

TAB 4

Approval resolutions for the Mission Bay North Owner Participation Agreement are as follows:

San Francisco Redevelopment Agency Resolution 188-98, at Tab 24 of Volume Seven

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

DEC 03 1998

San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102
Attention: Development Services

CONFORMED COPY of document recorded on _____
as No. **6477257**
This document has not been compared with
the original
SAN FRANCISCO ASSESSOR RECORDER

6477257

DUPLICATE

MISSION BAY NORTH OWNER PARTICIPATION AGREEMENT

By and between the Redevelopment Agency
of the City and County of San Francisco

and

Catellus Development Corporation

REC'D # **0001063763**
December 03, 1998 ----- 11:53:27

San Francisco Co Assessor-Recorder
Doris M. Ward, Assessor-Recorder

Document # **98-6477257-00**
REEL H273 IMAGE 0274
Account Number 26
SFDC Redevelopment Agency
Free Issue

Total fee	\$0.00
Amount Tendered:..	\$0.00
<hr/>	
Change	\$0.00
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**RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:**

**San Francisco Redevelopment Agency
770 Golden Gate Avenue
San Francisco, CA 94102
Attention: Development Services**

MISSION BAY NORTH OWNER PARTICIPATION AGREEMENT

**By and between the Redevelopment Agency
of the City and County of San Francisco**

and

Catellus Development Corporation

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B. Scope of Development

C. Housing Program

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Exhibit B Project Housing Data Table

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Exhibit D1 Declaration of Restrictions (For Rental)

Exhibit D2 Declaration of Restrictions (For Sale)

Exhibit E Approval Title Exceptions

Exhibit F Owner Affordable Housing Marketing and Operations Guidelines

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Exhibit J Affordable Housing Parcel Deed

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D. Infrastructure Plan

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Exhibit 9a Berry Street-At Grade Rail Crossing

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Table 1 Peak Hour Vehicle General Rates

Table 2 Intersection Improvement Threshold

Table 3 Street Segment Improvement Threshold

E. Financing Plan

- Exhibit A Acquisition Agreement**
- Exhibit B Mission Bay North Tax Allocation Debt Promissory Note**
- Exhibit C Mission Bay North Tax Allocation Debt Guaranty Agreement**
- Exhibit D Description of Infrastructure – Primary Benefit to North Plan Area**

F. Permit to Enter

G. Design Review and Document Approval Procedure

- Exhibit 1 Documents to be submitted for Major Phase Approvals**
- Exhibit 2 Documents to be submitted for Project Approvals**

H. Program in Diversity/Economic Development Program

- Schedule 1 Construction Work Force**
- Schedule 2 Equal pre-construction and Construction Phase Opportunity for Minority and Woman-owned Business Enterprises**
- Schedule 3 Prevailing Wage Provisions (Labor Standards)**
- Schedule 4 Job Training, Referral Hiring and Economic Development Program**

I. Certificates of Completion

J. Architect's Certificate

K. North Environmental Investigation and Response Program

L. CEQA Mitigation Measures

M. Transportation Management Plan

Documents Attached for Convenience Only:

Mission Bay North Interagency Cooperation Agreement

Mission Bay North Tax Allocation Agreement

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MISSION BAY NORTH OWNER PARTICIPATION AGREEMENT

This Mission Bay North Owner Participation Agreement (“North OPA”) is entered into as of the 16th day of November, 1998, between 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”), and Catellus Development Corporation, a Delaware corporation (the “Owner”). All initially capitalized terms in this North OPA are defined in Article 1 or have the meanings given when first defined.

RECITALS

A. In accordance with the Community Redevelopment Law of California (Health & Safety Code Section 33000 et seq.), the City and County of San Francisco (the “City”), acting through its Board of Supervisors, has approved a Redevelopment Plan for the Mission Bay North Redevelopment Project by Ordinance No. 327-98 adopted on October 26, 1998. The Redevelopment Plan, as it may be amended subject to the provisions of this North OPA, is referred to as the “Mission Bay North Redevelopment Plan.” In cooperation with the City pursuant to the Interagency Cooperation Agreement of even date herewith, the Agency is in the process of implementing the Mission Bay North Redevelopment Plan. The Mission Bay North Redevelopment Plan was recorded on _____, 1998 as Document No. _____ in the Official Records of the City.

