

TAB 5

MISSION BAY NORTH
INTERAGENCY COOPERATION AGREEMENT

THIS MISSION BAY NORTH INTERAGENCY COOPERATION AGREEMENT (this "Agreement") dated as of November 16, 1998, is between the CITY AND COUNTY OF SAN FRANCISCO, a charter city and county (the "City") and the REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic of the State of California (together with any successor public agency designated by or pursuant to law, the "Agency"). Unless otherwise defined in this Agreement, all initially capitalized terms used in this Agreement shall have the meanings given them in the Mission Bay North Redevelopment Plan (as described in Paragraph A of the Recitals, below) or in the North OPA (as described in Paragraph C of the Recitals, below), as the case may be.

THIS AGREEMENT 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 North Redevelopment Project and this Agreement by Ordinance No. 327-98, adopted by the Board on October 26, 1998 and approved by the Mayor on October 30, 1998. The Redevelopment Plan, as it may be amended, is referred to as the "Mission Bay North Redevelopment Plan."

B. The Mission Bay North Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by the China Basin Channel and Townsend, Third and Seventh Streets and containing approximately 65 acres of land, as more particularly described in such plan (the "North Plan Area"). The Mission Bay North Redevelopment Plan describes a mixed-use development comprised of up to approximately three thousand (3,000) units of housing, including both market-rate and affordable rental and for-sale units, approximately six (6) acres of public open space, up to approximately five hundred thousand (500,000) Leasable square feet of retail, commercial and entertainment uses, and parking and loading uses. In addition, the Agency may develop or cause to be developed approximately five thousand (5,000) Leasable square feet local serving retail uses on the Agency Affordable Housing Parcels. The project description and land use plan for the North Plan Area are attached as Exhibit A to this Agreement.

C. In order to facilitate the implementation of the Mission Bay North Redevelopment Plan, the Agency and Catellus Development Corporation, a Delaware corporation ("Catellus") are entering into or have entered into a Mission Bay North Owner Participation Agreement (the "North OPA"), dated as of November 16, 1998, regarding the development of Improvements within the North Plan Area by Catellus and its Transferees permitted under the North OPA (the "Owner"). In accordance with the terms and conditions of the North OPA, the Owner will develop the Improvements in the North Plan Area in Major Phases. Each of the Major Phases will contain subphases, including individual building Projects. The Owner will have the flexibility to determine the number and size of the Major Phases and subphases in order to

respond to market conditions and available financing. The North OPA sets forth phasing principles that will govern the Owner's development in the North Plan Area, including, without limitation, linkages relating to affordable housing, open space and infrastructure requirements. The Mission Bay North Redevelopment Plan and its implementing documents, including, without limitation, the North OPA, the Design for Development and the Mission Bay Subdivision Ordinance and regulations adopted thereunder, are referred to in this Agreement individually and collectively as the "Plan Documents."

D. In conjunction with its development of the North Plan Area, the Owner shall construct and improve Infrastructure in accordance with the Infrastructure Plan, a copy of which is attached as Exhibit B to this Agreement. Under the Infrastructure Plan, the Owner shall generally construct Infrastructure Improvements in phases as it builds adjacent development Projects. In addition, the Infrastructure Plan establishes thresholds or triggers for certain major transportation and other Infrastructure Improvements in particular instances where such linkages to adjacent development may not be adequate to address Infrastructure needs associated with the development of a Major Phase or Project. In order to provide for the implementation of the Infrastructure Plan consistent with the Mission Bay North Redevelopment Plan, the Mission Bay Subdivision Ordinance is being adopted concurrently herewith, and subdivision regulations are being adopted thereunder.

E. The redevelopment of the North Plan Area by the Owner in accordance with the Plan Documents affords numerous public benefits for the City and County and its residents. Such public benefits include, without limitation, the revitalization of the North Plan Area, which is currently blighted, and the elimination of the blighting influences, the provision of substantial new affordable housing, the provision of a variety of publicly accessible open space, the creation and enhancement of public access to the waterfront, and the creation of jobs, including employment opportunities for economically disadvantaged individuals.

F. Under Section 33220 of the Community Redevelopment Law, certain public bodies, including the City, are authorized to aid and cooperate, with or without consideration, in the planning, undertaking, construction or operation of redevelopment projects. As used in this Agreement, references to the "City" or to "City Agency" or "City Agencies" shall, where appropriate, include all City departments, agencies, boards, commissions and bureaus with subdivision or other permit, entitlement or approval authority or jurisdiction over any Major Phase or individual Project in the North Plan Area, or any portion thereof, including, without limitation, the Port Commission (the "Port"), the City Administrator, the Department of Public Works, 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 and the Police Commission, together with any successor City agency, department or officer designated by or pursuant to law.

G. Pursuant to Sections 33220, 33343, 33344 and 33370 of the Community Redevelopment Law, and in order to promote development in accordance with objectives and purposes of the Mission Bay North Redevelopment Plan and the Plan Documents, the City and the Agency wish to enter into this Agreement to provide for their cooperation in administering

the process for control and approval of subdivisions and all other applicable land use, development, construction, improvement, infrastructure, occupancy and use requirements and in establishing the City Regulations, policies and procedures relating to such approvals, and to declare the City's intent to undertake and complete actions and proceedings necessary to be carried out by the City under the Mission Bay North Redevelopment Plan and Plan Documents.

ACCORDINGLY, in consideration of the public benefits and other matters described in the foregoing recitals, the covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, the City and Agency agree as follows:

1. Purpose of this Agreement. The purpose of this Agreement is to facilitate the implementation of the Mission Bay North Redevelopment Plan and the development of the North Plan Area in accordance with the Mission Bay North Redevelopment Plan and the Plan Documents. The parties agree that the development of the North Plan Area pursuant to the Mission Bay North Redevelopment Plan and the Plan Documents is in the best interests of the City and the health, safety and welfare of its residents, and in accord with the public purposes and provisions of applicable federal, state and local laws. This Agreement is intended to provide the framework for cooperation among the City Agencies and the Agency in accordance with the Mission Bay North Redevelopment Plan and the Plan Documents with respect to the review and approval of Major Phase and Project authorizations in the North Plan Area and, where appropriate, to facilitate cooperation of the City Agencies in issuance of those permits, approvals, agreements and entitlements at each applicable stage of development of the Project. The Agency and the City acknowledge and agree that this Agreement is entered into for their benefit and for the express benefit of the Owner, that the Owner is entitled to rely on this Agreement, receive benefits conferred by this Agreement and enforce any provision of this Agreement against any party to this Agreement; provided, however, neither the Agency or the City shall be liable to the Owner for damages, except as between the Owner and the Agency under the North OPA, as further provided in Section 14.2 below. The parties further intend that during the term of this Agreement, the Owner shall be entitled to develop its property within the North Plan Area in accordance with this Agreement, the Mission Bay North Redevelopment Plan and the Plan Documents.

2. Cooperation. Pursuant to Sections 33220, 33343, 33344 and 33370 of the Community Redevelopment Law, the City shall aid the Agency, and the City and the Agency shall cooperate with one another, in carrying out the Mission Bay North Redevelopment Plan and the Plan Documents and shall, for the term of this Agreement, undertake and complete all actions or proceedings necessary or appropriate to ensure the continued fulfillment of the objectives of the Mission Bay North Redevelopment Plan and the Plan Documents, including, without limitation, preventing the recurrence or spread of conditions causing blight in the North Plan Area. Except as otherwise provided in the Infrastructure Plan, the Environmental Investigation and Response Program, the Tax Allocation Agreement and the Mitigation Monitoring Plan adopted pursuant to CEQA, nothing in this Section or elsewhere in this Agreement with regard to such cooperation shall obligate any of the City Agencies to expend any sums of money or incur any costs (other than administrative costs, subject to the Owner's obligation to pay or reimburse such costs, as

part of Agency Costs, in accordance with the North OPA).

2.1 Expeditious Processing of Approvals. The City Agencies and the Agency shall process with due diligence all submissions and applications by the Owner for permits, approvals, agreements and other entitlements for the redevelopment of the North Plan Area that are necessary to carry out the Mission Bay North Redevelopment Plan (including without limitation, all Project and Major Phase reviews and approvals, all subdivision and map approvals, all approvals of construction documents and construction and occupancy permits and all other permits required for a Project), in accordance with the Mission Bay North Redevelopment Plan and the Plan Documents, provided such obligation of the City Agencies and the Agency shall be subject to their acceptance of such submissions and applications as complete and further provided that such obligation shall be subject to the provisions of Section 2.3 below. The City Agencies and the Agency shall treat the redevelopment of the North Plan Area contemplated by the Mission Bay North Redevelopment Plan and the Plan Documents as a priority project for the City and the Agency, respectively, with a need for expeditious processing of Major Phase and other plan reviews, design and construction document reviews, permit applications, subdivision map applications, and other governmental approvals, when application is made for such approvals by the Owner.

(a) Major Phase Approvals. The Agency shall advise applicable City Agencies of any pre-submission conference for an application for a Major Phase approval and shall afford such City Agencies an opportunity to participate in such conference. The Agency shall deliver to all applicable City Agencies a copy of the Owner's Concept Plans submission for a Major Phase approval, within three (3) days after the Agency certifies that it has received a completed application in accordance with the Design Review and Document Approval Procedure. All such City Agencies shall provide the Executive Director of the Agency (the "Agency Director") with their comments on the submission as soon as reasonably possible but no later than fifty (50) days after the Agency's certification of a completed application.

(b) Project Approvals. The Agency shall advise applicable City Agencies of any pre-submission conference for an application for a Project approval and shall afford such City Agencies an opportunity to participate in such conference. The Agency shall deliver to all applicable City Agencies a copy of the Owner's submission of Basic Concept Design for approval of a Project, within three (3) days after the Agency certifies that it has received a completed application in accordance with the Design Review and Document Approval Procedure. All such City Agencies shall provide the Agency Director with their comments on the submission as soon as reasonably possible but no later than forty (40) days after the Agency's certification of a completed application. If the Owner submits an application for approval of a Project at the same time as it submits an application for approval of the Major Phase in which the proposed Project will be located, then the period for response for City Agencies under this subsection shall be extended, to the extent necessary, to up fifty (50) days after the Agency's certification of a complete application for the Major Phase. If the Owner submits an application for approval of a Project at any time before the Major Phase of which the Project is a part is approved, then the City Agencies specified above in this subsection shall provide their comments to the Agency no later than ten (10) days following approval of the Major Phase or forty (40)

days following the Agency's certification of a completed application for the Project approval, depending on which period of time the Agency specifies in its request for comments delivered to the City Agencies.

(c) Design Review. Design review of Major Phases and Projects shall be performed by the Agency pursuant to the Design Review and Document Approval Procedure attached to the North OPA, subject to the following:

(i) Port. The Port shall have the right to review and approve the design for public open space to be constructed by the Owner in accordance with the North OPA on land held under the jurisdiction of the Port Commission and impressed with the Burton Act trust ("Port Open Space"). Such design review shall apply the standards set forth in the Mission Bay North Redevelopment Plan and the Plan Documents. The Port's review and approval of design of Port Open Space means and requires: (i) review and approval of the design by the Port Commission at the stage of (A) submission by the Owner of an application for approval of a Major Phase and (B) submission by the Owner of Basic Concept Design Drawings for a Project; and (ii) review and approval of Schematic Design and Design Development Documents by the Port's Executive Director. In each instance, the Port shall approve, disapprove, or conditionally approve the design, in writing, within the time frames established under this Agreement. If the Port disapproves the design in whole or in part, the Port shall state the reason or reasons and recommend changes or make other recommendations, in writing to the Agency and the Owner. Any such reasons for disapproval or recommended changes must be in conformity with the Mission Bay North Redevelopment Plan and the Plan Documents. To the extent practicable, the Port Commission, where entitled to review of design of Port Open Space, shall consider design at a joint hearing with the Agency. Notwithstanding anything to the contrary above, if Port-owned property constitutes a relatively insignificant portion of an Open Space Parcel, the Port's design approval rights shall apply only to the portion of the open space Improvements to be built on the Port-owned property. Final Construction Documents for a Project shall be consistent with the design previously approved by the Port.

(ii) Planning. The Director of the Department of Planning (the "Planning Director") shall review and comment on the proposed design of Major Phases and Basic Concept Design Drawings for Projects. The Planning Director may provide any comments or recommendations, which must be consistent with the Mission Bay North Redevelopment Plan and Plan Documents, to the Agency Director within the time periods specified in Sections 2.1(a) and (b) for response by City Agencies. Such review by the Planning Director or Planning Commission shall be advisory only.

(d) Review of City Permits by Agency. All City permits, including, but not limited to, Building Permits and permits issued by the Department of Public Works, shall be referred to the Agency for review for compliance with the Mission Bay North Redevelopment Plan and Plan Documents, including any applicable requirements pursuant to CEQA (as defined in Section 8.2), in accordance with the Design Review and Document Approval Procedure.

2.2 Specific Actions by the City. Subject to Section 2.3 below and without limiting

the general provisions of this Agreement regarding the City's cooperation in the process for implementation of the Mission Bay North Redevelopment Plan and the Plan Documents, actions and proceedings by the City in accordance with this Agreement shall include (but not be limited to) the following:

(a) The institution and completion of proceedings for opening, closing, vacating, widening or changing the grades of streets, roads, alleys, sidewalks and other public rights-of-way and for other necessary modifications of the streets, the street layout and other public rights-of-way in the North Plan Area. Such action by the City shall include the requirements of abandonment, removal and relocation by the public utility companies (and, when applicable, City utilities) of their operations within the public rights-of-way as necessary to carry out the Mission Bay North Redevelopment Plan and the Plan Documents, provided that nothing in this Agreement shall be construed to require the cost of such abandonment, removal or relocation to be borne by others than those legally required to bear such cost.

(b) The provision of assistance to the Agency in carrying out the Mission Bay North Redevelopment Plan and the Plan Documents as set forth in this Agreement and in any memoranda of understanding or other agreements among the City Agencies or the City and the Agency that may be entered into in furtherance of this Agreement.

(c) During the term of the Mission Bay North Redevelopment Plan, the revision of the City's General Plan, zoning, subdivision and other land use or building regulations or ordinances if and to the extent necessary for the uses, development and construction of the Project developed pursuant to the Mission Bay North Redevelopment Plan and the Plan Documents.

(d) The acquisition of land and Infrastructure or other improvements from the Agency or the CFD (or similar financing device), and pursuant to the Financing Plan the institution and completion of proceedings for acceptance of a dedication of property or of completed Infrastructure if such Infrastructure has been constructed to City standards in accordance with the Infrastructure Plan and the Financing Plan. The procedures for the payment and construction of the Infrastructure shall be governed by the Financing Plan, including the Acquisition Agreement contemplated thereby

(e) Cooperation in relocating and terminating any rail franchises over excess trackage in block N5 and adjacent uses as necessary or appropriate to implement the Mission Bay North Redevelopment Plan and Infrastructure Plan.

(f) Compliance with the principles regarding Hazardous Substances that are set forth in the Environmental Investigation and Response Program, to the extent such principles are applicable to the City (including its Port) and implementation of those obligations imposed by the Environmental Investigation and Response Program on the City either as "City" or as owner of a parcel.

2.3 Procedures Required Under Applicable Laws. Any actions or proceedings

undertaken by any City Agencies in accordance with this Agreement shall be subject to procedures required under applicable City Regulations as provided in Section 3 of this Agreement, and to the exercise of discretion by City Agencies in making such findings and determinations as are required or permitted under such City Regulations.

2.4 Joint Community Facilities Agreement. The Financing Plan describes the Infrastructure to be constructed in connection with the Owner's development in the Plan Area and the real property to be acquired by the Community Facility District, and it specifies that Special Taxes levied on the Owner's property within the Plan Area are to be used by the Agency to be used for the purposes of financing Infrastructure in the manner and upon the terms and conditions set forth in the Financing Plan. The Agency has the responsibility for providing the Infrastructure to be financed with the Special Taxes and CFD bonds, for purposes of the Mello-Roos Community Facilities Act of 1982, as amended (the "CFD Act"). With respect to the Financing Plan and the respective obligations of the City and the Agency under this Agreement for the Infrastructure that is to be financed with the proceeds of the Special Taxes or CFD bonds and is designated for ownership and operation by the City, and the acceptance of such Infrastructure by the City if such Infrastructure is completed in accordance with applicable City Regulations (including the obligations of the City set forth in Section 2.2(d) of this Agreement), the City and the Agency agree and confirm that this Agreement is a "joint community facilities agreement" for purposes of Section 53316.2 of the CFD Act, and will be beneficial to the residents of the City and the future residents of the Plan Area.

3. Applicable City Regulations. Regardless of any future action by the City, whether by ordinance, resolution, initiative or otherwise, the rules, regulations and official policies applicable to and governing the overall design, construction, fees, use or other aspect of development of the North Plan Area shall be (i) the Mission Bay North Redevelopment Plan and the Plan Documents, (ii) to the extent not inconsistent therewith or not superseded by the Mission Bay North Redevelopment Plan, the Existing City Regulations, (iii) any new or changed City Regulations permitted under the Mission Bay North Redevelopment Plan as referenced in Sections 7 and 8 of this Agreement and (iv) any other proposed new or changed City Regulations that the Owner may otherwise consent to, in writing and in its sole and absolute discretion.

4. Subdivision Map Requirements and Infrastructure Construction. As provided in the California Subdivision Map Act (the "Map Act") and in the Mission Bay Subdivision Ordinance and its implementing regulations adopted pursuant to the Map Act, the City Agencies and, specifically, the Director of Public Works, shall approve parcel maps, tentative maps, vesting tentative maps, and condominium maps in compliance with applicable state and local law and substantially consistent with the Mission Bay North Redevelopment Plan and Plan Documents, and the Board of Supervisors of the City shall approve improvement agreements, improvement plans and final maps in compliance with applicable state and local law and substantially consistent with the Mission Bay North Redevelopment Plan, Plan Documents and previously approved tentative maps.

4.1 Processing Requirements. The Owner shall comply with applicable City Regulations (as set forth in Section 3 of this Agreement) for subdivision maps, including,

without limitation, requirements for public improvement agreements if the Infrastructure has not been completed when the final map is approved, including the provision of adequate security to guarantee completion of the public open space and other Infrastructure improvements required under the North OPA. By this Agreement, the Port delegates to the City's Department of Public Works the authority to grant any approvals required for construction of open space or street Infrastructure on land held under the jurisdiction of the Port Commission and impressed with the Burton Act trust, provided that the Department of Public Works shall provide copies of all applications submitted for such permits on such Port property, together with any other relevant documents submitted by the Owner in connection with such application, to the Port's Chief Harbor Engineer for his or her review and comment. Such review and comment by the Port's Chief Harbor Engineer shall be consistent with the Mission Bay North Redevelopment Plan and Plan Documents and with this Agreement.

4.2 Construction Requirements. Construction requirements for Infrastructure and other Improvements to be built in or for the benefit of the North Plan Area shall be consistent with the Infrastructure Plan, so long as the project described in the attached Exhibit A does not change so as to increase infrastructure demands, except that the City may change the requirements if (i) such changes are necessary to protect the physical health and safety of the public as further provided in Section 7 of this Agreement, (ii) such changes would impose only negligible additional cost (including, without limitation, no adverse effect on Net Available Increment pursuant to the Financing Plan) and would not delay development, limit or restrict the availability of Infrastructure, or impose limits or controls on the timing, phasing or sequencing of development, or (iii) ten (10) or more years following the effective date of the Board of Supervisors ordinance approving the Mission Bay North Redevelopment Plan, the changes reflect advances in technology affecting elements of the Mission Bay North Redevelopment Plan and, with respect to any such changes described in this clause (iii), all of the following conditions are met: (A) such changes would materially decrease the operation and maintenance costs to the City and do not materially interfere with the uses, heights, density and intensity of development described in the North OPA; (B) such changes are adopted on a City-Wide Basis for similar land uses pursuant to a new City Regulation approved by Board of Supervisors ordinance; and (C) such changes would not conflict with the Environmental Investigation and Response Program, including causing any violation of the applicable RMP. As used in this Section and elsewhere in this Agreement, "City-Wide Basis" shall mean all privately-owned property within (1) the territorial limits of the City or (2) any designated use classification or use district of the City so long as (a) any such use classification or use district includes a more than insubstantial amount of affected private property other than affected private property within the Plan Area and the South Plan Area, (b) the use classification or use district includes all private property that receives the general or special benefits of, or causes the burdens that occasion the need for, the new City Regulation or Development Fees or Exactions, and (c) the cost of compliance with the new City Regulation or Development Fees or Exactions applicable to the same type of use in the Plan Area (or portion thereof) does not exceed the proportional benefits to, or the proportional burdens caused by private development in, the Plan Area (or portion thereof).

5. Fees and Exactions.

5.1 Administrative Fees. Nothing in this Agreement shall preclude or constrain the Agency or any City Agency from charging or collecting any Administrative Fee (as such term is defined in Section 304.9 of the Mission Bay North Redevelopment Plan).

5.2 Development Fees and Exactions. During the term of the Mission Bay North Redevelopment Plan, the Development Fees and Exactions which shall be applicable to development by the Owner in the North Plan Area shall be as set forth in Section 304.9 of the Mission Bay North Redevelopment Plan.

