available as to defaults which arise out of the failure to pay any monetary fee or reimbursement required to be paid under this Permit, including failure to pay sums due under any indemnity.

Licensor and Permittee have executed this Permit as of the date first written above.

PERMITTEE:

CATELLUS DEVELOPMENT CORPORATION, a Delaware corporation [or if another party, insert name of other party]

By: _____

Name: _____

Its: _____

LICENSOR

By: _____