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 shown on the Land Use Plan and more particularly described in the Legal Description attached to this North OPA as Attachment A (the “North Plan Area”).

C. The Mission Bay North Redevelopment Plan describes a mixed-use development comprised of up to approximately three thousand (3,000) units of housing, including approximately two thousand four hundred (2,400) market-rate units and approximately six hundred (600) 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 approximately five thousand (5,000) additional Leasable square feet of local serving retail uses within Agency Affordable Housing Parcels, and parking and loading uses, all as more particularly described in the Scope of Development attached to this North OPA.

D. In accordance with the terms and conditions of this 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. This 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.

1 E. As set forth in the Housing Program, of the up to approximately three thousand
2 (3,000) units of housing that may be constructed in the North Plan Area, at least twenty percent
3 (20%), or up to six hundred (600) units, will be affordable to very low income households
4 earning up to fifty percent (50%) of the median income and lower income households earning up
5 to one hundred ten percent (110%) of median income. The Owner will construct and maintain
6 up to two hundred fifty-five (255) Affordable Housing Units in the North Plan Area. The total
7 number of Affordable Housing Units to be developed by the Owner is linked to the amount of its
8 total residential development. All of the Affordable Housing Units developed by the Owner will
9 be subject to deed restrictions to assure their affordability for a period of seventy-five (75) years.

10 F. The Agency will oversee development of the up to three hundred forty-five (345)
11 Affordable Housing Units in the North Plan Area on land donated by the Owner as provided in
12 the Housing Program (which also provides for the possibility of a ten percent (10%) increase in
13 the Agency Sponsored Affordable Housing Units). The Owner will contribute to the Agency, at
14 no cost, between approximately 2.5 and 3.8 acres of land suitable for development of Affordable
15 Housing Units by Qualified Housing Developers. The amount of acreage contributed by the
16 Owner depends on the amount of the Owner's residential development in the North Plan Area.
17 The Affordable Housing Parcels are distributed throughout the North Plan Area and integrated
18 with the market rate housing sites. The Owner is responsible for providing Infrastructure to the
19 Affordable Housing Parcels and remediating such sites in accordance with the provisions of this
20 North OPA. A mix of rental and ownership Affordable Housing Units will be developed on
21 these sites. To facilitate the development of the Affordable Housing Units on the Affordable
22 Housing Parcels contributed to the Agency, the Owner will establish a revolving loan fund of
23 Five Hundred Thousand Dollars (\$500,000) to provide pre-development funding.

24 G. At least twenty percent (20%) of the total tax increment generated by
25 development in the North Plan Area will be used for the development of Affordable Housing
26 Units on the Affordable Housing Parcels contributed to the Agency in the North Plan Area, as
27 further provided in the Financing Plan.

28 H. As provided in the Infrastructure Plan, in connection with the Owner's
29 development within the North Plan Area, the Owner will construct approximately 6 acres of
30 public open space. The public open space will include a pedestrian walkway and other
31 Improvements along the northern edge of the China Basin Channel, landscaped public plazas,
32 recreation areas and an enhanced pedestrian environment in the retail, commercial and
33 entertainment areas along King, Berry and Third Streets. The Owner shall remediate the Open
34 Space Parcels in accordance with the provisions of this North OPA. In addition, the Owner shall
35 pay for the maintenance of the open space through special taxes or bonds secured by special
36 taxes levied on the Owner's property as more particularly provided in the Financing Plan.

37 I. If during the term of the Mission Bay North Redevelopment Plan there is
38 available tax increment from development in the North Plan Area that is not required to pay for
39 Infrastructure, then such excess tax increment shall be made available to fund construction of
40 Affordable Housing Units for very low income households on an equal basis to the Agency and
41 the Owner, up to the maximum amounts specified in the Housing Program and Financing Plan.