5.3 Taxes and Assessments. Nothing in this Agreement, the Mission Bay North Redevelopment Plan or the Plan Documents shall limit the City's or the Agency's ability to impose new or increased taxes or special assessments, including, but not limited to, the special taxes under the Mello-Roos Community Facilities Act of 1982, as amended, to be used in furtherance of the Financing Plan, or any equivalent or substitute tax or assessment; provided, however, the foregoing is not intended to impair or restrict any rights of the Owner under applicable laws to approve new, increased or extended taxes or assessments with respect to the Owner's property, subject to the provisions of the Financing Plan.

6. Building Construction Codes. No Building Permit shall be issued for any construction in the North Plan Area by or on behalf of the Owner during the term of this Agreement unless the application for such Building Permit has been made and processed in a manner consistent with the Mission Bay North Redevelopment Plan and the Plan Documents. The Owner shall comply with the Building Construction Codes (as defined below) in effect at the time of the Building Permit application, subject to the limitations on Development Fees and Exactions as specified in the Mission Bay North Redevelopment Plan; provided, however, if the City has not yet adopted the 1997 Uniform Building Construction Codes as of the Effective Date of this Agreement, then the applicable Building Construction Codes at such time shall be deemed to consist of the more stringent requirements with respect to seismic safety of the (i) 1997 Uniform Building Construction Codes or (ii) the San Francisco Building Construction Code in effect at the time of the Building Permit application. As used in this Section, "Building Construction Codes" means the Building Code, Electric Code, Mechanical Code and Plumbing Code and any construction requirements in the Housing Code and Fire Code of the City (including the Port). All Building Permits issued under the Building Construction Codes shall be issued by the City's Department of Building Inspection. The Department of Building Inspection shall process applications for Building Permits in a manner consistent with this Agreement. By this Agreement, the Port delegates to the City's Department of Building Inspection the authority to issue any Building Permits required for construction on any property owned in trust by the City under the jurisdiction of its Port pursuant to the Burton Act, provided that the Department of Building Inspection shall provide copies of all applications submitted for Building Permits on such Port property, together with any other relevant documents submitted by Owner in connection with such application, to the Port's Chief Harbor Engineer for his or her review and comment. Such review by the Port's Chief Harbor Engineer shall be consistent with the Mission Bay North Redevelopment Plan, the Plan Documents and this Agreement. The Department of Building

Inspection shall be responsible for coordinating all of the City Agencies involved in review of Building Permit applications and shall, at the Owner's request, follow the Department's One-Stop Permit Coordination Program with respect to Building Permits for any Project in the North Plan Area. No such Building Permit shall be issued unless it has first been reviewed and approved by the Agency for consistency with the Redevelopment Requirements in accordance with the North OPA.

7. Protection of the Physical Health and Safety of the Public. Notwithstanding anything to the contrary contained in this Agreement, and in accordance with the provisions of Section 304.9 of the Mission Bay North Redevelopment Plan, the Agency and any City Agency having jurisdiction, shall exercise its discretion in a manner which is consistent with the public health, safety and welfare and shall retain, at all times, its and their respective authority to take any action that is necessary to protect the physical health and safety of the public, including, without limitation, authority to condition or deny a permit, approval, agreement or other entitlement or to change or adopt new City Regulation if required (i) to protect the physical health or safety of the residents of the North Plan Area, the adjacent community or the public, or (ii) to comply with applicable federal or state law or regulations, including, without limitation, changes in Existing City Regulations reasonably calculated to achieve new, more restrictive federal or state attainment standards applicable to the City for water quality, air quality, Hazardous Substances, or otherwise relating to the physical environment, where such proposed new City Regulations are applied to similar land uses on a City-Wide Basis as further provided in Section 304.9 of the Mission Bay North Redevelopment Plan, but subject, in all events, to any rights to terminate any agreement between the Owner and the Agency as set forth in the North OPA or any other Plan Documents. Except for emergency measures, any City Agency or the Agency, as the case may be, will agree to meet and confer with the Owner in advance of the adoption of such measures to the extent feasible; provided, however, such City Agency and the Agency each retain the sole and final discretion with regard to the adoption of any new City Regulation in furtherance of the protection of physical health and safety of the public as provided in this Section. Nothing herein shall expand the Owner's contractual obligations under the Environmental Investigation and Response Program.

8. Non-Conflicting City Regulations.

8.1 General. In addition to the reservation set forth in Section 7 of this Agreement, and consistent with the provisions of Section 304.9 of the Mission Bay North Redevelopment Plan, the City Agencies reserve the right to impose any new City Regulations and any changes to the Existing City Regulations (except for provisions of the Planning Code superseded by the Mission Bay North Redevelopment Plan) that do not conflict with the development contemplated by the Mission Bay North Redevelopment Plan and the Plan Documents. For purposes of this Section, "conflict" means any proposed new or changed City Regulations which (a) preclude or materially increase the cost of performance of or compliance with any provision of the Mission Bay North Redevelopment Plan or Plan Documents or (b) do any of the following: (i) alter the permitted uses of land, (ii) decrease the maximum height of buildings, (iii) reduce the density or intensity of development permitted, (iv) delay development, (v) limit or restrict the availability of Infrastructure, (vi) impose limits or controls on the timing, phasing or sequencing of

development, or (vii) modify Development Fees or Exactions except as permitted by the Mission Bay North Redevelopment Plan. Notwithstanding the foregoing, the City may apply its then current standards for Infrastructure pursuant to then applicable City Regulations (as set forth in Section 3 of this Agreement), if the standard is not otherwise specified in Infrastructure Plan.

8.2 Environmental Review. Nothing in this Agreement shall be deemed to limit any City Agency's or the Agency's ability to comply with the California Environmental Quality Act ("CEQA").

9. Effective Date. This Agreement shall become effective as of the date (the "Effective Date") which is the latest of (i) the date upon which the Mission Bay North Redevelopment Plan becomes effective, (ii) the date upon which the Board of Supervisors ordinance authorizing and approving this Agreement becomes effective, and (iii) the date on which the City and Agency authorize, execute and deliver this Agreement and Catellus executes and delivers the attached Consent and Agreement.

10. Term. The term of this Agreement shall begin on the Effective Date and shall end upon the expiration of the Mission Bay North Redevelopment Plan, or if earlier, the termination of the North OPA as to the portion so terminated.

11. No General Fund Commitment. Notwithstanding anything to the contrary contained herein, this Agreement is not intended to, and shall not, create any commitment of the City's General Fund in any manner that would violate the debt limitations under Article XVI, Section 18 of the State Constitution or of the City's Charter, including Section 3.105 of the Charter.

12. Permits to Enter on City Property. The City, including the Port, shall grant all Permits to Enter and approvals required for the Owner to enter onto, investigate, undertake environmental response programs, construct Infrastructure or Improvements upon or otherwise use property owned by the City, including the Port, in furtherance of the implementation of the Mission Bay North Redevelopment Plan and in accordance with the Plan Documents. Such permits to enter shall include, without limitation, permits to undertake environmental investigation and response programs in accordance with the Environmental Investigation and Response Program and other Plan Documents, and permits to construct Infrastructure on, in or under any street or other right-of-way or any land owned by the City, including the Port, in accordance with the Infrastructure Plan and the other Plan Documents. Such Permits to Enter shall be in form and substance substantially similar to the permit attached as Exhibit C to this Agreement. The City, including the Port, may from time to time amend the attached form Permit to Enter and impose such insurance, bond, guaranty and indemnification requirements as the City, including the Port, determines are necessary or appropriate to protect its interests, consistent with the City's custom and practice and in a manner that will not unnecessarily interfere with or materially increase the cost or risk of the Owner's ability to perform under the North or South OPAs or the Land Transfer Agreements, or if it would unnecessarily interfere with or materially increase the cost or risk, such amendment must be consistent with commercial industry practice; provided, further, in no event shall any such modification conflict with the Environmental Investigation and Response

Program or expand the scope of the basic indemnities or principal provisions or rights or obligations of the parties under the OPAs or Land Transfer Agreements with respect to Hazardous Substances. Nothing herein shall permit the City to modify any executed Permit to Enter without the consent of the Owner.

13. Other Governmental Authorizations.

13.1 Cooperation by the City; Permit Conditions.

(a) Subject to the terms and conditions of this Agreement and the Environmental Investigation and Response Program, the City shall cooperate with the Agency and with reasonable requests by the Owner to obtain permits, agreements or entitlements from any state, federal, regional or local agency (excluding the Agency or any City Agency) having or claiming jurisdiction over all or portions of the North Plan Area or aspects of its development (an "Other Regulatory Approval"), as may be necessary or desirable to effectuate and implement development of a Major Phase or Project in accordance with the Mission Bay North Redevelopment Plan and the Plan Documents. The City's commitment to the Owner under this Agreement shall be subject to the following conditions. Throughout the permit process for any Other Regulatory Approval, the Owner shall consult and coordinate with the affected City Agency in the Owner's efforts to obtain such permit, and the City shall cooperate reasonably with the Owner and, if applicable, the Agency, in the Owner's efforts to obtain such permit. However, the Owner shall not agree to the imposition of conditions or restrictions in connection with obtaining any Other Regulatory Approval if any City Agency, including the Port, is required to be a co-applicant or co-permittee and which could create any obligations on the part of such City Agency or restrictions on the property of the City, including its Port, unless in each instance the affected City Agency has previously approved such conditions or restrictions in writing and in its reasonable discretion or unless such obligation is specifically contemplated as the responsibility of the City under this Agreement, the Plan Documents or the City approvals of the entitlements for the North Plan Area.

(b) All costs associated with applying for and obtaining any necessary Other Regulatory Approval shall be borne by the Owner, except as otherwise expressly provided in the Environmental Investigation and Response Program. Unless otherwise provided in the Land Transfer Agreements, the Owner, at no cost or expense to the City, including its Port, shall be solely responsible in the construction of the Improvements for complying with any and all conditions or restrictions imposed by regulatory agencies as part of an Other Regulatory Approval, whether such conditions are on the site of the Major Phase or Project or require off-site improvements as a result of the Major Phase or Project. The Owner shall not be responsible for complying with any such conditions or restrictions required for Improvements within Agency Affordable Housing Parcels, except for the Owner's obligation to obtain any such Other Regulatory Approvals with respect to the Environmental Investigation and Response Program. The Owner shall have the right to appeal or contest any condition in any manner permitted by law imposed under any such Other Regulatory Approval, provided that the affected City Agency shall have the right to approve such appeal or contest if the City is a co-applicant or co-permittee. Such consent shall not be unreasonably withheld or delayed if the Owner can demonstrate to the

City's reasonable satisfaction that such appeal would not affect the City's responsibility or liability for any conditions which are or could be the responsibility of any City Agency under such Other Regulatory Approval. In all other cases, the affected City Agencies shall have the right to give or withhold such consent in their sole and absolute discretion. Any fines, penalties or corrective actions imposed as a result of the failure of the Owner to comply with the terms and conditions of any Other Regulatory Approval shall be paid or otherwise discharged by the Owner, and the City shall have no liability, monetary or otherwise, for such fines and penalties.

(c) Certain Other Regulatory Approvals may include conditions that entail maintenance or other obligations on the part of the permittee or co-permittees that continue after the City accepts the dedication of completed Infrastructure. Upon the City's acceptance of any Infrastructure in accordance with this Agreement and the Plan Documents that has any such continuing obligations under an applicable Other Regulatory Approval, the City shall, at the Owner's request, take such steps as are reasonably necessary to remove the Owner as the named permittee or co-permittee from such Other Regulatory Approval if either (i) such continuing obligations are designated as the responsibility of the City under this Agreement, the Plan Documents, or the Land Transfer Agreements or under the City approvals granted in connection with a Major Phase or Project or (ii) the City has otherwise, in its sole discretion, agreed to accept sole responsibility for such conditions in accordance with Section 13.1 above.

13.2 Indemnity. Without limiting any other indemnification provisions of this Agreement, the Owner shall Indemnify the City Agencies, including the Port, from and against any and all claims, demands, losses, liabilities, damages (including consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys' fees and costs and consultants' fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise (collectively, "Losses") which may arise in connection with the Owner's failure to obtain or comply with the terms and conditions of any Other Regulatory Approval or with the appeal or contest of any conditions of any Other Regulatory Approval; provided, however, such indemnity shall exclude any Losses to the extent they arise out of (i) any failure of any conditions that either (A) are designated as the responsibility of the City under this Agreement, the Plan Documents or the Land Transfer Agreements or under the City approvals granted in connection with a Major Phase or Project or (B) the City has otherwise, in its sole discretion, agreed to accept the responsibility for such terms or conditions as provided in Section 13.1, (ii) any Other Regulatory Approvals relating to the construction of Improvements within the Agency Affordable Housing Parcels, except for any such Other Regulatory approvals relating to the Owner's responsibilities under the Environmental Investigation and Response Program or (iii) the negligence or willful misconduct of the City Agencies.

14. Remedies.

14.1 General.

(a) In the event of any default in or breach of this Agreement (each a "default"), or any of its terms, by either the City Agencies or the Agency, the non-defaulting

party (or the Owner) may deliver a written notice of default to the other regarding such default. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise, and the manner in which the failure of performance may be satisfactorily cured. Upon receipt of such notice of default, either the City Agency or the Agency, as applicable, shall commence within a reasonable time not to exceed sixty (60) days to cure or remedy such default, and shall thereafter pursue such cure or remedy to completion.

(b) Upon delivery of a notice of default, the City Agency and the Agency, together with the Owner, shall promptly meet to discuss the default and the manner in which the defaulting party can cure or remedy the same so as to satisfy the aggrieved party's concerns. The City Agency, Agency and the Owner shall continue meeting regularly, discussing, investigating and considering alternatives for a period of sixty (60) days from the delivery of the notice of default. If, at the end of the meet and confer period, the aggrieved party no longer holds the view that the other party is in default, such party shall issue a written acknowledgment of the other party's cure or remedy of the matter which was the subject of the notice of default.

(c) If (i) action is not diligently taken or pursued, or the default shall not be cured or remedied within a reasonable time or (ii) either the City Agency or the Agency, which is alleged to be responsible for the default, shall refuse to meet and discuss as described above, then the aggrieved party may institute such proceedings (except as otherwise limited by this Agreement and, in particular, Section 14.2) as may be necessary or desirable in its opinion to cure and remedy such default, including, without limitation, proceedings to compel specific performance by the party in default of its obligations. Nothing in this Section shall require a party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such party. The parties acknowledge that termination is a remedy only in the event of termination of the North OPA, as further provided in this Agreement.

(d) Notwithstanding anything to the contrary in this Agreement, nothing in this Section or elsewhere in this Agreement shall limit the rights or remedies of the Owner under any applicable law governing the application, review, processing or permitting of development projects, including, but not to, the Permit Streamlining Act (California Government Code Sections 65920 - 65963.1) and the applicable timelines set forth therein.

14.2 No Monetary Damages. The parties have determined that monetary damages generally are inappropriate and that it would be extremely difficult and impractical to fix or determine the actual damages to a party as a result of a breach or default under this Agreement and that equitable remedies and remedies at law not including damages are the appropriate remedies for enforcement of this Agreement. The parties would not have entered into this Agreement if either of them were liable to the other or to the Owner, including any Transferee of the Owner, for damages under or with respect to this Agreement. Consequently, the parties have agreed that neither party shall be liable in damages to the other, to any Owner, including any Transferee, or to any other Person, and each covenants not to sue for or claim any damages and expressly waives its right to do so (A) for any breach of, or which arises out of, this Agreement

or (B) arising out of or connected with any dispute, controversy or issue regarding the application, interpretation or effect of the provisions of this Agreement, except as otherwise provided in the North OPA as between the Agency and the Owner.

14.3 Attorneys' Fees. In the event of any dispute or any legal action or other dispute resolution mechanism to enforce or interpret any provision of this Agreement, the prevailing party shall not be entitled to attorneys' fees.

14.4 Owner Default. If the Owner is in Material Breach of the Owner's obligations under the North OPA, including, without limitation, failure to pay a material sum of Agency Costs (following expiration of any notice and cure periods specified therein), any obligations of the City Agencies or the Agency under this Agreement with respect to the Major Phase or Project (or Major Phases or Projects) to which such Material Breach relates shall be suspended and shall not be reinstated unless and until such Material Breach is remedied. For purposes of this Section, a Material Breach with respect to one Major Phase or Project shall not be deemed a Material Breach with respect to any other Major Phase or Project unless it pertains to such Major Phase or Project (e.g. an obligation which arises in one Major Phase but is to be performed in a subsequent Major Phase shall not be affected), nor shall such failure relieve the City Agencies or Agency of any obligation which arose prior to the failure of condition, and a Material Breach by the Owner under the North OPA shall have no effect under this Agreement other than as to the Major Phase or Project to which it pertains. The provisions of this Section shall not be deemed to limit any other rights or remedies of the Agency under the North OPA or other Plan Documents, or any other rights or remedies of the City Agencies under applicable laws.

15. General Provisions.

15.1 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 North
Telefacsimile: (415) 749-2565

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 a notice or communication to the City:

Office of the Mayor
City and County of San Francisco
City Hall
401 Van Ness Avenue, Third Floor
San Francisco, CA 94102
Attn: Mission Bay Project Manager
Reference: Mission Bay North
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 North
Telefacsimile: (415) 554-3808

And, in the case of any notice or communication involving the Port, with a copy to:

Port of San Francisco
Ferry Building, Suite 3100
San Francisco, CA 94111
Attn: Executive Director
Reference: Mission Bay North
Telefacsimile: (415) 274-0528

And to:

Port of San Francisco
Ferry Building, Suite 3100
San Francisco, California 94111
Attn: Port General Counsel
Reference: Mission Bay North
Telefacsimile: (415) 274-0630

- (ii) And in the case of a notice or communication sent by either the City or the Agency to the other, a copy shall be sent to the Owner Representative at:

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

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 North Interagency Cooperation 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.

15.2 Amendments. Except as otherwise provided in this Agreement, this Agreement may be amended or modified only by a written instrument executed by City and Agency, with the written consent of the Owner Representative (as defined in Section 15.6 of this Agreement), which consent shall not be unreasonably withheld, conditioned or delayed. The Agency and the Owner shall not amend the Infrastructure Plan, the Environmental Investigation and Response Program nor the Design Review and Document Approval Procedure in a manner that materially alters the obligations of any City Agencies or the principal benefits accruing therefrom to the City or any of the City Agencies (including the development of Open Space Parcels under the Infrastructure Plan), nor shall the Agency and the Owner amend the Housing Program in a manner that would materially alter the obligations of the Owner or the Agency so as to lessen the principal benefits accruing to the City from the affordable housing elements of the Housing Program, without in each case obtaining the prior written consent of the City, which may be given or withheld in its sole discretion. The Mayor and the Director of Public Works (or any successor City officer as designated by law) shall have the authority to consent to any non-material amendments or other modifications to this Agreement, including, but not limited to, the Infrastructure Plan, after consultation with the directors of any affected City Agencies. For purposes hereof, "non-material changes" shall mean any change which does not materially increase the costs or liabilities of the City, or does not materially decrease the time periods required for review or approval by any City Agency of permits, approvals, agreements and entitlements in connection with the implementation of the Mission Bay North Redevelopment Plan and Plan Documents. Material amendments to this Agreement and amendments to the other Plan Documents specified above that would materially alter the obligations of the City Agencies or principal benefits as provided in this Section shall require the approval of the Board of Supervisors, by resolution.

15.3 Severability. If any provision of this Agreement, or its application to any Person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other Person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all the circumstances or would frustrate the fundamental purposes of this Agreement. Without limiting the foregoing, in the event that any applicable federal or state law prevents or precludes compliance with any material term of this Agreement, the parties shall promptly modify, amend or suspend this Agreement, or any portion of this Agreement, to the extent necessary to comply with such provisions in a manner which preserves to the greatest extent possible the benefits to each of the parties to this Agreement and to the Owner before such conflict with federal or state law. However, if such amendment, modification or suspension would deprive the City or the Agency of the substantial benefits derived from this Agreement or make performance unreasonably difficult or expensive, then the affected party may terminate this Agreement upon written notice to the other party. In the event of such termination, neither party, nor the Owner, shall have any further rights or

obligations under this Agreement.

15.4 Non-Waiver. Any delay or failure by the City or the Agency (or Owner) to exercise any right under this Agreement shall not be deemed a waiver of that or any other right contained in this Agreement.

15.5 Successors and Assigns; Third Party Beneficiary. This Agreement shall inure to the benefit of and bind the respective successors and assigns of the City and the Agency. The Owner, including any Transferee of the Owner permitted under the North OPA, is an intended third party beneficiary of this Agreement. Except as provided above with respect to the Owner and its permitted Transferees, this Agreement is for the exclusive benefit of the parties hereto and not for the benefit of any other Person and shall not be deemed to have conferred any rights, express or implied, upon any other Person.

15.6 Consents by Owner Representative. Any approvals or consents of the Owner required under this Agreement shall be limited to the approval or consent of the Owner Representative. For these purposes, "Owner Representative" shall mean the person designated in writing by Catellus Development Corporation ("Catellus") to act in such capacity under this Agreement, or, if (i) all or substantially all of the undeveloped property in the North Plan Area has been Transferred to an Affiliate or (ii) a Transfer of all or substantially all of the undeveloped property in the North 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 North OPA (the "Transfer Entity"), then the Affiliate, Resulting Entity or Transfer Entity, as the case may be, may designate the person to act in such capacity under this Agreement.