1 In addition, the Agency may use its share of any excess tax increment or other funding sources to
2 further "buy down" the affordability of the moderate-income housing units constructed by the
3 Owner so that lower income households may be served.

4 J. Subject to the terms and conditions set forth in this North OPA, the Owner will
5 develop the Infrastructure directly related to each of the Major Phases in accordance with the
6 incremental build-out of each Project. In connection with such development, and as an essential
7 condition of the Owner's obligations under this North OPA, the Agency will fund, repay or
8 reimburse the Owner for the direct and indirect costs of constructing the Infrastructure through
9 (i) special taxes or bonds secured by special taxes levied on the Owner's property under the
10 Communities Facilities District, (ii) payment of net available property tax increment generated
11 within the North Plan Area or tax allocation bonds issued secured by such increment, or (iii) a
12 combination of the foregoing. No tax increment nor proceeds from any tax allocation bonds will
13 be made available to the Owner for the Project beyond the Net Available Increment generated
14 from development within the North Plan Area. In this way, no tax increment will be drawn for
15 development in the North Plan Area from other redevelopment project areas in accordance with
16 this North OPA. All tax increment generated in the North Plan Area will, to the extent legally
17 permissible, remain within the North Plan Area for development of affordable housing, open
18 space and infrastructure in accordance with this North OPA, except to the extent excess
19 increment may be utilized in the South Plan Area for the development of Agency Sponsored
20 Affordable Housing Units as provided in the Financing Plan.

21 K. The Owner will establish an equal opportunity program, a first source hiring
22 program for qualified economically disadvantaged individuals, and an economic development
23 program, all as more particularly set forth in the attached Program in Diversity/Economic
24 Development Program, including payment of the amount of One Million Five Hundred
25 Thousand Dollars (\$1,500,000) into a City fund to assist in job training, job referral and
26 administration of the City's first source hiring program.

27 L. In furtherance of the Mission Bay North Redevelopment Plan, the Agency caused
28 a Declaration of Restrictions affecting all of the North Plan Area to be recorded in the Office of
29 the Recorder of the City and County of San Francisco, State of California, at page __, as
30 Document No. _____ on _____, 1998 and the Agency approved, by Resolution No. 186-98
31 on September 17, 1998 the Mission Bay North Design for Development ("Design for
32 Development").

33 M. The development proposed pursuant to this North OPA and the fulfillment
34 generally of this North OPA are: (i) in the best interest of the City and the health, safety, morals
35 and welfare of its residents; (ii) in accordance with the public purposes and provisions of
36 applicable Federal, state and local laws and requirements; and (iii) consistent with, in furtherance
37 of, and necessary to, the effectuation of the Mission Bay North Redevelopment Plan and Design
38 for Development.

39 In order to further effectuate the foregoing program of development contemplated by the
40 Mission Bay North Redevelopment Plan, and for good and valuable consideration the amount

1 and sufficiency of which is hereby acknowledged, the parties have entered into this North OPA
2 to memorialize their understandings and commitments concerning the matters generally
3 described above.

4
5 NOW, THEREFORE, the Agency and the Owner agree as follows:

6 1. Definitions

7 The following terms have the meanings and content set forth in this Article 1, wherever
8 used in this North OPA.

9 1.1. Abandon(s) means the period during which no work is performed in the
10 North Plan Area. As used herein, "work" includes Owner's (i) performance of substantial
11 physical construction of Improvements; (ii) expenditure of a substantial sum of money for design
12 activity within a reasonable period of time; or (iii) diligent efforts, including the expenditure of a
13 substantial sum of money, to obtain or actually obtaining approval(s) necessary to Commence
14 Construction for Improvements.

15 1.2. Acquisition Agreement has the meaning set forth in the Financing Plan.

16 1.3. Additional Land has the meaning set forth in the Housing Program.

17 1.4. Additional Payments has the meaning set forth in the Financing Plan.

18 1.5. Affiliate means a Person in which the Owner directly or indirectly owns
19 and controls (i) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty
20 percent (50%) or more) of each class of equity interests (including rights to acquire such
21 interests), or (ii) twenty-five percent (25%) or more (or if such Person is not publicly traded fifty
22 percent (50%) or more) of each class of interests that have a right to nominate, vote for or
23 otherwise select the members of the board or other governing body that directs or causes the
24 direction of substantially all of the management and policies of that Person.

25 1.6. Affordable Housing Land Contribution has the meaning set forth in the
26 Housing Program.

27 1.7. Affordable Housing Plan has the meaning set forth in the Housing
28 Program.

29 1.8. Affordable Housing Units has the meaning set forth in the Housing
30 Program.

31 1.9. Agency has the meaning set forth in the opening paragraph of this North
32 OPA.

1 1.10. Agency Affordable Housing Parcel means the Affordable Housing Land
2 Contribution, the Additional Land (if applicable) and the One-Half Acre Contribution.

3 1.11. Agency Costs means the reasonable costs and expenses actually incurred
4 and paid by the Agency not inconsistent with the purposes of this North OPA, including
5 reasonable costs and fees of third-party professionals necessary for the Agency to perform its
6 duties hereunder, costs incurred and paid by the Agency to City Agencies (excluding costs
7 included in any City permit application or processing fees paid directly by Owner to City)
8 excluding therefrom (i) general and administrative costs or overhead of the Agency except for
9 costs directly attributable to staff time allocable to implementation of the development
10 contemplated hereunder, (ii) any costs incurred prior to the Effective Date of this North OPA,
11 (iii) fees or costs incurred in connection with an amendment of the Mission Bay North
12 Redevelopment Plan or Plan Documents not consented to by Owner in accordance with this
13 North OPA, and (iv) litigation costs otherwise potentially recoverable pursuant to Section 19.6
14 hereof.

15 1.12. Agency Excess Increment has the meaning set forth in the Financing Plan.

16 1.13. Agency Lease has the meaning set forth in the Land Transfer Agreements.

17 1.14. Agency Property means any real property within the North Plan Area
18 owned, leased or controlled by Agency.

19 1.15. Agency Sponsored Affordable Housing Unit has the meaning set forth in
20 the Housing Program.

21 1.16. Area Median Income means the median income for a household residing
22 in the City as determined pursuant to Section 50093 of the California Health and Safety Code.

23 1.17. Assumption Agreement means an agreement in recordable form
24 reasonably satisfactory to Agency duly executed by Owner and the Transferee that describes
25 (i) the portions of the North Plan Area being Transferred, (ii) the obligations of Owner that the
26 Transferee assumes, (iii) the obligations from which Owner will be released consistent with this
27 North OPA, and (iv) the Transferee's acknowledgement that the Transferee has reviewed and
28 agrees to be bound by this North OPA and all conditions and restrictions applicable to the
29 Transferred Property.

30 1.18. Building Permit means a building or site permit issued by the Central
31 Permit Bureau of the City which will allow the Owner to Commence Construction of a Project
32 pursuant to this North OPA.

33 1.19. Certificate of Completion has the meaning set forth in Section 3.6.

34 1.20. Certificate of Occupancy means an instrument issued by the City
35 Department of Building Inspection certifying that a Residential Unit or non-residential Project is
36 fit for occupancy or use pursuant to the San Francisco Building Code.