15.7 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

15.8 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

15.9 Interpretation of Agreement.

(a) Exhibits. Whenever an "Exhibit" is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference.

(b) Captions. Whenever a section, article or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

(c) Words of Inclusion. The use of the term “including,” “such as” or words of similar import when following any general term, statement or matter shall not be construed to limit such term, statement or matter to the specific items or matters, whether or not language of non-limitation is used with reference thereto. Rather, such terms shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such statement, term or matter.

(d) References. Wherever reference is made to any provision, term or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, section or paragraph of this Agreement or any specific subdivision thereof.

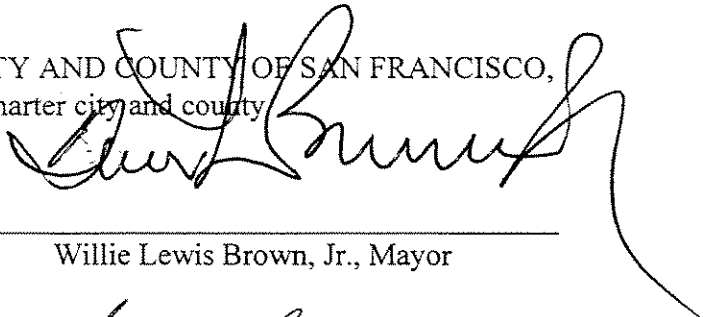
(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

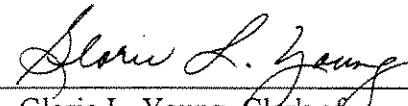
15.10 Entire Agreement. This Agreement (including the Exhibits) contains all the representations and the entire agreement between the parties with respect to the subject matter of this Agreement. Any prior correspondence, memoranda, agreements, warranties or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either party or any other Person and no court or other body shall consider those drafts in interpreting this Agreement.

15.11 Further Assurances. The Agency and the City shall each take all actions and do all things, and execute, with acknowledgment or affidavit if required, any and all documents that may be necessary or appropriate to achieve the purposes of this Agreement.

IN WITNESS WHEREOF, the City and the Agency have duly executed and delivered this Agreement as of the date first written above.

CITY AND COUNTY OF SAN FRANCISCO,
a charter city and county

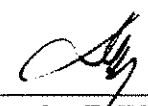
By 
Willie Lewis Brown, Jr., Mayor

By 
Gloria L. Young, Clerk of
the Board of Supervisors

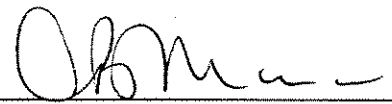
Pursuant to Board of Supervisors Ordinance No. 327-98, adopted by the Board on October 26, 1998 and approved by the Mayor on October 30, 1998

RECOMMENDED AND APPROVED:

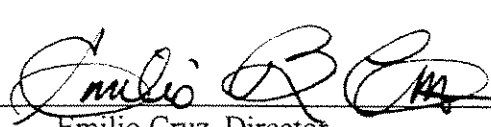
SAN FRANCISCO PORT COMMISSION

By 
Douglas E. Wong, Executive Director
Pursuant to Port Commission Resolution No. 98-87, adopted September 22, 1998

SAN FRANCISCO PUBLIC UTILITIES COMMISSION

By 
Anson Moran, General Manager
Pursuant to Public Utilities Commission Resolution No. 98-0238, adopted September 29, 1998

PUBLIC TRANSPORTATION COMMISSION

By 
Emilio Cruz, Director
Pursuant to Public Transportation Commission Resolution No. 98-083, adopted September 22, 1998

BUILDING INSPECTION COMMISSION

By 

Frank Y. Chiu, Director of Department of Building Inspection

Pursuant to Building Inspection Commission Resolution No. 080.98, adopted October 7, 1998

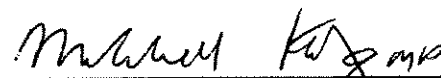
PLANNING COMMISSION

By 

Gerald Green, Director

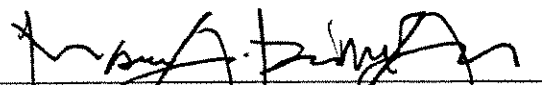
Pursuant to Planning Commission Resolution No. 14701, adopted September 17, 1998

DEPARTMENT OF PUBLIC HEALTH

By 

Mitchell Katz, Acting Director

DEPARTMENT OF PUBLIC WORKS

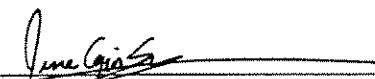
By 

Mark Primeau, Director

APPROVED AS TO FORM:

LOUISE H. RENNE

City Attorney

By 

Jesse Capin Smith

Deputy City Attorney

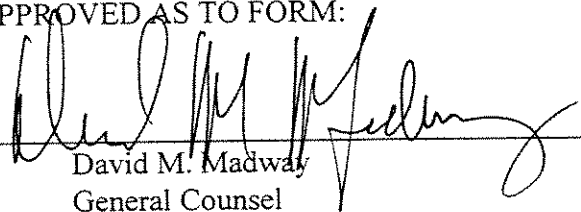
REDEVELOPMENT AGENCY OF THE CITY
AND COUNTY OF SAN FRANCISCO
a public body, corporate and politic, of the State of California

By 

James B. Morales
Executive Director

Pursuant to Agency Commission Resolution No. 188-98, adopted September 17, 1998

APPROVED AS TO FORM:


David M. Madway
General Counsel

OWNER'S CONSENT AND AGREEMENT

The undersigned, on behalf of itself and each and every of its Transferees permitted under the North OPA, hereby acknowledges that the Owner and its permitted Transferees are intended third party beneficiaries of the foregoing Mission Bay North Interagency Cooperation Agreement dated as of November 16, 1998 (the "Interagency Cooperation Agreement") and agrees as follows:

1. Definitions. Except as otherwise defined in this instrument, initially capitalized terms shall have the meanings given in the North OPA (as defined in the Interagency Cooperation Agreement, to which this instrument is attached and made a part thereof).

2. Consent and Agreement. The Owner consents to such Interagency Cooperation Agreement, and further hereby specifically agrees to be bound by Section 14 relating to limitations on remedies (as between Owner and the City or the Agency) and Section 13 relating to authorizations by other governmental agencies, including, without limitation, the indemnification contained therein; provided, however, the foregoing consent and agreement shall not be deemed to limit any rights the Owner may have against the Agency under the North OPA for actual damages (and not consequential or special damages) to the extent provided in the North OPA.

3. Indemnity. In addition to the indemnities of the Owner set forth in the North OPA and any other Plan Documents, and subject to the terms, conditions and limitations set forth in this instrument below, the Owner agrees as follows:
 - (a) The Owner agrees to and shall indemnify, defend and hold the City and each of the City Agencies, including the Port, together with their commissioners, directors, officers, employees, agents, successors and assigns, harmless from and against any and all claims, demands, losses, liabilities, damages (including consequential damages), liens, obligations, interest, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, (including, without limitation, reasonable attorneys' fees and costs and consultants' fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise (including, without limitation, the reasonable costs to the City Agencies of carrying out the terms of any judgments, settlements, consent decrees, stipulated judgments or other partial or complete terminations of any actions or proceedings that require any of the City Agencies to take any action) (collectively, "Losses") arising from or as a result of (i) noncompliance of the Owner Improvements with any Federal, state or local laws or regulations (except as to any obligations accepted by the City under Section 13.1 of the Interagency Cooperation Agreement) including those related to disabled access (excluding therefrom any Agency Property or portion thereof on which Owner has not constructed Improvements), (ii) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur in the North Plan Area (excluding therefrom any Agency Property or portion thereof on which Owner has not constructed Improvements) and which shall be directly or indirectly caused by the negligent act

or omission of the Owner or its agents, servants, employees or contractors, or (iii) any claim submitted to the City for relocation assistance or payments by any tenant (or other occupant) of the North Plan Area if the Owner is otherwise responsible for reimbursing the Agency for such relocation costs under Section 10 of the North OPA (provided the foregoing shall not be deemed to create or imply any obligation of the Owner to reimburse or pay such relocation costs to the City if it reimburses or pays such costs to the Agency, or to the Agency if it reimburses or pays such costs to the City), all except to the extent such Losses are directly or indirectly caused by the negligent act or omission or willful act of the City Agencies (including the Port) or the Agency or their respective directors, officers, employees, agents, successors and assigns, including the negligence or other actionable misconduct of any of the City Agencies acting (or failing to act) in its governmental capacity in the exercise of its police powers.

(b) In addition to the foregoing indemnity set forth in subparagraph (a), the Owner shall indemnify, defend and hold harmless the City and each of the City Agencies, including the Port, together with their commissioners, directors, officers, employees, agents, successors and assigns, from and against any and all Losses (i) arising directly or indirectly out of or connected with any third-party contracts or agreements entered into by the Owner in connection with its performance under the North OPA (excluding therefrom any obligations of tenants of the Owner to the Agency or any City Agency under the Program in Diversity/Economic Development Program or Section 19.32 of the North OPA) or (ii) otherwise covered by any indemnity by the Owner in favor of the Agency under the North OPA, except, in any such instance, to the extent caused by the willful misconduct or negligence of the City Agencies or the Agency.

(c) The agreement to indemnify, defend and hold harmless set forth above is in addition to, and in no way shall be construed to limit or replace, any other obligations or liabilities which the Owner may have under the North OPA and any of the other Plan Documents, including, without limitation, the Acquisition Agreement, or at common law or otherwise.

(d) 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. The City Agencies agree to give prompt notice to the Owner with respect to any suit or claim initiated or threatened against the City Agencies, at the address for notices of the Owner set forth in the North 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 City Agency has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to the Owner, then the Owner's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Owner shall not affect the rights of the City Agency or the obligations of the Owner hereunder unless the Owner is prejudiced by such failure, and then only to the extent of such prejudice. The Owner shall, at its option but subject to the reasonable consent and approval of the City Agency, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Owner's own choice; provided, however, that in all cases the City Agency

shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Owner shall fail, however, in the City Agency's reasonable judgment, within a reasonable time following notice from the City Agency alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the City Agency shall have the right promptly to hire counsel at the Owner's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Agency upon receipt by the Owner of a properly detailed invoice therefor.

(e) The indemnities contained in this paragraph (3) shall survive any termination of the Interagency Cooperation Agreement as to matters that arise during the term hereof.

(f) With respect to any Infrastructure that is dedicated to and accepted by the City, the indemnities shall not extend to (i) any failure of such Infrastructure to comply with any new laws or changes in laws that become applicable after the City accepts such Infrastructure, (ii) any failure of the City to comply with the conditions of any Other Regulatory Approval that either (A) are designated as the responsibility of the City under the Interagency Cooperation Agreement, any other Plan Documents or the Land Transfer Agreements or under the City approvals granted in connection with a Major Phase or Project or (B) that the City has otherwise, in its sole discretion, agreed to accept the responsibility for in accordance with the Interagency Cooperation Agreement, or (iii) any Other Regulatory Approvals relating to the construction of Improvements within the Agency Affordable Housing Parcels except for any such Other Regulatory approvals relating to the Owner's obligations under the Environmental Investigation and Response Program.

(g) Notwithstanding anything to the contrary set forth in this paragraph (3), the foregoing indemnities of the Owner shall not include (i) any Losses originating after the date the City accepts title to any Infrastructure in accordance with the applicable Acquisition Agreement (or otherwise accepts title consistent with the Plan Documents) or (ii) any Losses originating from a change in applicable laws which occurs after the date of City's acceptance of title to such Infrastructure under the applicable Acquisition Agreement (or otherwise accepts title consistent with the Plan Documents).

(h) Further notwithstanding anything to the contrary set forth in this paragraph (3), the foregoing indemnities of the Owner shall exclude any Losses relating to Hazardous Substances. The Owner's contractual obligations and indemnities regarding Hazardous Substances shall be governed by the other Plan Documents, including the Environmental Investigation and Response Program, the Land Transfer Agreements and Permits to Enter, as applicable.

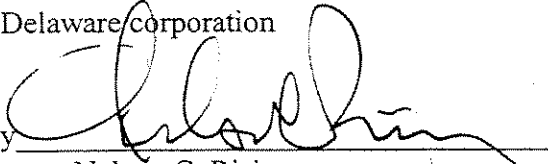
(i) The foregoing indemnities are not intended to limit any indemnities or releases to or from the City Agencies in the Environmental Investigation and Response Program or the Land Transfer Agreements

4. Limitations on Liability. It is understood and agreed that no commissioners,

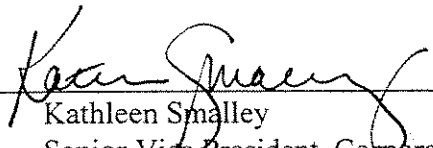
members, officers, agents, or employees of the Agency or the City Agencies (or any of their successors or assigns) shall be personally liable to the other or to any other Person nor shall any officers, directors, shareholders, agents or employees of Owner (or of its successors or assigns) be personally liable to the Agency, the City Agencies or any other Person in the event of any default or breach of the Interagency Cooperation Agreement by the Agency or the City Agencies or of this Consent by the Owner, as the case may be, or for any amount which may become due or any obligations under the terms of the Interagency Cooperation Agreement or this Consent.

IN WITNESS WHEREOF, this instrument has been duly executed and delivered as of this 16th day of November, 1998.

CATELLUS DEVELOPMENT CORPORATION,
a Delaware corporation

By 

Nelson C. Rising
President and Chief Executive Officer

By 

Kathleen Smalley
Senior Vice President, Corporate Operations
and General Counsel

MISSION BAY NORTH INTERAGENCY COOPERATION AGREEMENT

LIST OF EXHIBITS

EXHIBIT A	Project Description and Land Use Plan
EXHIBIT B	Infrastructure Plan
EXHIBIT C	Form of Permit to Enter

EXHIBIT A

MISSION BAY NORTH

INTERAGENCY COOPERATION AGREEMENT

LAND USE PLAN AND PROJECT DESCRIPTION

EXHIBIT A
MISSION BAY NORTH
INTERAGENCY COOPERATION AGREEMENT
LAND USE PLAN AND PROJECT DESCRIPTION

Initially capitalized terms unless separately defined in this project description have the meanings and content set forth in the North OPA. “Local-serving” has the meaning and content set forth in the Mission Bay North Redevelopment Plan.

The North Plan Area contains a mix of primarily residential and retail uses, with associated parking and loading areas, together with supporting infrastructure, including a significant open space component. The development program of Owner and the Agency for the North Plan Area is more specifically as follows:

I. Owner's Development Program.

A. Infrastructure Program.

The Owner’s obligations with respect to Infrastructure are set forth in the Infrastructure Plan. Together with the Mission Bay Subdivision Code and Regulations, the Infrastructure Plan establishes the design standards, construction standards and criteria for Infrastructure in the North Plan Area. The Infrastructure Plan also contains an Infrastructure phasing methodology which establishes the timing and components of Infrastructure that will be required in connection with a Major Phase or Project.

B. Development Program Components.

In addition to and in conjunction with the Infrastructure described in the Infrastructure Plan, the Owner is permitted to construct the following Improvements in the North Plan Area on sites where such uses are permitted by the Mission Bay North Redevelopment Plan:

1. Up to approximately 2,655 Dwelling Units as defined in the Mission Bay North Redevelopment Plan, including approximately 2,400 market-rate units, and 255 Affordable Housing Units; provided, however, that Owner may elect to construct additional units that the Agency would otherwise be permitted to construct pursuant to the terms and conditions of Section 3.4.3 of the North OPA.
2. Up to approximately 500,000 Leasable square feet of retail uses including: 50,000 Leasable square feet of Local-serving retail, 350,000 Leasable square feet of urban entertainment-oriented retail use, and 100,000 Leasable square feet of City-serving retail.
3. Public facilities, including open lot or enclosed storage, pump station, railroad tracks and related facilities, or other public use or structure.

4. Approximately six (6) acres of open space.
5. Associated parking and loading, as provided in the Mission Bay North Design for Development document.
6. Temporary uses as permitted under the Mission Bay North Redevelopment Plan and interim uses as may be approved pursuant to the Mission Bay North Redevelopment Plan.
7. Non-conforming uses, subject to the terms and conditions of the Mission Bay North Redevelopment Plan.

C. Streetscape.

The Owner shall prepare and submit to the Agency a Streetscape Plan for the North Plan Area prior to or concurrent with the first Major Phase submission. The Streetscape Plan shall be a concept level plan which includes, at a minimum, the following:

1. Street Trees. The Streetscape Plan will depict the types of street tree species proposed, general location, planting frequency and size, and relationship to the street hierarchy.
2. Lighting. The Streetscape Plan will describe lighting fixture types, general location and frequency.
3. Street Furnishings. The Streetscape Plan will describe, for street furnishings such as benches, trash receptacles, newspaper racks, bicycle racks and kiosks, general location, frequency and types.
4. Sidewalk Treatment, Paving and Curbing. The Streetscape Plan will depict generally the sidewalk treatment, paving and curbing features.

D. Signage.

The Owner shall prepare and submit to the Agency a Signage Plan for the North Plan Area prior to or concurrent with the first Major Phase submission. The Signage Plan shall be a concept level plan which includes, at a minimum, a description of any uniform signage features proposed for the North Plan Area. Uniform signage is not required, however, for the North Plan Area or any land uses therein, except for signs and images that pertain to safety, direction and orientation, which shall be located and signed consistently in major paths and intersections.

E. Channel Edge.

The Owner shall prepare and submit to the Agency a Channel Edge Plan. This Plan, covering the portions of the blocks denoted "NP" on the Land Use Plan from the top of the north Channel bank toward the Channel to the mean low tide line, shall be a concept level plan which describes concepts for vegetation and, where necessary, bank stabilization techniques. This

information shall be provided as a combined submittal for N1-N3 with the first Major Phase submission that includes one of these three blocks, and for N4/N5 for the first Major Phase that involves either of these blocks.

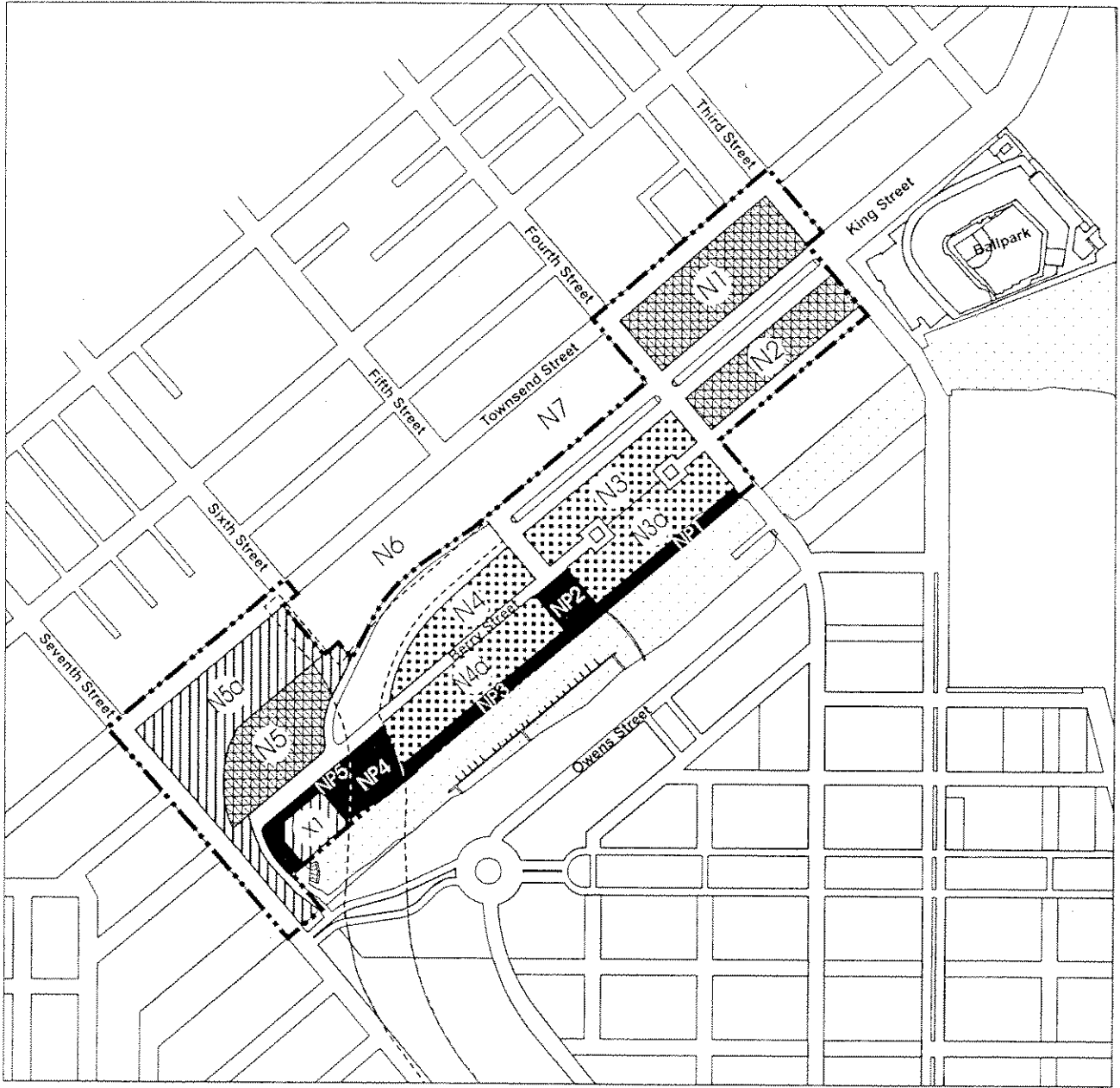
II. Agency's Development Program.