- 1 1.21. City means the City and County of San Francisco.
- 2 1.22. City Agency/City Agencies has the meaning set forth in the Mission Bay
3 North Redevelopment Plan.
- 4 1.23. Commence Construction means groundbreaking in connection with the
5 commencement of physical construction of the Improvements.
- 6 1.24. CFD has the meaning set forth in the Financing Plan.
- 7 1.25. Complete Construction means (i) with respect to Residential Units within
8 a Residential Project, the issuance of a final Certificate of Occupancy for such development, and
9 with respect to a non-residential Project, the issuance of a temporary certificate of occupancy and
10 (ii) as to either, the delivery of an Architect's certificate from the Owner's architect in the form
11 of Attachment J.
- 12 1.26. Conflicting Law means applicable state or federal laws and any rules,
13 regulations, orders, executive mandate or any state or federal court decision thereunder (or any
14 governmental approvals, permits, authorizations or conditions thereto) which precludes or
15 substantially increases the cost of performance of or compliance with any provision of this North
16 OPA by either Owner or Agency.
- 17 1.27. Construction Documents mean Final Construction Documents and the
18 applicable Design Documents.
- 19 1.28. Declaration of Restrictions is the document described in Recital L.
- 20 1.29. Design for Development means the document described in Recital L and
21 includes any amendments to said document.
- 22 1.30. Design Documents means Concept Plans, Basic Concept Design
23 Documents, Schematic Design Documents, and Design Development Documents, all of which
24 have the meanings set forth in the Design Review and Document Approval Procedure, and
25 specifically excludes any contracts between the Owner and any contractor, subcontractor,
26 architect, engineer, consultant or Mortgagee.
- 27 1.31. Design Review and Document Approval Procedure is attached hereto as
28 Attachment G.
- 29 1.32. Development Fees or Exactions has the meaning set forth in the Mission
30 Bay North Redevelopment Plan.
- 31 1.33. Effective Date means the later of (i) the date upon which the Mission Bay
32 North Redevelopment Plan becomes effective or (ii) the Effective Date of the Interagency
33 Cooperation Agreement (as therein defined).

1 1.34. Final Construction Documents has the meaning set forth in Design Review
2 and Document Approval Procedure.

3 1.35. Financing Plan is attached hereto as Attachment E.

4 1.36. For-Sale has the meaning set forth in the Housing Program.

5 1.37. Foreclosed Property has the meaning set forth in Section 13.5.

6 1.38. Hazardous Substance(s) has the meaning set forth in the North
7 Environmental Investigation and Response Program.

8 1.39. Housing Increment has the meaning set forth in the Financing Plan.

9 1.40. Housing Program is attached hereto as Attachment C.

10 1.41. Improvements means buildings, structures, Infrastructure and other work
11 of improvement described in the Infrastructure Plan or Scope of Development to be constructed
12 in or for the benefit of the North Plan Area.

13 1.42. Infrastructure means those items identified in the Infrastructure Plan
14 including open space (including, among other items, park improvements and restrooms), streets,
15 rails, sewer and storm drainage systems, water systems, street improvements (including freeway
16 ramps or other demolition), traffic signal systems, dry utilities and other improvements any of
17 which are to be constructed in or for the benefit of the North Plan Area or any other matters
18 described in the Infrastructure Plan.

19 1.43. Infrastructure Plan means the document attached hereto as Attachment D
20 as it may be amended from time to time.

21 1.44. Interagency Cooperation Agreement is described in Recital A and attached
22 hereto for convenience only.

23 1.45. Land Transfer Agreements mean those certain agreements between
24 Catellus Development Corporation, the City, the Port and the State Lands Commission, as
25 applicable, generally referred to as the Amended and Restated City Land Transfer Agreement,
26 Amended and Restated Port Land Transfer Agreement and Amended and Restated Agreement
27 Concerning the Public Trust.

28 145A. Land Use Plan and Legal Description has the meaning set forth in
29 Recital B.

30 1.46. Leasable means "Floor Rentable Area," as defined and calculated in the
31 1996 Building Owners and Managers Association International publication "Standard Method
32 For Measuring Floor Area in Office Buildings."

33 1.47. Losses has the meaning set forth in Section 15.1.

1 1.48. Low Income Household means a person or household earning up to
2 seventy percent (70%) of the Area Median Income, adjusted for household size.

3 1.49. Major Phase means a development segment comprising one or more of the
4 numbered parcels or portions of parcels included with a numbered parcel (or a remainder parcel
5 if so approved by Agency pursuant to the Design Review and Document Approval Procedure)
6 shown on the Land Use Plan containing one or more Projects.

7 1.50. Material Breach means a default or breach by either party that materially
8 affects the other party's ability to timely proceed without substantially increased costs including
9 Agency failure to utilize the Net Available Increment to pay for Infrastructure in accordance with
10 the Financing Plan.