A. Infrastructure.

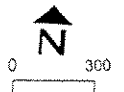
The Agency's obligations with respect to Infrastructure are set forth in the Infrastructure Plan and the Mission Bay Subdivision Regulations. The Owner is responsible for providing Infrastructure to the Agency Affordable Housing Parcels in accordance with the North OPA, consistent with the Infrastructure Plan and Mission Bay Subdivision Code and Regulations, including the phasing methodology.

B. Development Program Components.

1. Up to approximately 345 Affordable Housing Units, including a mix of rental and ownership units. This number may be increased under the terms and conditions of the Mission Bay North Housing Program.
2. Associated parking and loading, as provided in the Design for Development document.
3. Up to approximately 5,000 Leasable square feet of Local-serving retail on Affordable Housing Parcels.
4. Temporary uses as permitted under the Mission Bay North Redevelopment Plan and interim uses as may be approved pursuant to the Mission Bay North Redevelopment Plan.
5. Non-conforming uses, subject to the terms and conditions of the Mission Bay North Redevelopment Plan.



-  OPEN SPACE
-  MISSION BAY RESIDENTIAL
(Mixed use including neighborhood serving Retail)
-  MISSION BAY NORTH RETAIL
(Mixed use including Entertainment uses, Housing, City-serving and neighborhood Retail)
-  PUBLIC FACILITIES
Pump Station, Rail Easement and Area below Freeway



MISSION BAY LAND USE PLAN - NORTH

EXHIBIT B

MISSION BAY NORTH INTERAGENCY COOPERATION AGREEMENT
NORTH INFRASTRUCTURE PLAN

Table of Contents

	<u>Page</u>
I. INFRASTRUCTURE DESCRIPTION	2
A. PUBLIC INFRASTRUCTURE WITHIN THE STREET RIGHT OF WAYS.....	2
1. Street Improvements.....	2
2. Wet Utilities.....	11
3. Dry Utilities.....	12
B. PUBLIC OPEN SPACE	13
1. Open Space Parcels.....	13
2. Mid-Block Lanes	14
C. OTHER INFRASTRUCTURE.....	14
1. Pedestrian Bridge.....	14
2. Freeway and Pump Station Demolition.....	14
3. Interim Operational Requirements.....	14
4. MUNI.....	15
5. Waterfront Transportation Projects.....	17
6. Access to Seventh Street.....	17
7. Odor Control Improvements.....	17
II. INFRASTRUCTURE PHASING METHODOLOGY.....	18
A. Infrastructure Phasing.....	18
1. Adjacency.....	18
2. Cumulative Development Requirements.....	19
B. Specific Additional Factors and Criteria Influencing Infrastructure Phasing.....	19
1. Interim Operational Requirements.....	19
2. Intersection and Street Segment Improvements.....	20
3. Open Space.....	20
4. Interconnecting Infrastructure.....	21

LIST OF EXHIBITS

Exhibit 1	North Plan Area
Exhibit 2	Signalization and Restriping
Exhibit 2a	Eighth Street/Townsend Intersection
Exhibit 3	Street Sections
Exhibit 3a	Street Sections
Exhibit 3b	Street Sections
Exhibit 3c	Street Sections
Exhibit 4	Combined Sewers
Exhibit 5	High Pressure Water & Suction Inlets
Exhibit 6	Low Pressure Water
Exhibit 7	Reclaimed Water Line
Exhibit 8	Parks & Open Space
Exhibit 9	Berry Street Extension – No Rail Crossing
Exhibit 10	Pedestrian Bridge
Table 1	Peak Hour Vehicle Trip Generations
Table 2	Intersection Improvement Thresholds
Table 3	Street Segment Improvement Thresholds

MISSION BAY NORTH INFRASTRUCTURE PLAN

This Infrastructure Plan will govern the construction and development of Infrastructure in the North Plan Area and is consistent with the Redevelopment Requirements. Except as is consistent with the Interagency Cooperation Agreement and as agreed to by the Agency and Owner, no Infrastructure beyond what is described herein, and such other Infrastructure as may be mutually agreed to by the Agency and Owner, will be required for development of the North Plan Area or will be constructed by the Owner in the North Plan Area.

Initially capitalized terms unless separately defined in this Infrastructure Plan have the meanings and content set forth in the North OPA. "Mission Bay Datum" is defined as City Datum plus one hundred feet.

This Infrastructure Plan describes all Infrastructure Improvements to be provided by Owner in accordance herewith for the North Plan Area. While some Infrastructure Improvements to be provided by City Agencies and other governmental agencies, such as the San Francisco Municipal Railway ("MUNI"), are described, their inclusion herein is not intended to be all inclusive of all Improvements to be provided by City Agencies or other governmental agencies. A condition precedent to Owner's performance under this Infrastructure Plan is the obtaining of all requisite approvals.

This Infrastructure Plan and the Mission Bay Subdivision Regulations establish the design standards, construction standards, criteria and specifications of Infrastructure in the North Plan Area, including, without limitation, streets, blocks, lots, and Infrastructure within the street right of way, including for the combined sewer system, and Open Space Parcels and all other Infrastructure. In subdivision processing, including the review and approval of subdivision improvement plans, the precise location and final design of Infrastructure Improvements consistent with this Infrastructure Plan including intersection Improvements, street segment Improvements, wet and dry utilities Improvements, open space Improvements, and other Infrastructure Improvements will be determined.

The dedication, acquisition and acceptance of streets and other Infrastructure Improvements will occur through the subdivision map process in accordance with the Mission Bay Subdivision Code, Mission Bay Subdivision Regulations and as provided in the Financing Plan and Acquisition Agreement. Other than as provided in the Land Transfer Agreements, no real property is required to be acquired to construct the Infrastructure described in this Infrastructure Plan.

I. INFRASTRUCTURE DESCRIPTION

A. PUBLIC INFRASTRUCTURE WITHIN THE STREET RIGHT OF WAYS

1. Street Improvements.

For the North Plan Area, substantial Infrastructure has already been constructed and dedicated which will serve the development. Third Street, Fourth Street, Seventh Street, Berry Street, and Townsend Street have been dedicated and improved. The existing and proposed street systems for the North Plan Area are shown in Exhibit 2 and in Exhibit 3, respectively. Basic geometrics in the right of way such as numbers of lanes, their uses, and their widths are also shown in Exhibit 2 and are further shown in Exhibit 3 and accompanying Exhibits 3a, 3b and 3c. The following Infrastructure Improvement descriptions apply generally to streets in the North Plan Area, but may vary slightly from street to street based on particular requirements, which shall be determined during the review of the applicable subdivision improvement plans, in accordance with the procedure for granting exceptions as set forth in the Subdivision Code and the North OPA.

a. **Street Surface Improvements.** Street surface improvements consist of roadway reconstruction, preparation, excavation, fine grade, rock base, concrete pavement, asphalt pavement, combined concrete curbs and gutters, concrete sidewalk, traffic control signs and striping, street trees, and appurtenant improvements. Existing street elevations are, for the most part, at approximate finish grade. Some minor modification will be made by cutting or importing fill in order to provide sufficient gradient to accommodate 100 year overland flow requirements. Consideration will be given to future settlement of new Improvements installed by the Owner pursuant to this Infrastructure Plan. Street surface Improvements are not required except as specifically set forth in this Infrastructure Plan.

The street structural sections consist of three typical types: asphaltic concrete over aggregate base, asphaltic concrete over concrete; and a combination thereof to meet and match existing streets. All street structural sections shall meet City standards in effect from time to time. However, the City may allow flexible pavement modifications to Sections 208 and 209 of Standard Specifications and Section XII of the Mission Bay Subdivision Regulations. Such modifications may be reviewed and may be approved during the review of the applicable subdivision improvement plans.

At the time of street construction, all anticipated Infrastructure crossings will be installed prior to final street pavement. For major utilities such as water lines, the facilities are to be installed "dry" until such time as the interconnections are available. For minor conduits, such as for future traffic signal wires, sleeves (or individual conduits if detailed data is available at the time) will be installed to minimize future street cuts. Space will be provided in areas where new joint trench is being installed for future installation of twelve (12) conductor cables to synchronize intersections. Underground utilities shall not be required to be built on piles. No surcharging of street rights of way or Open Space Parcels shall be required.

King Street, a recently constructed Waterfront Transportation Project component, was completed to Fifth Street with the Owner contributing a portion of project costs. As part of the MUNI Third Street Light Rail Project, any modifications to King Street at Fourth Street will be constructed by and be the responsibility of MUNI. The Owner has no further obligation in relation to King Street Improvements or drainage facilities except as provided in subsections b. and c. below.

Owner shall generally relocate existing hydrants and other existing facilities as necessary to the extent required by sidewalk and street widening.

As used in this Infrastructure Plan,

- (i) Shared right-through lane means a traffic lane from which a vehicle can either make a right turn, or travel straight through the intersection.
- (ii) Shared left-through lane means a traffic lane from which a vehicle can either make a left turn, or travel straight through the intersection.
- (iii) Exclusive through lane means a traffic lane from which a vehicle can only travel straight through the intersection.
- (iv) Exclusive left-turn lane means a traffic lane from which a vehicle can only make a left turn.
- (v) Exclusive right-turn lane means a traffic lane from which a vehicle can only make a right turn.

b. Intersections Improvements.

The following specific intersection Improvements, shown in Exhibit 2 and Exhibit 3 (and accompanying Sections) shall, except as otherwise indicated, be provided by Owner in connection with the development of the North Plan Area in accordance with this Infrastructure Plan:

- (i) Third Street/King Street
 - A. Widen the west side of Third Street between Berry and King Streets by approximately twelve feet to provide an additional northbound through lane,

resulting in a northbound lane configuration of an exclusive right turn lane, three through lanes, and a shared left-through lane.

- B. Relocate the signal pole within the right of way in the southwest corner of the intersection to facilitate the widening of the west side of Third Street.
- C. Install “Don’t Block the Box” signs on the northbound, eastbound, and westbound approaches to the intersection.

(ii) Third Street/Berry Street

- A. Restripe the northbound approach to provide an additional through lane for a total of three through lanes and an exclusive left turn lane.
- B. Narrow north side of Berry Street right of way between seventeen and one-half (17.5) feet and twenty-five and one-half (25.5) feet between Fourth and Third Streets to accommodate one lane in each direction with parking on the south side. Provide one exclusive left turn lane and one exclusive right turn lane on the eastbound Berry Street approach to Third Street.
- C. Remove island from center of intersection. Relocate the traffic signal poles in the center island and northeast corner of the intersection to accommodate the narrowing of Berry Street, and adapt signal head to implement a protected left turn phase for the northbound approach.
- D. Install “Don’t Block the Box” signs for the northbound, southbound, and eastbound approaches to the intersection.

(iii) Fourth Street/King Street

- A. Widen the south side of King Street by tapering to a width of approximately eleven (11) feet from Fifth Street to Fourth Street to provide a shared right-through lane between Fifth and Fourth Streets, for a total of one (1) exclusive left turn lane, two (2)

through lanes, and one (1) shared right-through lane.

- B. Widen the south side of King Street by tapering from a width of approximately eleven (11) feet from Fourth Street to approximately three hundred (300) feet to the west of Fourth Street to provide continuity to the through lanes across the intersection.
- C. Widen the west side of Fourth Street north of King Street by narrowing the sidewalk by approximately twelve (12) feet from the end of the Caltrain drop-off zone, to provide an additional through lane, for a total of one (1) shared left-through lane, two (2) through lanes, and an exclusive right turn pocket. Owner will make a good faith effort to maintain the existing crosswalk width between the northwest and southwest quadrants of the intersection.
- D. Provide approximately fifteen (15) feet of additional right-of-way on both sides of Fourth Street between King and Berry Streets to accommodate MUNI and bicycle traffic, and provide one (1) eleven (11) foot lane adjacent to the MUNI tracks and one (1) fifteen (15) foot curb lane. Except as otherwise provided herein, Owner and MUNI will each be responsible for one-half (1/2) the cost of widening and improving the existing Fourth Street to the dimension shown in Section BB, in accordance with Section I.C.4 hereof.
- E. Relocate the signal poles at the four corners of the intersection to facilitate the widening of the south side of King Street and both sides of Fourth Street. Except as otherwise provided herein, Owner and MUNI will each be responsible for one-half (1/2) the cost of relocating the signal poles on the southeast and southwest corners of the intersection, in accordance with Section I.C.4 hereof.
- F. Install "Don't Block the Box" signs for the northbound, southbound, eastbound, and westbound approaches to the intersection.

(iv) Fourth Street/Townsend Street

- A. Widen the east side of Fourth Street by approximately six (6) feet to provide an additional through lane for a total of one (1) mixed traffic lane and one (1) MUNI only lane, and widen the east sidewalk by approximately one (1) foot.
- B. Relocate traffic signal pole and existing trolleybus poles in the right-of-way at the southeast corner of the intersection to accommodate the widening of the east side of Fourth Street.

(v) Fourth Street/Berry Street

- A. Narrow north side of Berry Street right of way between seventeen and one-half (17.5) and twenty-five and one-half (25.5) feet between Third and Fourth Streets to accommodate one lane in each direction with parking on the south side. Provide one (1) shared left-through lane and one (1) exclusive right turn lane on the westbound Berry Street approach to Fourth Street.
- B. Relocate (or replace if needed) traffic signal poles in the right of way at all corners of the intersection to accommodate the widening of Fourth Street and the narrowing of Berry Street. Except as otherwise provided herein, Owner and MUNI will each be responsible for one-half (1/2) of the cost of relocating signal poles at the intersection, in accordance with Section I.C.4 hereof.
- C. Install "Don't Block the Box" signs for the northbound, southbound, eastbound, and westbound approaches to the intersection.

(vi) Fifth Street/King Street

- A. Narrow the northern side of the median of King Street on the westbound approach for approximately two hundred fifty (250) feet to provide an exclusive left turn lane. Restripe the westbound approach to provide an additional through lane, for a total of three through lanes and a left turn lane. This

Improvement requires Owner to obtain Caltrans approval.

- B. Remove "NO LEFT TURN" pavement markings on westbound approach, and add signal heads to implement a protected left turn phase for the westbound approach.
- C. Relocate MUNI power transmission support poles within the right of way for approximately two hundred fifty (250) feet east of Fifth Street from the median of King Street to the center of the street, between the MUNI tracks.
- D. Restripe the I-280 off-ramp touchdown to provide an additional through lane, for a total of two through lanes, and a shared right-through lane. Narrow the southern side of the median of King Street eastward for approximately three hundred (300) feet beyond the intersection of Fifth and King Streets to align with the existing three through lanes. This Improvement requires Owner to obtain Caltrans approval.
- E. Agency to cause City to take all necessary actions to eliminate on-street parking on both sides of Fifth Street. Agency to cause City to review design of intersection improvements plans to prevent vehicular traffic from driving onto MUNI's exclusive right-of-way.

(vii) Seventh Street/Townsend Street

- A. Restripe the southbound, eastbound, and westbound approaches to provide a left-turn lane, a through lane, and a right-turn lane for the commute period.
- B. Restripe the northbound approach to provide a left turn lane, a through lane, and a shared right-through lane.

(viii) Eighth Street/ Townsend Street

- A. Eliminate traffic circle and reconfigure intersection as a five (5) approach intersection with the lane configuration shown in Exhibit 2a.

- B. Install new traffic signal poles, mats and heads in each corner of the intersection. Install a new traffic signal controller.

(ix) Third Street/Townsend Street

- A. Agency to cause City to take all necessary actions to prohibit on-street parking on the north side of Townsend Street between Second and Third Streets during the p.m. (evening) peak commute period in order to provide an additional westbound through lane during the p.m. peak commute period, for a total of two through lanes and a shared right-through lane during the p.m. (evening) peak hour.

(x) Seventh Street/Berry Street

- A. Restripe the eastbound approach to provide one (1) left-turn lane and one (1) right-turn lane.
- B. Restripe the northbound and southbound approaches on Seventh Street to provide two (2) through lanes.

c. Street Segments.

The following specific street segment Improvements shall, except as otherwise indicated, be provided by Owner in connection with the development of the North Plan Area.

(i) Third Street

- A. Widen the west side of Third Street between Berry and King Streets by approximately twelve (12) feet to provide an additional northbound through lane, resulting in a northbound lane configuration of an exclusive right turn lane, three through lanes, and a shared left-through lane. A twelve (12) foot sidewalk will be included on Third Street between Berry and King Streets. See Intersection Improvement, Section I.A.1.b.(i).

(ii) Fourth Street

- A. Widen the west side of Fourth Street from the end of the CalTrain terminal drop-off zone to King Street to provide the additional southbound lane

noted in Section I.A.1.b.(iii)C above, including providing additional right-of-way, if necessary.

- B. Widen the east side of Fourth Street between King and Townsend Streets to accommodate the lane configurations for the Fourth Street/Townsend Street intersection in Section I.A.1.b(iv)(A).

City shall take all necessary actions to eliminate the MUNI-only restriction on the northbound approach of Fourth Street between King and Townsend Streets so that it can be used by all vehicular traffic, as noted in Section I.A.1.b(iv)(A).

- C. Provide approximately one hundred thirteen (113) feet right-of-way between King and Berry Streets, with approximately eighty-nine (89) feet of roadway including approximately thirty-seven (37) feet for MUNI and two (2) twelve (12) foot sidewalks, as noted in Section I.C.4 below. Two (2) fifteen (15) foot curb lanes will be provided to accommodate both bicycle and motor traffic. (Class III bike route.) Except as otherwise provided herein, Owner and MUNI will each be responsible for one-half (1/2) the cost of widening and improving the existing Fourth Street to the dimension shown in Section BB, in accordance with Section I.C.4 hereof.

(iii) King Street

- A. Widen south side of King Street between Fifth and Fourth Streets to accommodate the lane configurations for the Fourth Street/King Street intersection in Section I.A.1.b(iii)A, above.
- B. Construct a one-way one-lane westbound frontage road from Fifth Street to Berry Street as described in Section Exhibit 3c and as described in the Waterfront Transportation Project, Phase 2, as approved as of the Effective Date of the North OPA.

No eastbound frontage road will be constructed. Rather, Berry Street will remain open to traffic from Sixth to Fifth Street. The frontage road alignment has not been finalized. The area that was to have

been the eastbound frontage road shall be reconveyed to Owner.

(iv) Seventh Street

- A. Restripe Seventh Street between Townsend and Hooper Streets to accommodate the lane configuration changes described in Sections I.A.1.b.(vii)A, (vii)B, and (x)B. The northbound and southbound curb lanes will be restriped as fourteen (14) foot wide lanes to accommodate both bicycles and motor vehicles.
- B. Provide traffic signal interconnection on Seventh Street for the 16th Street, The Common, and Townsend Street intersections.

City shall take all necessary actions to eliminate on-street parking on both sides of Seventh Street between Townsend and Hooper Streets during the morning and evening peak commute periods.

(v) Berry Street Connector (See Exhibit 9 and Section I.C.6 below)

- A. Extend Berry Street around the west end of China Basin Channel, on the east side of the railroad to intersect The Common (the "Berry Street Connector Road").
- B. Construct one (1) fourteen (14) foot lane in each direction, with the southbound lane widening to two (2) lanes at the intersection with The Common, as described in the South Infrastructure Plan attached to the South OPA.

This Improvement requires relocation of JPB easement and other City Agencies and other governmental agencies' approvals as described in Section I.C.6 below. See Exhibit 9.

- C. The Berry Street Connector Road described in subsection A above will provide no on-street parking and will have no sidewalks.

- D. Pedestrian and bicycle access will be provided on a combined pathway parallel but separate from the connector road.

2. Wet Utilities.

The following section describes Infrastructure for sanitary sewer, combined sewer and storm drain facilities which shall, except as otherwise indicated, be provided by Owner in connection with the development of the North Plan Area:

a. Sanitary Sewer, Storm Drain And Combined Sewer System. The sanitary sewer, storm drain and combined sewer system and the Infrastructure Improvements to be constructed by Owner in connection therewith are identified on Exhibit 4. The facilities consist mostly of existing combined sanitary sewer and storm drain. With the exception of the new combined line parallel and adjacent to the north side of China Basin Channel (the "Channel") between Fourth Street and Sixth Street, only minor modifications are required to adequately sewer and storm drain the North Plan Area. However, separate storm and sewer lines will be constructed and connected to the existing combined sewer. In the subdivision process precise tie-in locations to the existing sewers in relationship to the outfall/diversion structures will be determined.

In Berry Street, construction will be done in a manner acceptable to the Owner and the City and designed to protect the integrity of the existing combined sewer box and utilities. In those portions of Berry Street being vacated the City shall reserve non-exclusive public utility easements for the area in which such utilities are located or are to be relocated.

The collection systems described above are designed for a five year storm consistent with existing City design criteria. For flows over the five year storm, adequate overland flows for the 100 year storm will be maintained in the street areas or in other designated areas, with flows directed to China Basin Channel (the "Channel"). At or prior to the approval of the first Major Phase Owner shall submit to the Department of Public Works an overland flow study demonstrating how the 100 year storm flows will be accommodated through the North Plan Area to the Channel.

b. Auxiliary Water Supply System (AWSS). The AWSS system and the Infrastructure Improvements to be constructed by Owner in connection therewith are identified on Exhibit 5. This system is also known as a high pressure water supply system dedicated for fire protection. Most of this system is existing. The City wide system serves as a source of fire protection in industrial, commercial and many residential districts. The system consists of cast iron or ductile iron pipe (DIP), high pressure hydrants, valves and fittings, and appurtenant improvements. It is contemplated that the North Plan Area system will be connected to the South Plan Area system via an interconnection between Berry Street and North and South Common Streets via the proposed connector road (as described in Section I.A.1.b(vii) above) when appropriate. In addition, the AWSS line will be connected to the existing Seventh Street line at Berry Street. Additionally, the line will interconnect to the South of Channel via the Connector road between Berry and North Commons. DPW will design the proposed

Improvements shown in Exhibit 5. Owner shall pay for the costs of designing the AWSS System. Owner may monitor the design process and cost parameters during design development and contribute to the design specifications by reviewing and commenting on conceptual design and cost analyses and proposed final construction plans and estimates prior to bidding for cost and to ensure consistency with the other utility Infrastructure Improvements, including pipe, hydrant and valve locations.

c. Low Pressure Water System. The low pressure water system is identified schematically on Exhibit 6. Most of this system is existing. This domestic water supply and fire protection system consists of DIP mains, low pressure fire hydrants, valves and fittings, and appurtenant Improvements. It is contemplated that the North Plan Area system will be connected to the South Plan Area System when appropriate. A connection to the South Plan Area low pressure system may, subject to approval of other regulatory agencies with jurisdiction (such as BCDC, Corps of Engineers, RWQCB and others), be installed in the Fourth Street alignment beneath the Channel when appropriate. Engineering design and analysis provided by Owner shall verify whether this interconnect is required for adequate fire flows and it shall not be constructed if not so required. Final pipe sizes, locations, connections and interconnections, flows, pressures, and location and number of fire hydrants will be determined with a new "Hardy Cross" hydraulic model analysis using appropriate design criteria reasonably established by the City.

d. Channel Suction Inlets. Channel Suction Inlet Infrastructure Improvements shown on Exhibit 5 will be provided by Owner subject to approval of other regulatory agencies with jurisdiction (such as BCDC, Corps of Engineers, RWQCB and others). No cisterns are required.

e. Reclaimed Water System. The Reclaimed Water System Infrastructure Improvements identified on Exhibit 7 will be installed by Owner to the extent required by applicable City Regulations. This system consists of DIP bagged for corrosion protection and cross-connection prevention, valves and fittings, and appurtenant improvements. The pipes will be installed in each of the streets (one (1) side only) as the streets are constructed. Supply for the reclaimed water has not yet been determined. Lines will therefore be installed dry. Actual supply point connections will be determined when supply is available.

3. Dry Utilities.

a. Joint Utility Trench. Work necessary to provide the joint trench for dry utilities (that lie in public streets and in the sidewalk area if at all possible) consists of trench excavation and installation of conduit ducts for telephone, cable, fiber optic, electrical, gas (direct burial), fire and police alarm and MUNI. Additionally, utility vaults, splice boxes, street lights and bases, wire and transformer allowance, and backfill are included. The utility owner/franchisee (such as MUNI and fiber optic companies) will be responsible for installing facilities such as transformers and wire.

All necessary and properly authorized public utility Improvements for which franchises are authorized by the City shall be designed and installed in the public right-of way in

accordance with City Regulations in effect from time to time, and permits approved by DPW. Joint trenches or utility corridors will be utilized wherever feasible. The location and design of joint trenches/utility corridors in the right-of way must be approved by DPW during the subdivision review process. All subsurface vaults serving one building shall be placed behind the property line. If a subsurface vault serves the distribution system, it may be placed in the right of way. Other facilities (e.g., traffic signal controllers) shall be located above ground as necessary for operational reasons. The precise location of the joint trench in the right of way will be determined prior to recording the applicable final map and identified in the subdivision improvement plans. Nothing in this Infrastructure Plan shall be deemed to preclude Owner from seeking reimbursement for or causing others to obtain consent for the utilization of such joint trench facilities where such reimbursement or consent requirement is otherwise permitted by law.

b. Street Lights. Secondary power for street lighting shall be installed in a separate trench in accordance with the City Regulations in effect from time to time. Sections 937 through 943 of the San Francisco Public Works Code contain specific requirements for street lighting and is hereby incorporated by reference.

B. PUBLIC OPEN SPACE

1. Open Space Parcels.

The Open Space Parcels are shown in Exhibit 8 as shaded zones and denoted as parcels beginning with "NP." The Owner shall construct all of the Improvements in the Open Space Parcels in accordance herewith and as described in the Design for Development.

Parcels NP1 to NP5 are on the northerly and westerly border of the Channel and will provide a variety of open space uses including a pedestrian promenade along the entire length of the Channel, a plaza/square at the foot of Fifth Street, a view platform at the foot of Sixth Street axis, and areas for courts and other active use. These Open Space Improvements are further described below and in the Design for Development.

The pedestrian promenade (North Channel Esplanade-NP1 & NP3)) is an urban walkway generally at grade and wide enough for emergency vehicles. Site furnishings may include pedestrian-scale light poles, benches (wood, stone or metal), and trash receptacles. Guidelines for the treatment of the Channel edge below the top of bank are included in the Design for Development and are subject to approval of regulatory agencies (such as BCDC, Corps of Engineers and RWQCB). Westerly of the Fourth Street Bridge, the promenade will include, subject to approval of other regulatory agencies with jurisdiction (such as BCDC, the Corps of Engineers and RWQCB) construction of a pile-supported deck over the eroded portions of the Channel edge.

The plaza/square at the Fifth Street axis (Fifth Street Square-NP2) is envisioned as a neighborhood square. A central water element or other character giving design feature (pavilion, artwork, etc.) will be a prominent feature in this space, and will be supplemented by benches and lighting. This open space area and the area at the Sixth Street axis may accommodate future

improvements to the existing venting system, including a vent for the nearby Combined Sewer Overflow box.

At the plaza and also at the Sixth Street axis (NP4), a structural deck, pile supported and/or cantilevered, will, subject to approval of regulatory agencies with jurisdiction (such as BCDC, the Corps of Engineers and RWQCB) cover the existing storm drain outfalls at the Channel edge.

The more active areas of open space are located on the west end of the promenade near the overhead freeways. This area, (Pumphouse Park-NP5)) between freeway support columns, can accommodate several courts including basketball and tennis, as well as paths for rollerblading, jogging, bicycling and walking. Site furnishings will include light poles, drinking fountains, benches, and trash receptacles.

2. **Mid-Block Lanes.** Mid Block Lanes on parcels N3, N3a, N4 and N4a. may include paving, street furnishings, lighting, landscaping and irrigation system.

C. OTHER INFRASTRUCTURE

The following additional Infrastructure Improvements shall, except as otherwise indicated, be provided by Owner in connection with the development of the North Plan Area.

1. **Pedestrian Bridge.** A neighborhood linking pedestrian bridge across the Channel at Fifth Street will connect the neighborhood open space system north and south of Channel in the Channel Park area along Fifth Street. The obligation to construct a neighborhood linking pedestrian bridge is subject to obtaining authorization and approvals acceptable to Owner from all regulatory agencies with jurisdiction (such as BCDC and Coast Guard). The bridge as shown in Exhibit 10 will be a center swing bridge 11 feet wide, with a steel approach span of approximately 115 feet long, a steel center swing span of approximately 70 feet, an approach span of approximately 65 feet long, and steel deck supports, turntable systems, wall abutments (not higher than five feet above adjacent finish grades at the north and south channel banks) and a control building (or equivalent type of bridge structure which achieves the same pedestrian connection between the north and south sides of Channel).

2. **Freeway and Pump Station Demolition.** The abandoned section of I-280 in the North Plan Area between Sixth Street and Third Street has been or is being demolished in anticipation of adoption of the Mission Bay North Redevelopment Plan and related Plan Documents. The Fourth Street off ramp and the abandoned Fourth Street Pump Station are also being or will be demolished.

3. **Interim Operational Requirements.** These Improvements include temporary Improvements to be constructed by Owner such as interim roadways or utility Improvements which may be necessary to adequately serve a Major Phase or Project therein, until such time as final Improvements are constructed. These Improvements may be removed and /or abandoned by Owner, as determined by the Department of Public Works, when the

balance of development occurs. An example is a traffic turn-around area at the interim terminus of a street which will be extended in future phases.

4. MUNI. The MUNI Light Rail Transit Project is anticipated to run down the center of portions of King Street and Fourth Street in the North Plan Area. MUNI will construct the street section and traffic signals in Fourth Street between King Street and the Channel in order to accommodate the track and platform system in accordance with this Infrastructure Plan. If, however, the Owner proceeds with Fourth Street Improvements pursuant to the phasing program (See Section II) prior to MUNI's construction of its Fourth Street facilities, the Owner will construct the street section and traffic signals and provide the necessary right of way in Fourth Street between King and the Channel, as described in Exhibit 3b, necessary for MUNI facilities.

The Owner is not responsible for MUNI related Improvements in the North Plan Area, except as specifically provided herein. The relocation of utilities necessitated by the Third Street Light Rail Project shall not be the responsibility of Owner except as described in this Infrastructure Plan.

Except as otherwise provided herein, Owner and MUNI will each contribute only to Fourth Street Widening Costs (as defined below) incurred by Owner or MUNI in the total amount for each of one-half (1/2) the cost of widening and improving the existing Fourth Street between King Street and the Channel in accordance with this Infrastructure Plan (the "Fourth Street Contribution"). As used herein, the widening and improving of the existing Fourth Street between King Street and the Channel in accordance with this Infrastructure Plan, hereinafter the "Fourth Street Widening," consists only of the following:

- (1) Demolition of existing pavement, curb and gutter;
- (2) Preparation of street subsurface and street base;
- (3) Installation and resurfacing of street;
- (4) Construction or reconstruction of gutters, catch basins and sidewalks;
- (5) Utility lateral extensions;
- (6) Installation or relocation of street lights and strain poles;
- (7) Installation or relocation of traffic signal poles, masts, heads and controllers.

MUNI's or Owner's, as applicable, obligation for any Fourth Street Contribution is conditioned upon: (a) A construction contract having been executed for the Fourth Street Widening, or a portion thereof; and (b) The Owner or MUNI, as applicable, having secured a funding commitment for the balance of the cost of constructing the Fourth Street Widening or the segment which is covered by the construction contract described in clause (a) above.

Provided the foregoing conditions to Owner's and MUNI's obligation for any Fourth Street Contribution have been satisfied, the Owner or MUNI, as applicable, shall pay the Fourth Street Contribution upon the occurrence of all of the following: (i) Owner and MUNI, as applicable, having certified that construction of the Fourth Street Widening, or portion thereof covered by the applicable construction contract, is ready to proceed; and (ii) Owner or MUNI, as applicable, having provided reasonably detailed documentation, including, without limitation, from the construction bid documents for the Fourth Street Widening Costs (as defined below) to be paid.

As used herein, "Fourth Street Widening Costs" means the substantiated, reasonable costs of construction of the Fourth Street Widening, which costs shall consist of the following, without duplication: (i) the "hard" costs to be incurred by Owner or MUNI, as applicable, under the contract, for the construction of the Fourth Street Widening (the "Hard Costs"); (ii) out of pocket costs incurred by Owner or MUNI, as applicable, in preparing construction documents, specifications, schedules and related construction contracts in the amount of two percent (2%) of the Hard Costs; (iii) a construction and project management fee to be retained by Owner or MUNI, as applicable, in the amount of four percent (4%) of the Hard Costs; (iv) pro-rata professional costs in the amount of eleven percent (11%) of the Hard Costs, 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 Owner or MUNI); and (v) out of pocket costs directly related to the construction of the Fourth Street Widening, such as costs of security, safety signage, payment, performance and/or maintenance bonds, and insurance costs. City Agencies' administrative costs in connection with the Fourth Street Widening project shall only be included to the extent allowed as a Fourth Street Widening Costs and shall not be included in Agency Costs.

In conjunction with the Waterfront Transportation Projects, MUNI is not precluding the possibility of extending the existing King Street MMX tracks to a future station at Sixth Street, which extension and facilities, including a minimum three hundred sixty (360) foot long platform, shall be constructed by and be the responsibility of MUNI. Owner will provide poles and/or the legal permission to connect via eyebolts to the structural components on adjacent buildings with sufficient structural capacity to support trolleybus wires on both sides of Fourth Street between Townsend and King Streets and on Fourth Street between King and Channel Streets prior to the initiation of trolley bus service into Mission Bay. Where possible combined streetlight/trolley bus poles may be provided as determined by MUNI.

The final timing for MUNI Improvements, as described herein has not been established by MUNI. It is possible, for example, that portions of the Third Street Light Rail Project may commence in advance of adjacent development along related street frontage. The first construction phase is scheduled to begin in January 2000 with revenue service to begin in 2003. In order to accommodate the Third Street light rail tracks, a MUNI station platform and bicycle traffic between Berry and King Streets, the Owner will provide approximately fifteen (15) feet of Fourth Street on each side of the street between King and Berry Streets and approximately eleven (11) feet on the west side of the street between Berry and China Basin Channel tapering to the existing lane configuration over a length of approximately ninety (90) feet.

City shall install and maintain transit shelters, including transit related furniture, adjacent to MUNI selected transit zones on land owned by the City (unless otherwise agreed by Owner). Owner should work with MUNI to accommodate, in land owned by the City (unless otherwise agreed by Owner), MUNI operation, staging and support facilities, including, but not limited to, operator restroom, street supervisor call boxes, oversized terminus/trailer shelters, transmit patron access, and special vehicular and MUNI personnel access and staging areas to support maintenance and security functions. The precise location shall be determined in consultation with Owner.

If Owner modifies lot entrances and/or exits that affect MUNI facilities, such as bus terminal areas, Owner will work with MUNI to develop acceptable mitigation. Owner will bear the reasonable costs of relocation of MUNI facilities if needed.

5. **Waterfront Transportation Projects.** Phase One of the Waterfront Transportation Project within the North Plan Area, which included the touchdown ramps at Fifth Street and King Street along with MUNI Light Rail Improvements, has been completed with contributions from the Owner in anticipation of adoption of the Mission Bay North Redevelopment Plan and related Plan Documents. A portion of Phase Two of the City's Waterfront Transportation Project related to westbound King Street frontage road between Fifth Street and Sixth Street is included in this Infrastructure Plan. (See Section I.A.1.c. above)

6. **Access to Seventh Street.** Access to Seventh Street will be provided via the Berry Street Connector Road to the North and South Common Streets, which in turn will connect Seventh Street by means of an at-grade railroad crossing as described in more detail in the South Infrastructure Plan attached to the South OPA. See Exhibit 9.

7. **Odor Control Improvements.**

Owner shall, subject to the terms and conditions of this Section I.C.7, pay to the City a total of Five Million Dollars (\$5,000,000) in cash (inclusive of amounts payable pursuant to this Section I.C.7 and pursuant to Section I.C.10 of the South Infrastructure Plan) to be used, together with any interest earned thereon, exclusively for capital costs (i.e., out-of-pocket costs of design and construction) of physical improvements at the Southeast Water Pollution Control Plant designed to reduce odors ("Odor Control Improvements"), such as, without limitation, covering, venting and treating foul air from various solids handling facilities.

a. Owner shall pay said amount in two (2) equal installments (each, an "Installment") of Two Million Five Hundred Thousand Dollars (\$2,500,000) each. The first Installment shall be due and payable on the date ten (10) days after the date of Final Approval (as defined below) of the first Building Permit for new construction by Owner of a Project in either the North or the South Plan Area other than a Project to be constructed by the Agency, City or for the UCSF Campus. The date of "Final Approval" of a Building Permit is the date upon which (i) any and all applicable appeal periods for the filing of any administrative appeal challenging the issuance or effectiveness of such Building Permit shall have expired and no such appeal shall have been filed, or (ii) if such an administrative appeal is filed, the issuance and effectiveness of such Building Permit shall have been upheld by a final decision in each such

administrative appeal without any adverse effect on the validity of such Building Permit. The second Installment shall be payable on the date one (1) year after the date of Final Approval of such Building Permit. Installments paid pursuant to Section I.C.10 of the South Infrastructure Plan shall be credited against any Installments due under this Section I.C.7.

b. Owner's obligation to pay each Installment shall be conditioned only on (i) the continuing effectiveness on the date the Installment is due of the Owner Participation Agreement for either or both the North Plan Area and the South Plan Area and (ii) such Building Permit is not as of the date the Installment is due suspended or revoked by the City at its own initiative. Following contribution by Owner, the City shall diligently proceed to design and construct Odor Control Improvements to the extent of the funds contributed by Owner.

c. The City has publicly stated its intent to spend an additional Five Million Dollars (\$5,000,000) to correct sewer flooding problems in the Bay View/Hunters Point neighborhoods. Annually, following the contribution of funds by the Owner pursuant to the foregoing paragraph and until all such funds have been expended, the City will provide to Owner a summary of the status of the Odor Control Improvements and sewer flooding improvements undertaken with the funds contributed by the Owner and the City's own funds.

II. INFRASTRUCTURE PHASING METHODOLOGY

A. Infrastructure Phasing.

Construction of Infrastructure Improvements described herein, including public Open Space Parcels, will be phased and included in the applicable tentative maps and related improvement plans and improvement agreement approved prior to filing a final map to serve the incremental build-out of the North Plan Area in accordance with the Mission Bay North Redevelopment Plan and Plan Documents. In order to maintain flexibility in determining Infrastructure requirements, an Infrastructure phase is defined as the access, utility and open space Improvements necessary to accommodate development of a Major Phase or Project therein.

1. Adjacency.

The primary underlying principle of the Mission Bay North Plan Area Infrastructure phasing plan is "adjacency", and unless provided below, Infrastructure will be constructed based on this principle. When development occurs in a Major Phase or for a Project adjacent Infrastructure necessary for access and utilities such as streets (and Improvements therein, if any), curbs, gutters, sidewalks and open space will be constructed. This includes, in general, Open Space Parcels (or portions thereof) that are adjacent to the Project to be developed. Similarly, the construction of storm and sewer facilities using the City's existing combined sewer system will generally follow the adjacency principle. Adjacent Infrastructure refers to Infrastructure which is near to and may share a common border or end point with a Major Phase or Project but which may not be adjoining or contiguous with a Major Phase or Project.

2. Cumulative Development Requirements.

The second principle of Infrastructure phasing is “cumulative development requirements.” Due to the effect of cumulative traffic growth, some key intersections and street segments may reach congested conditions before development occurs on sites adjacent to those intersections or street segments out of the typical adjacency phase. A specific Improvement might be, for example, a new or reconstructed intersection or street segment, such as the widening of an existing street.

Therefore, thresholds have been established for each applicable traffic infrastructure Improvement, based on the number of p.m. (evening) peak hour vehicle trips that are likely to cause one or more intersections in the North Plan area to deteriorate to unacceptable levels of service. As part of the review process for each Project, the number of p.m. (evening) peak hour vehicle trips generated will be estimated using the trip rates shown in Table 1, and added to the total calculated number of p.m. (evening) peak hour vehicle trips already generated by the developed portions of the Mission Bay project, using the same trip rates. This number will determine which Infrastructure Improvement has to be built beyond that already required by the adjacency principle.

Tables 2 and 3 identify the street intersections and street segments Improvements, respectively, that are subject to cumulative development requirements and show the approximate number of p.m. (evening) peak hour vehicle trips that establish the need for each such Improvement. The number of p.m. peak hour vehicle trips shown in Tables 2 and 3 could result from a variety of project development schemes and land use combinations. The trip rates shown in Table 1 will be used to establish if a given mix of land use development requires Improvements to the street intersections and street segments listed in Tables 2 and 3.

B. Specific Additional Factors and Criteria Influencing Infrastructure Phasing.

Several other factors or specific criteria will affect the timing and nature of Infrastructure construction. Except as provided below, the general phasing principles in Section II.B shall control the construction of Infrastructure Improvements.

1. Interim Operational Requirements.

The interim operational requirements as described in Section I.C.3 shall be provided as necessary to adequately serve a Major Phase or Project therein, until such time as the final or permanent Infrastructure Improvements are constructed. These interim Improvements may be removed and/or abandoned, as determined by the Department of Public Works, when the balance of development occurs.

2. Intersection and Street Segment Improvements.

a. Intersection Improvements.

- (i) Table 2 identifies the approximate levels of cumulative development that produce the number of vehicle trips to require the implementation of the North Plan Area intersections Improvements at each intersection described in Section I.A.1.b. Even if not indicated by Table 2's land use intensity threshold, adjacent intersection Improvements will be constructed with development of an adjacent Project, regardless of the amount of overall cumulative development.
- (ii) Third Street/Berry Street. The Improvement in Section I.a.1.b.(ii)A, will be undertaken after the southbound left turn pocket to Terry Francois Boulevard on the Lefty O'Doul Bridge is eliminated, which would occur after the Owens Street/Third Street intersection in the South Plan Area is built.

b. Street Segments. Table 3 identifies the approximate levels of cumulative development that would require the implementation of the North Plan Area street segments Improvements described in Section I.A.1.c. Even if not indicated by Table 3's land use intensity threshold, adjacent street segment Improvements will be constructed with the development of an adjacent Project, regardless of the amount of overall cumulative development.