11 1.51. Memorandum of Option has the meaning set forth in the Housing
12 Program.

13 1.52. Mission Bay North Redevelopment Plan means the document described in
14 Recital A and includes any amendments to said document.

15 1.53. Mission Bay North Very Low Income (VLI) Subsidy Funds means any of
16 the Owner Excess Increment.

17 1.54. Moderate Income Household means a person or household earning up to
18 one hundred and ten percent (110%) of the Area Median Income, adjusted for household size.

19 1.55. Mortgage means any mortgage, deed of trust, financing lease, indenture,
20 trust agreement, reimbursement agreement, certificate of participation, collateral assignment or
21 other agreement or instrument (including without limitation any derivative agreement, swap,
22 hedge, forward purchase or other instrument relating to any of the foregoing) creating or
23 evidencing a security interest in, encumbrance upon, securitization of or lien against (a) the
24 North Plan Area or any portion thereof or interest therein, (b) this North OPA or any interest
25 therein, (c) any ownership interest in or security of the Owner or (d) any income, rentals,
26 revenue, profits or other proceeds derived from the Owner's ownership, operation, leasing or sale
27 of the real property in North Plan Area or the Improvements or any portion thereof or interest
28 therein, whether as security for the repayment of a loan or the performance of an obligation or as
29 the creation of fractional undivided interests which are sold or pledged, directly or indirectly, or
30 which are negatively pledged, in order to finance or refinance, directly or indirectly, any costs of
31 the Owner incurred in connection with the Owner's obligations under this North OPA.

32 1.56. Mortgagee means the holder of a Mortgage or of any beneficial interest
33 therein, and shall include any insurer or guarantor of a Mortgage, or of any obligation or
34 condition secured by such Mortgage. The Mortgagee shall also include a Person holding an
35 interest in a Mortgage by way of collateral assignment securing the performance of an obligation
36 of the holder of such Mortgage, to the extent provided in such collateral assignment.

37 1.57. Net Available Increment has the meaning set forth in the Financing Plan.

1 1.58. Net Worth means net worth, calculated in accordance with generally
2 accepted accounting principles, plus the difference between (a) the fair market value of any real
3 estate owned and (b) the book value of any real estate owned less accumulated depreciation
4 thereon.

5 1.59. North OPA means this Mission Bay North Owner Participation
6 Agreement, its Attachments and any amendments thereto.

7 1.60. North Environmental Investigation and Response Program is attached
8 hereto as Attachment K.

9 1.61. North Plan Area has the meaning set forth in Recital B.

10 1.62. One-Half Acre Contribution has the meaning set forth in the Housing
11 Program.

12 1.63. Open Space Parcels means those parcels or portions thereof designated for
13 use as parks, plazas or other public open space in the Mission Bay North Redevelopment Plan.

14 1.64. Owner means Catellus Development Corporation, a Delaware corporation,
15 and its Transferees as permitted under this North OPA, except as otherwise provided in
16 Section 3.9, Article 6, Article 10, Section 12.2 and the Program in Diversity/Economic
17 Development Program.

18 1.65. Owner Affordable Housing Unit has the meaning set forth in the Housing
19 Program.

20 1.66. Owner Affordable Housing Unit Requirement has the meaning set forth in
21 the Housing Program.

22 1.67. Owner Excess Increment has the meaning set forth in the Financing Plan.

23 1.68. Owner Improvements means Improvements constructed in the North Plan
24 Area by the Owner.

25 1.69. Owner VLI Note has the meaning set forth in the Housing Program.

26 1.69A Permit to Enter is attached hereto as Attachment F.

27 1.70. Person means any natural person, corporation, firm, partnership,
28 association, joint venture, governmental or political subdivision or agency or any similar entity.

29 1.71. Plan Documents means those documents so defined in the Mission Bay
30 North Redevelopment Plan.

31 1.72. Port means City acting by and through its Port Commission.

1 1.73. Program in Diversity/Economic Development Program is attached hereto
2 as Attachment H.

3 1.74. Project means an individual building and the related Improvements
4 anticipated to be constructed in connection therewith pursuant to the Infrastructure Plan and
5 Scope of Development.