3. Open Space.

Improvements on Open Space Parcels or portions thereof, in the North Plan Area, will be undertaken when the adjacent Project is developed, in accordance with the adjacency principle described in Section II.B.1 and as provided in the applicable final map improvement plans as follows:

a. Development of Parcels N3a and N4a.

(i) Channel Esplanade. (Parcels NP1 and NP3). Improvement to the Channel Esplanade will be phased and completed in segments within a reasonable period of time of Completion of Construction of the immediately adjacent Project in Parcels N3a and N4a , as determined by the Agency at the time of Completion of Construction.. Such construction segments would generally be contiguous with the immediately adjacent Project, and shall also take into consideration reasonable construction, access and storage requirements for each such Project and subsequent Projects.

The phasing of construction of the Channel edge below the top of bank shall be determined during review by resource agencies with jurisdiction.

(ii) Fifth Street Square. (Parcel NP2). Fifth Street Square may be constructed in two (2) separate phases, provided that the initial phase shall be completed within a reasonable period of time of Completion of Construction of the immediately adjacent Project in Parcels NP3a or NP4a, as applicable, as determined by the Agency at the time of Completion of Construction. Such initial phase shall consist of not less than fifty percent (50%) nor more than seventy-five percent (75%) of the Fifth Street Square area, as reasonably determined by the Agency and Owner, subject to reasonable construction, access and storage requirements for each Project and subsequent Projects.

(iii) Parcel NP4. Parcel NP4 will be constructed within a reasonable period of time of Completion of Construction of the immediately adjacent Project in N4a, as determined by the Agency at the time of Completion of Construction.

b. Development of Parcel N5. Improvement of Parcel NP5 will be completed within a reasonable period of time of Completion of Construction of the last Project in Parcel N5, provided, however, that the portion of Parcel NP5 at the end of China Basin Channel adjacent to the Berry Street Connector Road will be constructed in conjunction with the construction of the Berry Street Connector Road.

c. Development of Parcel N1. No Open Space Improvements required.

d. Development of Parcel N2. No Open Space Improvements required.

e. Development of Parcel N3. No Open Space Improvements required.

f. Development of Parcel N4. No Open Space Improvements required.

A construction phasing schedule for Open Space Parcels shall be identified by Owner at the time of Major Phase approval for each Major Phase which includes Open Space Parcels.

4. Interconnecting Infrastructure.

The following interconnecting Infrastructure systems should be provided based upon cumulative development requirements as following.

a. Pedestrian Bridge. The timing of construction of a north and south neighborhood linking pedestrian bridge as described in Section I.C.1, shall be determined by Owner and in accordance with the standard set forth in the South Infrastructure Plan.

b. Possible Low Pressure Water Line at Fourth Street. The results of a new "Hardy Cross" hydraulic model analysis will be submitted by Owner to the San Francisco Water Department at the time of approval of the first Major Phase in the South Plan




Area. The timing of construction of a low pressure water connection to the south, as described in Section I.a.2.c, if necessary, shall be determined based upon the hydraulic analysis described above, subject to the approval of all regulatory agencies with jurisdiction and the San Francisco Water Department.

c. **High pressure (AWSS) Water System West of the Channel along 7th Street to Berry.** The timing of construction of a high pressure water connection to the south, as described in Section I.A.2.d, if appropriate, shall be determined based on adjacency and as approved by the Department of Public Works and subject to approval of all regulatory agencies with jurisdiction and the San Francisco Water Department.

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**NORTH OF CHANNEL
PLAN AREA**

LEGEND

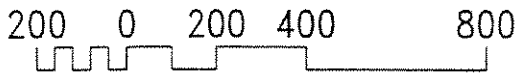
-  RESIDENTIAL
-  MIXED RESIDENTIAL & COMMERCIAL
-  OPEN SPACE / PARKS

- ① LIMIT OF NORTH OF CHANNEL WORK
- ② EMERGENCY ACCESS AND PUBLIC UTILITY EASEMENT AREA

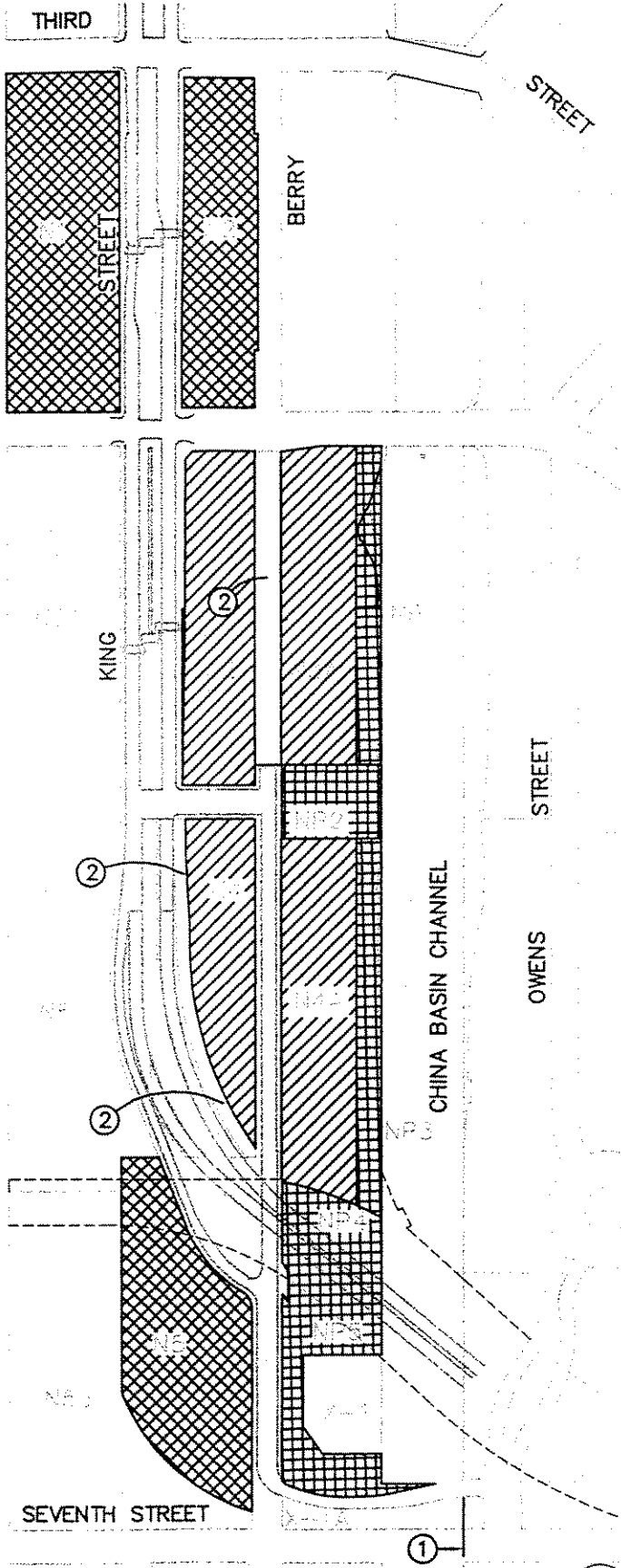
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GRAPHIC SCALE






A PROJECT OF CATELLUS DEVELOPMENT CORPORATION



①

**NORTH OF CHANNEL
INFRASTRUCTURE
SIGNALIZATION**

SYMBOL DESCRIPTION

-  TRAFFIC SIGNALIZATION (NEW)
-  TRAFFIC SIGNALIZATION (UPGRADE)
-  RE-STRIPING

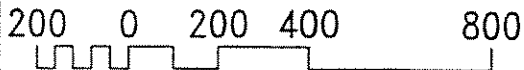
NOTE

FOR OFF-SITE INFRASTRUCTURE IMPROVEMENTS TO THE INTERSECTION OF 8TH STREET AND TOWNSEND STREET SEE 2a

- ① LIMIT OF NORTH OF CHANNEL WORK
- ② EMERGENCY ACCESS AND PUBLIC UTILITY EASEMENT AREA

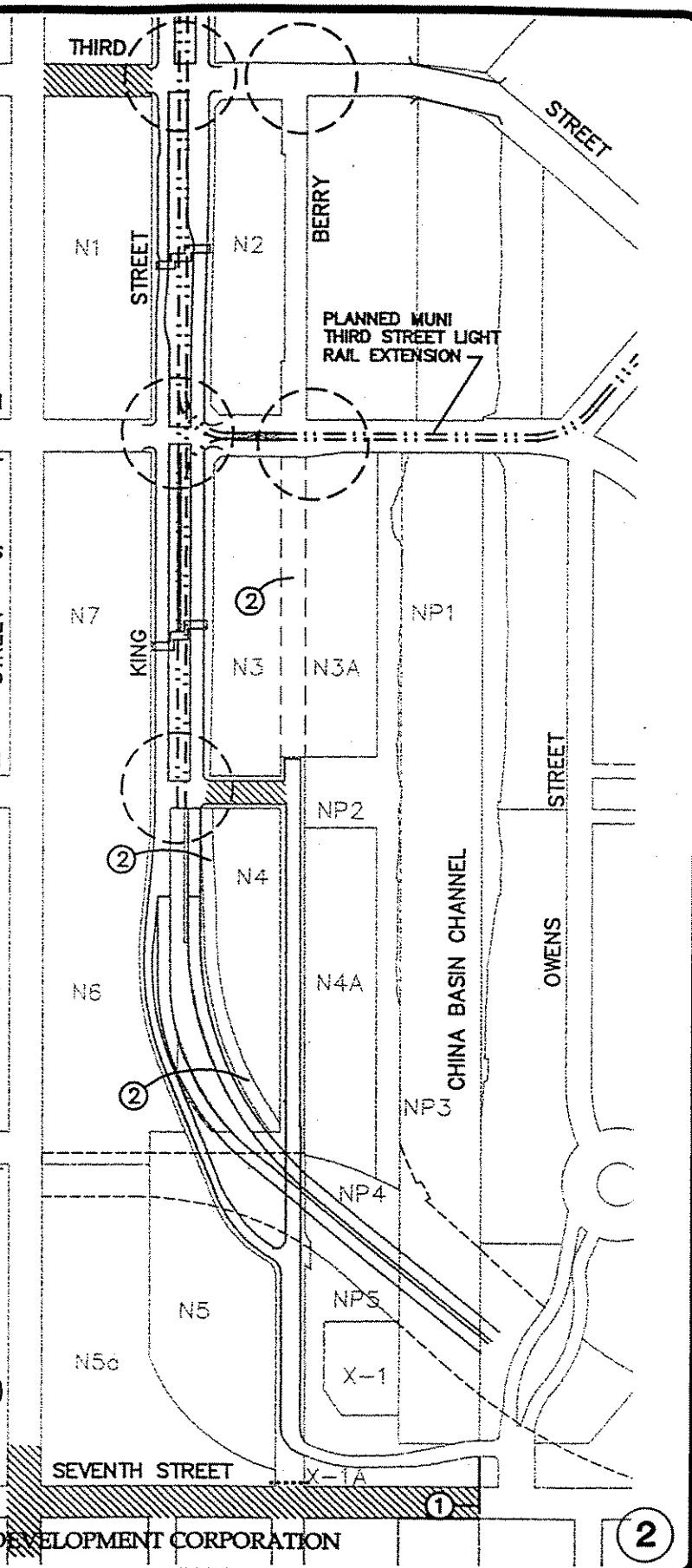


GRAPHIC SCALE



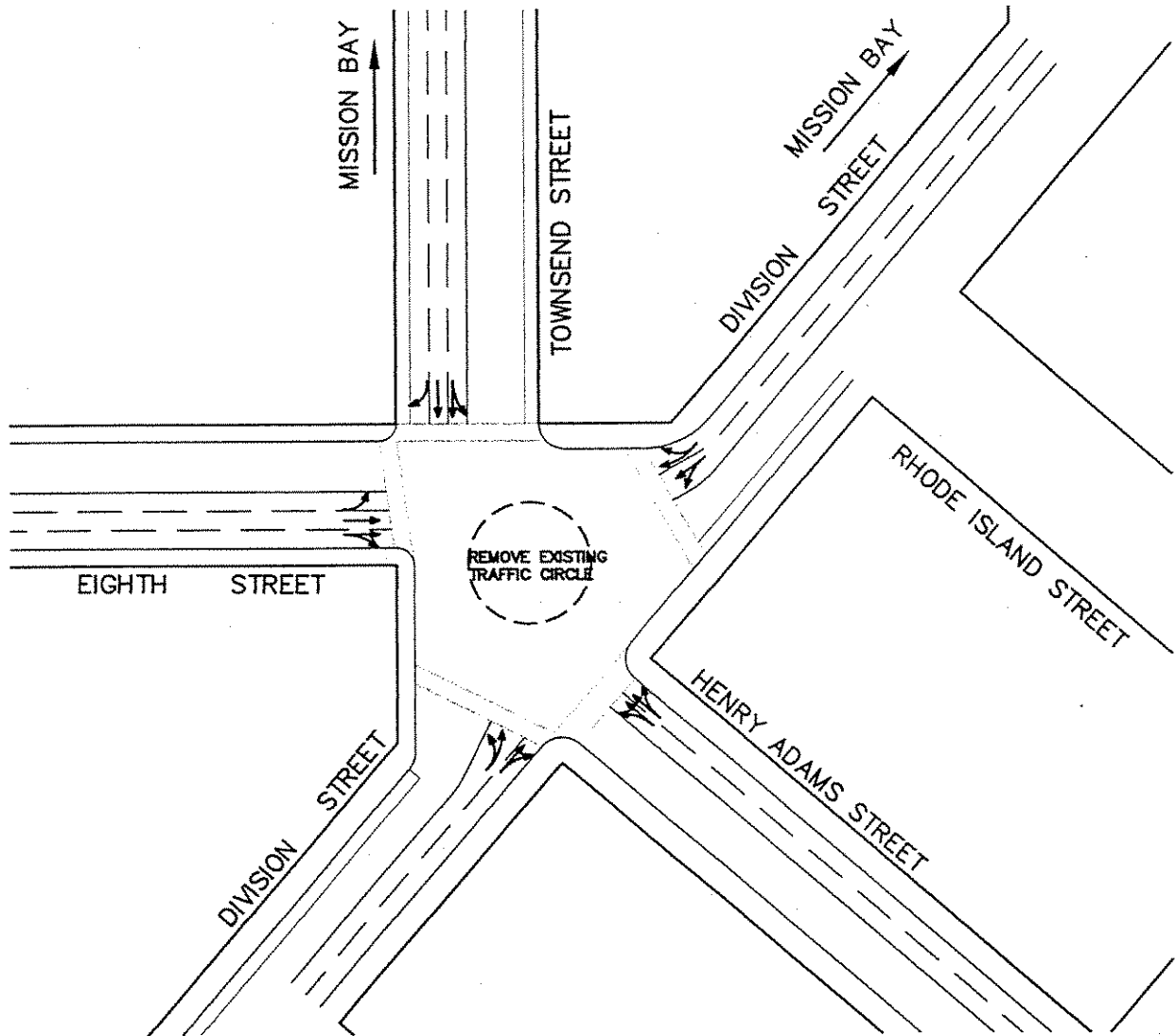
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②

**NORTH OF CHANNEL
INFRASTRUCTURE
EIGHTH AND TOWNSEND STREET
TRAFFIC SIGNALIZATION**

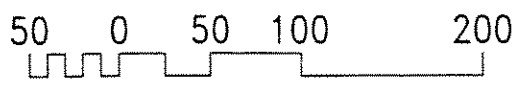


INF-104D 97-0540/L



NOTE:
FULLY SIGNALIZED INTERSECTION

GRAPHIC SCALE



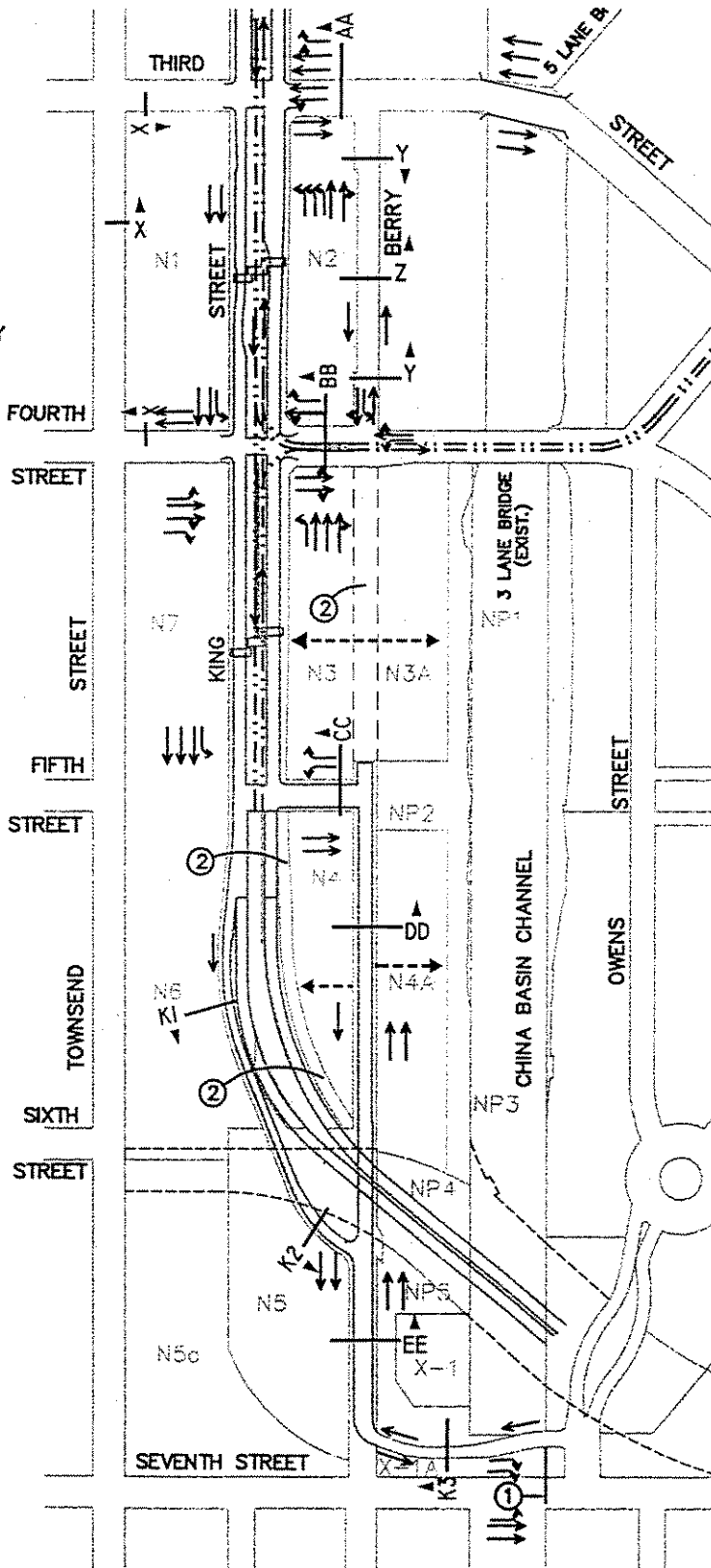
A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

2a

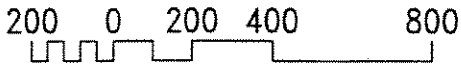
**NORTH OF CHANNEL
INFRASTRUCTURE
STREET SECTION KEY MAP**

SYMBOL	DESCRIPTION
	TRAFFIC FLOW
	TURNING MOVEMENT
	SECTIONS
	MID-BLOCK WALKWAY

- ① LIMIT OF NORTH OF CHANNEL WORK
- ② EMERGENCY ACCESS AND PUBLIC UTILITY EASEMENT AREA



GRAPHIC SCALE



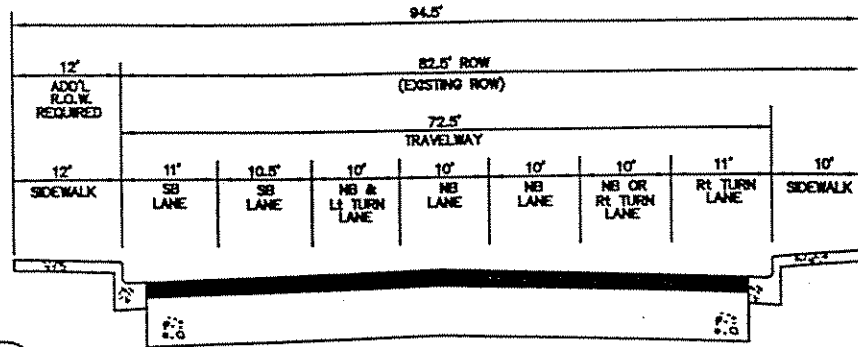
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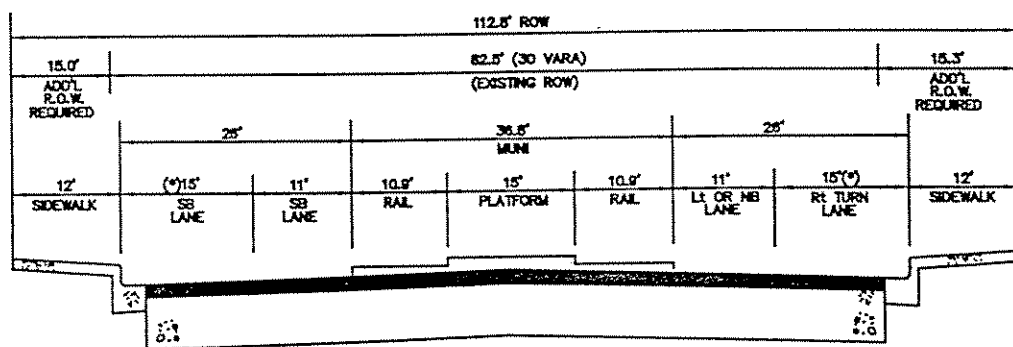
A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

3

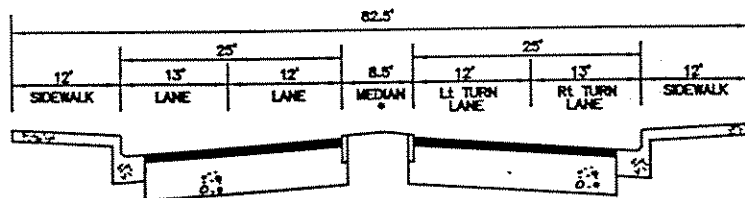
**NORTH OF CHANNEL
INFRASTRUCTURE
STREET SECTIONS**



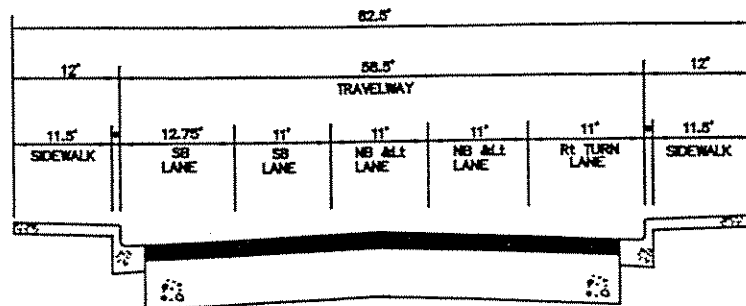
AA PROPOSED THIRD STREET
BETWEEN KING STREET AND BERRY STREET



BB (*) WIDE CURB LANE TO FACILITATE BIKE TRAFFIC
PROPOSED FOURTH STREET
BETWEEN KING STREET AND BERRY STREET



CC PROPOSED FIFTH STREET
BETWEEN KING STREET AND BERRY STREET * MOUNTABLE MEDIAN



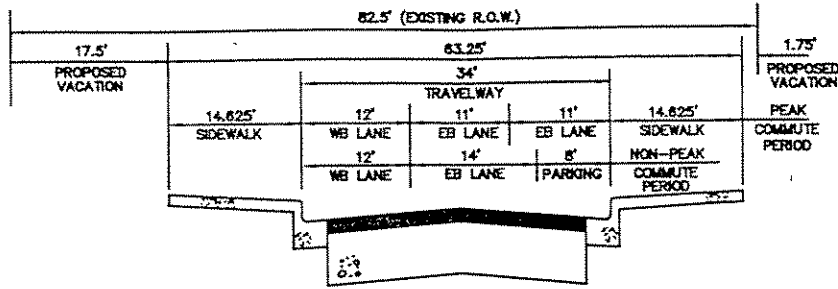
CC ALTERNATE PROPOSED FIFTH STREET
BETWEEN KING STREET AND BERRY STREET * 0.5 FEET

INF-104D 97-0540/L

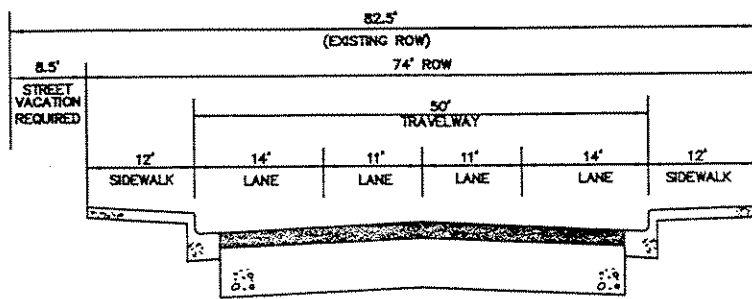


A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

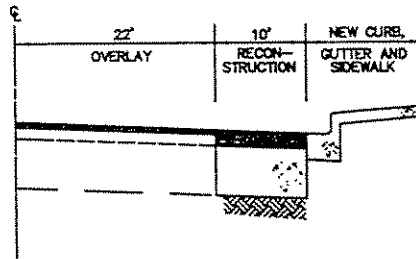
3a



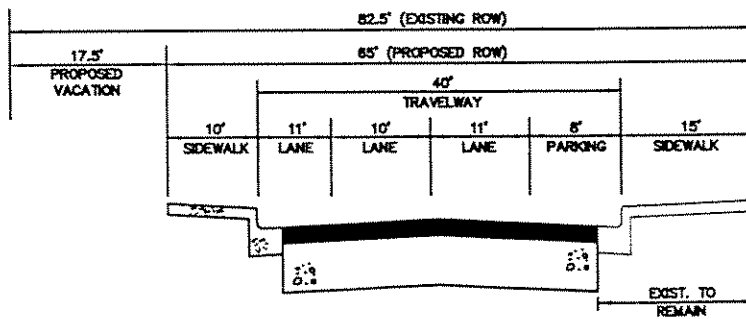
DD PROPOSED BERRY STREET
BETWEEN FIFTH STREET AND SIXTH STREET



EE PROPOSED BERRY STREET
BETWEEN SIXTH STREET AND SEVENTH STREET



X ADJACENT BLOCK H1 STREET CONFORMS (THIRD STREET, FOURTH STREET, TOWNSEND STREET)



Y BERRY STREET
BETWEEN FOURTH STREET AND THIRD STREET, AT THE INTERSECTION APPROACHES

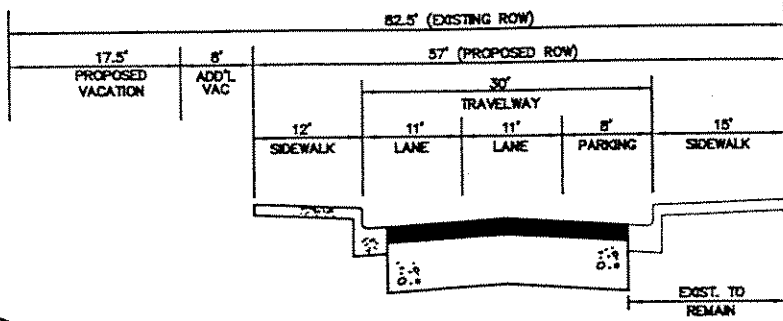
INF-104D 97-0540/L



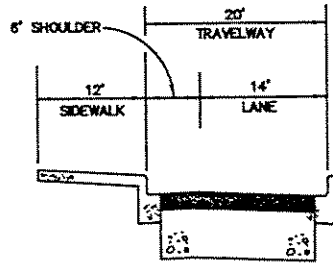
A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

3b

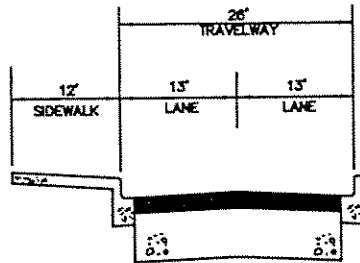
INF-104D 97-0540/L



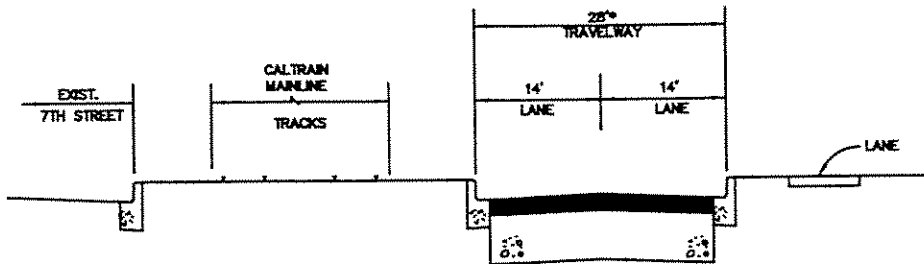
Z BERRY STREET BETWEEN THIRD AND FOURTH, MID-BLOCK



K1 KING STREET FRONTAGE ROAD



K2 KING STREET FRONTAGE ROAD NEAR BERRY STREET



K3 CONNECTOR ROAD - BERRY STREET TO NORTH LIMIT OF WORK WIDENS TO 3 LANES APPROACHING NEW AT-GRADE RAIL CROSSING (TO BE CONSTRUCTED AS PART OF MISSION BAY SOUTH PLAN)






A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

3c

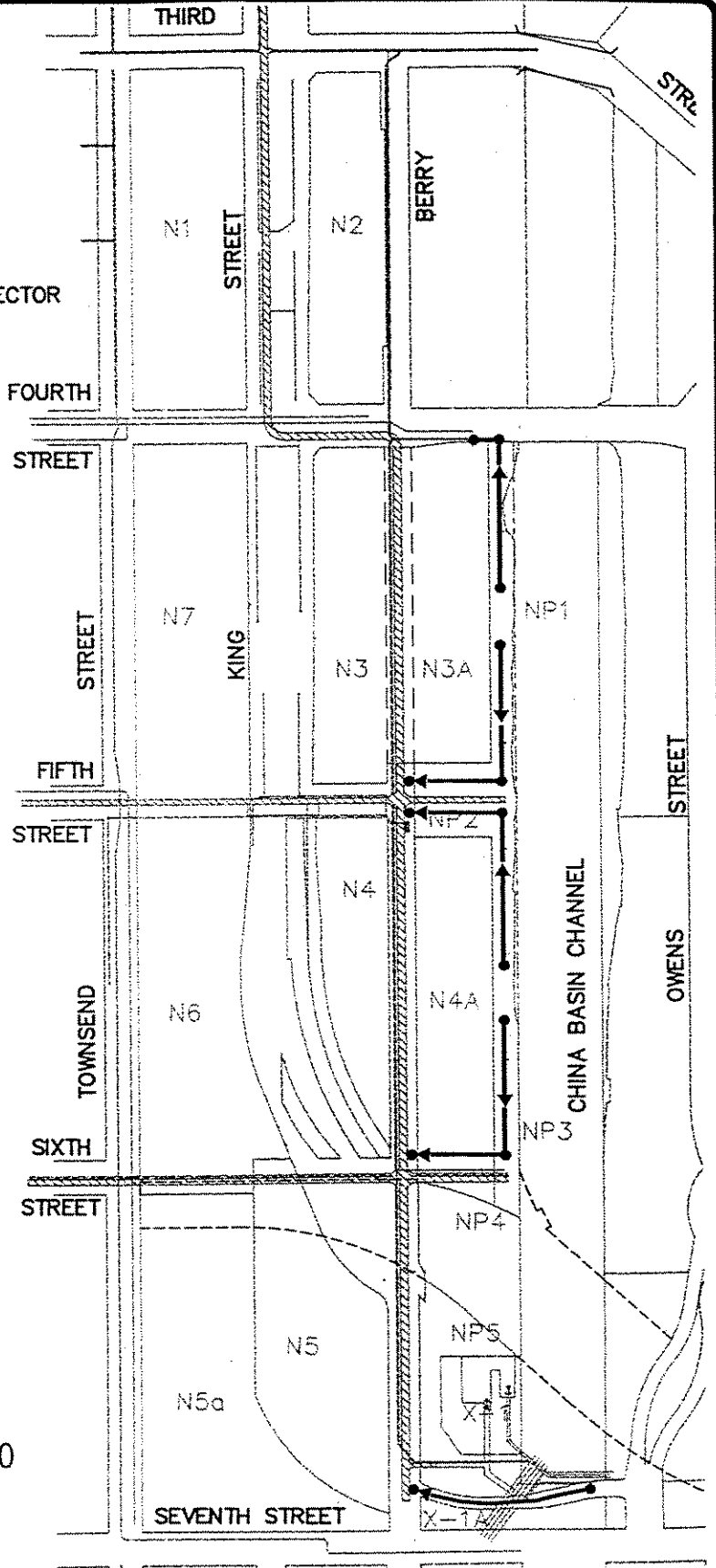
**INFRASTRUCTURE
SEWER**

SYMBOL DESCRIPTION

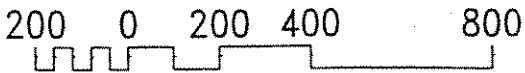
-  STORM DRAIN (NEW)
-  STRUCTURE EXISTING SEWER COLLECTOR
-  EXISTING TRANSPORT AND STORAGE BOX

NOTE:

SANITARY SEWER LATERALS TO SERVE PROPOSED DEVELOPMENTS WILL BE ROUTED TO EXISTING COMBINED SEWER FACILITIES. THESE NEW LATERALS ARE NOT SHOWN ON THIS PLAN.



GRAPHIC SCALE







INF-104D 97-0540/L



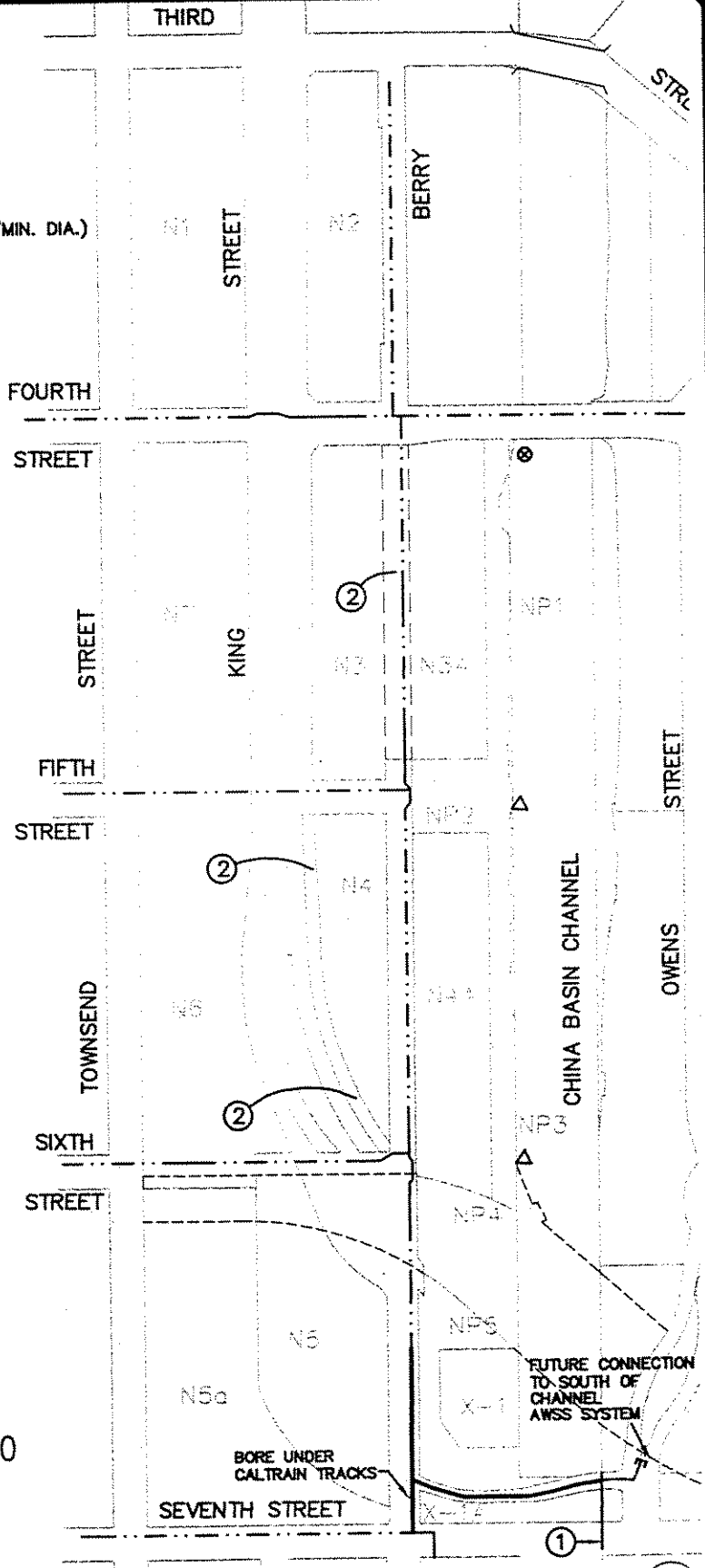
A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

**NORTH OF CHANNEL
INFRASTRUCTURE
HIGH PRESSURE WATER
AND SUCTION INLETS**

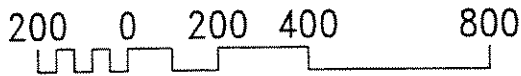
SYMBOL DESCRIPTION

-  PROPOSED HIGH PRESSURE (12" MIN. DIA.)
-  EXISTING HIGH PRESSURE
-  PROPOSED SUCTION INLET
-  EXISTING SUCTION INLET

① LIMIT OF NORTH OF CHANNEL WORK



GRAPHIC SCALE



INF-104D 97-0540/L



A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

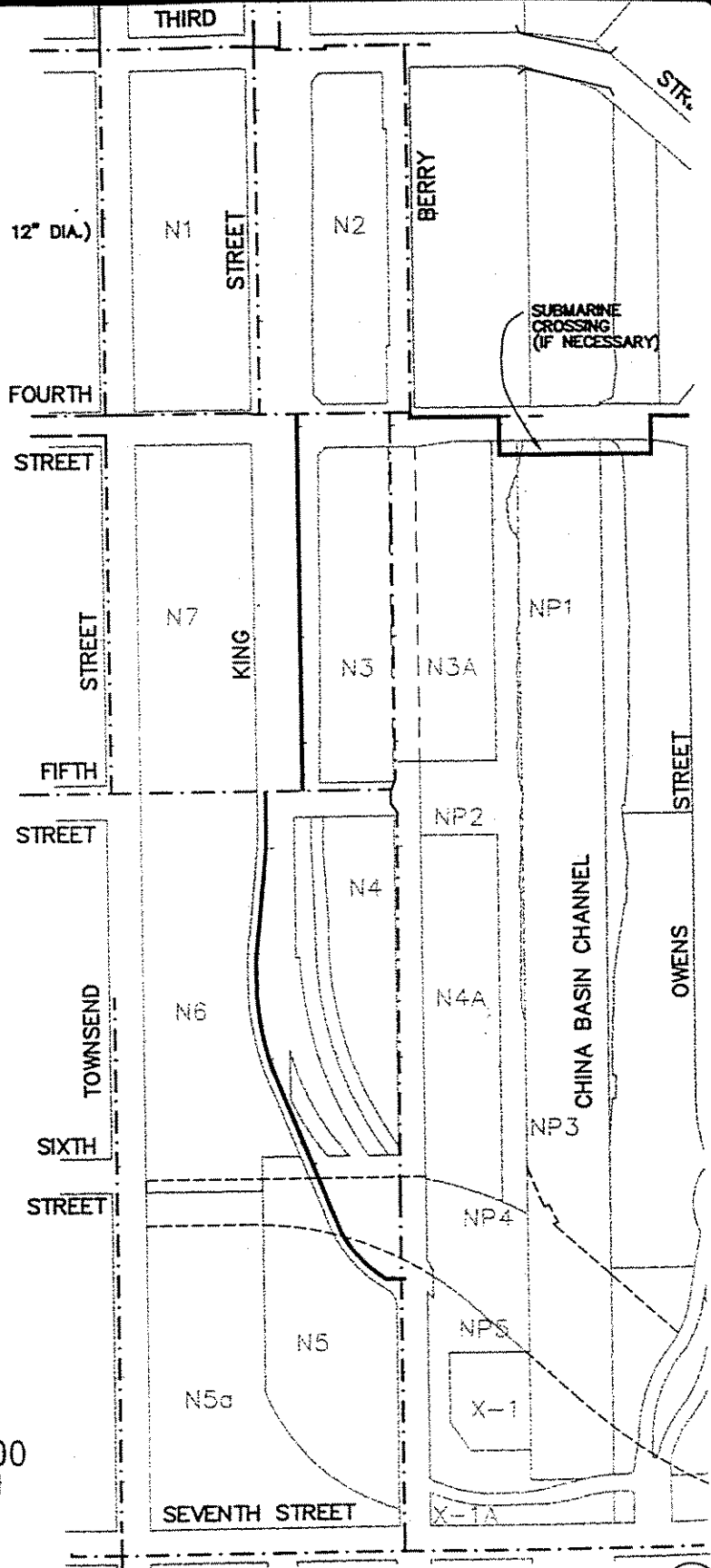
5

**NORTH OF CHANNEL
INFRASTRUCTURE
LOW PRESSURE WATER**

SYMBOL

DESCRIPTION

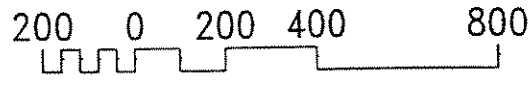
- PROPOSED LOW PRESSURE (AVE. 12" DIA.)
- - - - - EXISTING LOW PRESSURE



INF-104D 97-0540/L






GRAPHIC SCALE



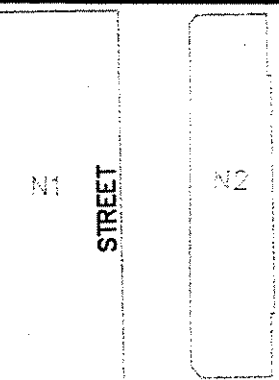
A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