6 1.75. Qualified Housing Developer means non-profit organizations (including
7 (i) governmental or quasi-governmental agencies or (ii) to the extent required to permit tax credit
8 or similar financing, a limited partnership of which one of the general partners is a non-profit
9 organization and the limited partnership's governing documents provide that the activities and
10 purposes of the partnership are primarily to construct, develop, own, manage and operate
11 Affordable Housing Units substantially in furtherance of the non-profit general partner
12 organization's purposes and only incidentally to further the for-profit purposes of the for-profit
13 partners, including providing for a reasonable rate of return) with the financial capacity and
14 experience and a proven history of developing Affordable Housing Units consistent with the
15 character and quality of the North Plan Area Residential Projects, the Mission Bay North
16 Redevelopment Plan, Design for Development and Scope of Development.

17 1.76. Redevelopment Requirements means (i) the Mission Bay North
18 Redevelopment Plan, (ii) the Scope of Development and any amendments thereto, (iii) the
19 Design for Development, and (iv) those elements of the Construction Documents for which
20 approval is required pursuant to the Design Review and Document Approval Procedure.

21 1.77. Rental or For-Rent has the meaning set forth in the Housing Program.

22 1.78. Residential Project means a Project containing Residential Units and may
23 also contain other uses permitted under the Mission Bay North Redevelopment Plan.

24 1.79. Residential Unit means a dwelling unit as defined in Mission Bay North
25 Redevelopment Plan.

26 1.80. Scope of Development is attached hereto as Attachment B.

27 1.81. South Plan Area means the area within the Mission Bay South
28 Redevelopment Plan.

29 1.82. Tax Allocation Agreement is attached hereto for convenience only.

30 1.83. Total Affordable Housing Requirement means twenty percent (20%) of
31 the total number of Residential Units constructed pursuant to this North OPA by the Owner, the
32 Agency and any Qualified Housing Developer.

33 1.84. Transfer means to sell, assign, convey, lease, sublease, Mortgage,
34 hypothecate or otherwise alienate, excluding therefrom any grant of occupancy rights for

1 permanent improvements such as space leases or granted in connection with existing
2 improvements within the North Plan Area.

3 1.85. Transferred Property has the meaning set forth in Section 14.1.

4 1.86. Transferee means the Person to whom a Transfer is made.

5 1.87. Transferor means the Person who effects a Transfer pursuant to this North
6 OPA.

7 1.88. Unavoidable Delay means a delay in the performance of any term or
8 condition of this North OPA that is caused by strikes or other labor disputes, acts of God,
9 shortage of or inability to obtain labor or materials, damage to works in progress by any casualty,
10 except to the extent caused by the negligence of the Person claiming the benefit of the
11 Unavoidable Delay, lawsuits brought by plaintiffs unaffiliated with the Person claiming the
12 benefit of Unavoidable Delay, restrictions imposed or mandated by governmental or quasi-
13 governmental entities (other than the party claiming the unavoidable delay or delays by City
14 Agencies) in issuing requisite approvals or consents, enemy action, civil commotion, fire, flood,
15 earthquake or any other unforeseeable event beyond the reasonable control of a Person.

16 2. Term of Agreement

17 The term of this North OPA shall commence upon the Effective Date and continue until
18 the earlier of (i) expiration of the Mission Bay North Redevelopment Plan or (ii) its termination
19 pursuant to Article 12.

20 3. The Owner's Development of North Plan Area

21 3.1. General Phasing Concept. Subject to the provisions of this North OPA,
22 the Owner's construction of the Improvements described in the Scope of Development in the
23 North Plan Area will be in Major Phases, in such order (including concurrently) as the Owner
24 deems appropriate. Subject only to the Housing Program, the Owner shall determine in its sole
25 and absolute discretion the area to be developed in each Major Phase, the sequence and mix of
26 commercial and residential development within each Major Phase and within the North Plan
27 Area and the individual Projects within each Major Phase, including the mix of Rental and For-
28 Sale Residential Units.