**NORTH OF CHANNEL
INFRASTRUCTURE
RECLAIMED WATER**

SYMBOL	DESCRIPTION
	PROPOSED PIPELINE (6" DIP)
	CONNECTION TO FUTURE SOURCE OF SUPPLY NOT YET DETERMINED
	SERVICE CONNECTION

① LIMIT OF NORTH OF CHANNEL WORK

THIRD STREET

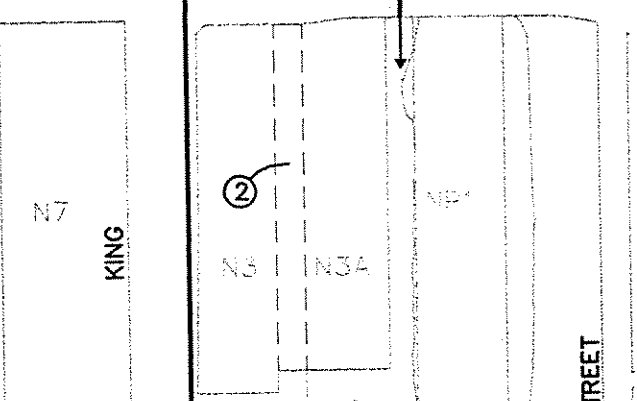


BERRY STREET

STREET

FOURTH STREET

STREET



FIFTH STREET

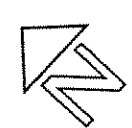
STREET

TOWNSEND STREET

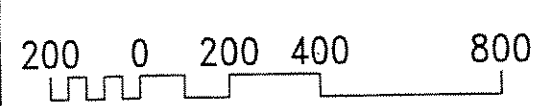
SIXTH STREET

STREET

SEVENTH STREET



GRAPHIC SCALE



A PROJECT OF CATELLUS DEVELOPMENT CORPORATION

①

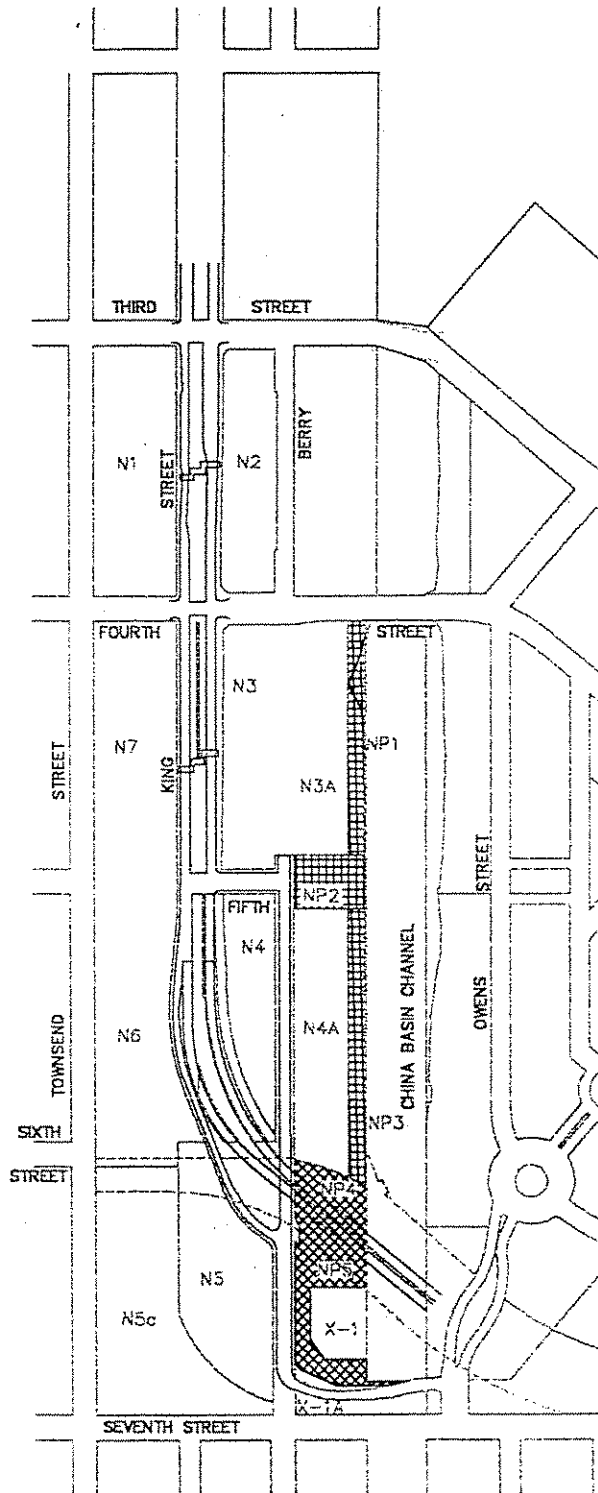
⑦

INF-104D 97-0540/L

**NORTH OF CHANNEL
INFRASTRUCTURE
PARKS & OPEN SPACE**

LEGEND

- NP1 CHANNEL PROMENADE
- NP2 FIFTH STREET PLAZA
- NP3 CHANNEL PROMENADE
- NP4 FREEWAY PARK
- NP5 CHANNEL PARK
- P9 CHANNEL PARK

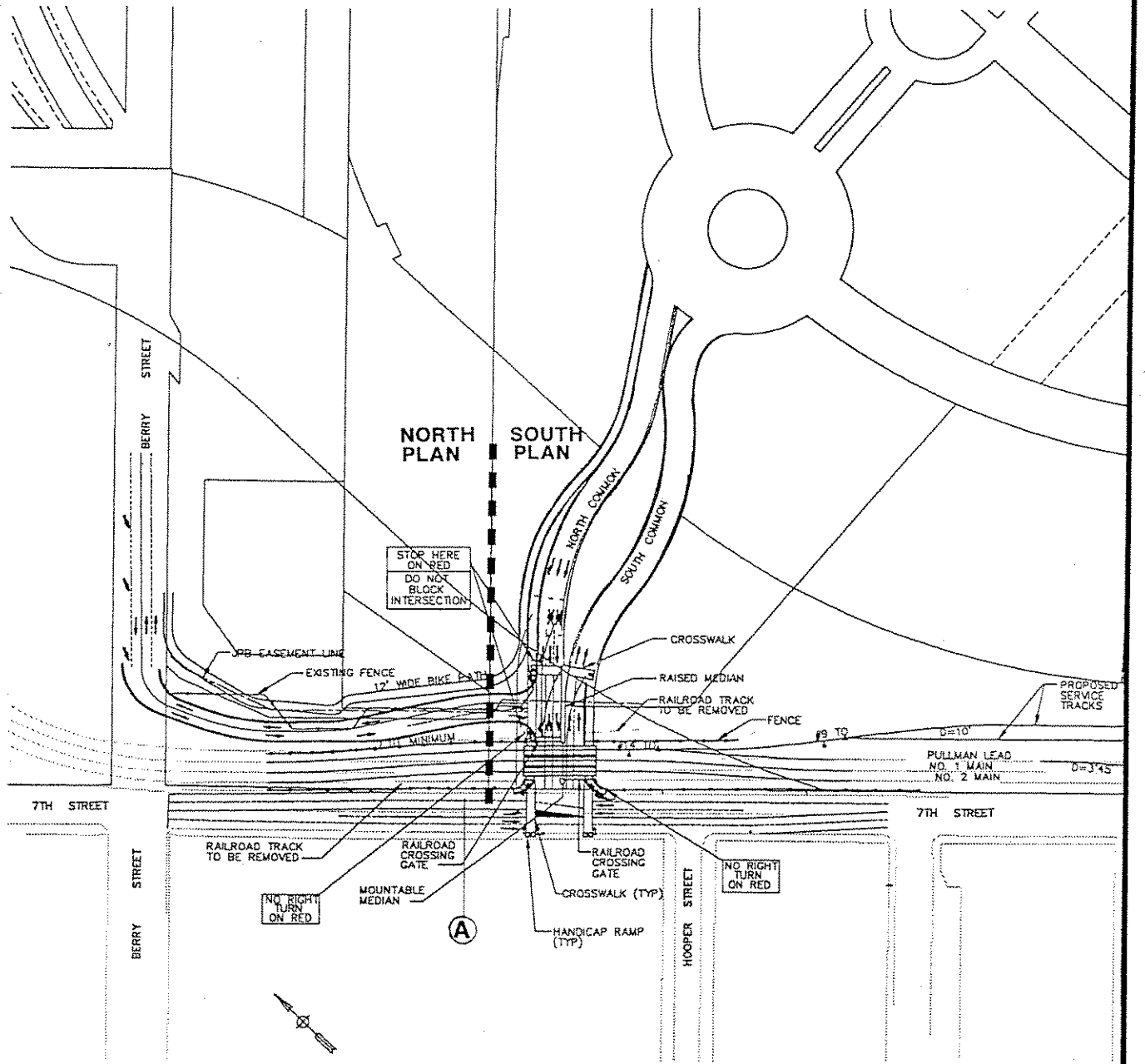


GRAPHIC SCALE

200 0 200 400 800



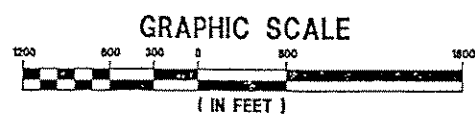
INFRASTRUCTURE AT GRADE CROSSING AT COMMON



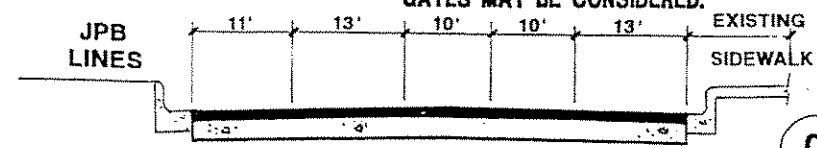
STOP HERE
ON RED
DO NOT
BLOCK
INTERSECTION

NO RIGHT
TURN
ON RED

NO RIGHT
TURN
ON RED



NOTE:
* AS AN ALTERNATE, FOUR QUADRANT
GATES MAY BE CONSIDERED.



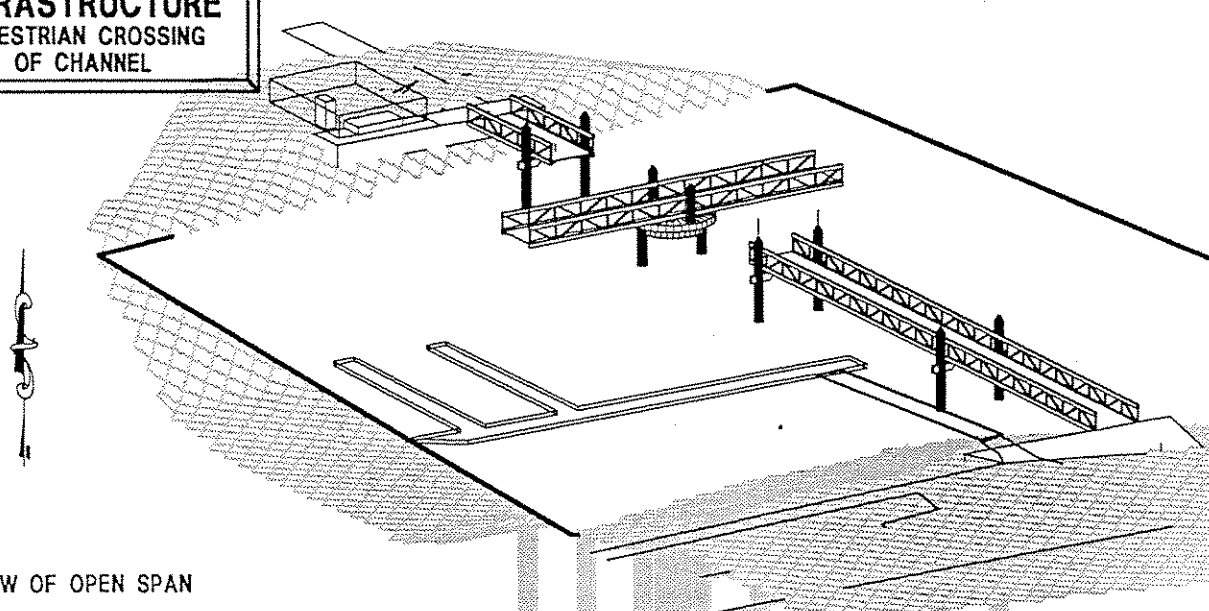
SANTINA &
THOMPSON, INC.
Hawk
Engineers, Inc.

8/21/98

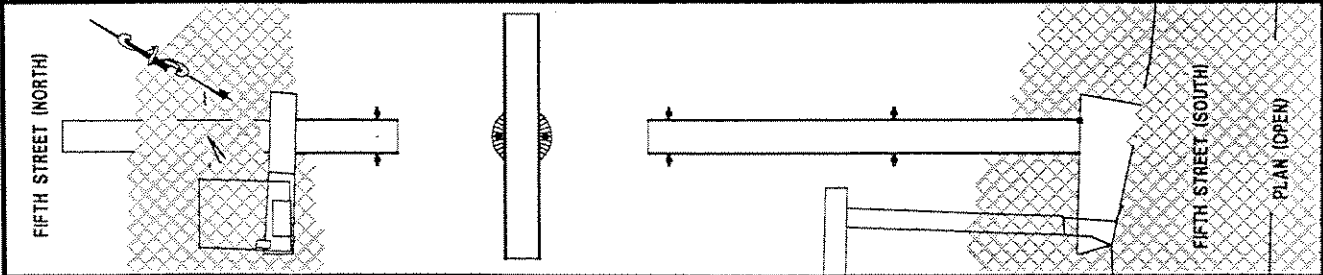
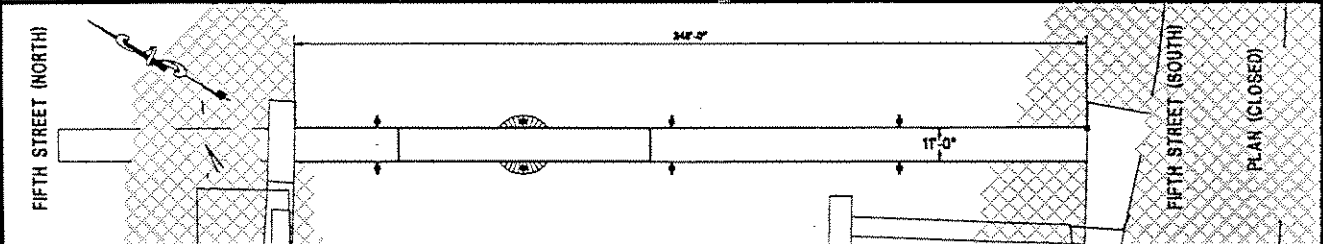
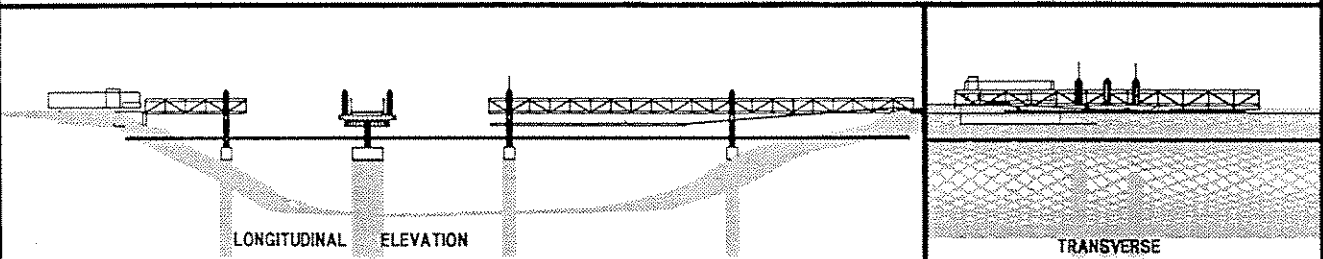
N.T.S. SECTION A

9

**NORTH OF CHANNEL
INFRASTRUCTURE
PEDESTRIAN CROSSING
OF CHANNEL**



3-D VIEW OF OPEN SPAN



**SANTINA &
THOMPSON, INC.**
*Hawk
Engineers, Inc.*

NOT TO SCALE
7-30-98

10

TABLE I. MISSION BAY PM PEAK HOUR VEHICLE TRIP GENERATION RATES

Project Areas	Land Use Type	PM Peak Hour Vehicle Trip Rate
Mission Bay North	Retail	1.36 per ksq. ft.
	Restaurant	6.02 per ksq. ft.
	Residential	0.75 per d.u.
	Movie Theater	0.06 per seat
Mission Bay South	Retail	2.00 per ksq. ft.
	Hotel	0.27 per room
	Residential	0.81 per d.u.
	Office	0.95 per ksq. ft.
	Research & Development	0.59 per ksq. ft.
	Large Retail	4.50 per ksq. ft.
UCSF Campus	UCSF	0.61 per ksq. ft.
	School	0.05 per student

Notes:

ksq. ft. = 1,000 square feet

d.u. = dwelling unit

Source: Table VI.1.1, p. VI.8, Volume II, Draft Mission Bay Subsequent Environmental Impact Report

**TABLE 2. MISSION BAY NORTH: INTERSECTION IMPROVEMENT THRESHOLDS
BASED ON CUMULATIVE PROJECT PM PEAK HOUR VEHICLE TRIPS***

Intersection	Measure	Mission Bay PM Peak Hour Vehicle Trips
Third/King	Reconfigure signal & widen street.	5,500
Fourth/King ¹	Reconfigure signal & widen street.	5,500
Fifth/King	Narrow median & reconfigure signal.	8,200 ²
Third/Berry	New signal & restripe street.	5,500
Seventh/Berry	Restripe street.	14,200 ³
Third/Townsend	Restripe street.	10,400 ²
Seventh/Townsend	Restripe street.	8,200 ²
Eighth/Townsend	Intersection reconstruction.	8,200 ²
Fourth/Berry ¹	Reconfigure signal.	14,200 ³

* When Mission Bay development reaches a level that produces the number of p.m. peak hour project vehicle trips shown, the intersection would need to include the measures shown in order to maintain an acceptable level of service.

¹ Improvements may be needed before the vehicle threshold indicated because of conformity with MUNI Third Street Light Rail extension construction.

² May include development of up to 460,000 square feet of commercial/industrial, 40,000 square feet of city-serving retail and 90 dwelling units which are not part of the Owner Project in the South Plan Area.

³ May include development of up to 1,064,000 square feet of commercial/industrial, 90,000 square feet of city-serving retail and 90 dwelling units which are not part of the Owner Project in the South Plan Area.

Source: Table VI.2, p. VI.13 and Table VI.4, p. VI.21, Volume II, Draft Mission Bay Subsequent Environmental Impact Report

**TABLE 3. MISSION BAY NORTH: STREET SEGMENT
IMPROVEMENT THRESHOLDS BASED ON CUMULATIVE PROJECT
PM PEAK HOUR VEHICLE TRIPS***

Street Segment	PM Peak Hour Vehicle Trips
King Street (eastbound) between Fourth and Fifth Streets	5,500
King Street (westbound) between Fifth and Berry Streets	5,500
Third Street between Berry and King Streets	5,500
Fourth Street between Townsend Street and Peter Maloney Bridge ¹	5,500
Berry Street extension to The Common	8,200 ²

* When Mission Bay development reaches a level that produces the number of p.m. peak hour project vehicle trips shown, the intersection would need to include the measures shown in order to maintain an acceptable level of service.

¹ Improvements may be needed before the time indicated because of conformity with MUNI Third Street Light Rail extension construction.

² May include development of up to 460,000 square feet of commercial/industrial, 40,000 square feet of city-serving retail and 90 dwelling units which are not part of the Owner Project in the South Plan Area.

Source: Table VI.3, p. VI.16, Volume II, Draft Mission Bay Subsequent Environmental Impact Report

EXHIBIT C

MISSION BAY NORTH INTERAGENCY COOPERATION AGREEMENT
FORM OF 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 sightly 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), Licensor 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.

Licensor 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 Licensor Entities in Section 13(d)(ii) below, then Licensor, 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"). Licensor 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).

[Licensor 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 Licensor 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: _____

Approval resolutions for The North Interagency Cooperation Agreement are as follows:

San Francisco Redevelopment Agency Resolution No. 188-98, at Tab 24 of Volume Seven

San Francisco Planning Commission Resolution No. 14701, at Tab 38 of Volume Seven

San Francisco Port Commission Resolution No. 98-94, at Tab 50 of Volume Seven

San Francisco Public Transportation Commission Resolution No. 98-082, at Tab 55 of Volume Seven

San Francisco Public Utilities Commission Resolution No. 98-0237, at Tab 59 of Volume Seven

San Francisco Building Inspection Commission Resolution No. BIC080.98, at Tab 62 of Volume Seven

San Francisco Board of Supervisors Ordinance No. 327-98, At Tab 69 of Volume Seven