29 3.2. Land Uses within North Plan Area. The Owner's development of each
30 Major Phase and each Project within a Major Phase shall be in accordance with the
31 Redevelopment Requirements and will be designed, reviewed, constructed and completed
32 pursuant to this North OPA and encompass the following development program:

33 (a) The Owner may develop in the Major Phases up to two thousand
34 six hundred fifty-five (2,655) Residential Units within the North Plan Area of which up to two
35 thousand four hundred (2,400) will be market rate Residential Units and up to two hundred and
36 fifty-five (255) will be Affordable Housing Units, plus parking and loading. In connection with

1 the Owner's development of Residential Units, the Owner shall deliver Agency Affordable
2 Housing Parcels to the Agency and construct Owner Affordable Housing Units in accordance
3 with the Housing Program.

4 (b) The Owner may develop up to approximately three hundred and
5 fifty thousand (350,000) square feet of Leasable area of commercial and entertainment uses, one
6 hundred thousand (100,000) square feet of Leasable area of city-serving retail, and fifty thousand
7 (50,000) square feet of Leasable area of local-serving retail plus parking and loading uses
8 associated with all development within the Major Phases.

9 (c) Infrastructure for the North Plan Area shall be constructed
10 consistent with the Infrastructure Plan attached hereto as Attachment D and financed as provided
11 for in the Financing Plan attached hereto as Attachment E.

12 3.3. Commencement of the Owner's Development. The Owner shall
13 Commence Construction of the Owner Improvements within a Major Phase not later than the
14 tenth (10th) anniversary of the Effective Date of this North OPA. In addition to any other
15 extension permitted hereunder, the ten (10) year period within which the Owner shall Commence
16 Construction shall be extended for a period equal to the period of any default by the Agency of
17 any of its obligations herein. Failure by the Owner to so commence shall not be a default under
18 this North OPA, but shall give rise to the Agency's right to terminate pursuant to Article 12
19 hereof.

20 3.4. Conditions to the Owner's Obligations. Subject to the provisions of
21 Sections 3.4.2 and 3.4.3 of this North OPA, the following are conditions precedent to the
22 Owner's obligations with respect to the Agency Affordable Housing Parcels set forth in the
23 Housing Program except to the extent expressly waived by the Owner:

24 (a) As a condition to such obligations arising in all of the Major
25 Phases, prior to November 1, 1999, in accordance with the Land Transfer Agreements, the Initial
26 Closing (as therein defined) shall have occurred.

27 (b) As a condition to such obligations arising in any Major Phase
28 which requires an existing public street to be vacated as contemplated by the Land Transfer
29 Agreements, the City shall have finally approved the vacation of such street consistent with the
30 Land Transfer Agreements, provided that Owner shall have cooperated with City in the street
31 vacation proceeding as provided in the Land Transfer Agreements.

32 (c) As a condition to such obligations arising in the first Major Phase,
33 prior to January 1, 2000 the Agency shall have formed the CFD (or similar financing device as
34 contemplated by the Financing Plan) in accordance with the Financing Plan; provided Owner
35 shall have reasonably cooperated with City in the formation of the CFD as contemplated in the
36 Financing Plan.

37 (d) As a condition to such obligations arising in the Major Phase
38 involving block N5 shown on the Land Use Plan, the relocation of the rail crossing at King Street

1 and termination of the applicable rail franchises within or adjacent to block N5 as described in
2 the Infrastructure Plan shall have been authorized by all regulatory entities having jurisdiction
3 over same.

4 (e) As a condition to such obligations arising in each Major Phase or
5 Project, the Agency, or any City Agency, as applicable, shall not be in Material Breach
6 (following expiration of any notice and cure periods) of any obligations hereunder or under the
7 Mission Bay North Redevelopment Plan, Plan Documents or the Interagency Cooperation
8 Agreement required to be performed on each of their parts relating to such Project or Major
9 Phase; provided, however, that following conveyance of an Agency Affordable Housing Parcel,
10 Owner's obligations as to such Agency Affordable Housing Parcels under the Environmental
11 Investigation and Response Program or Infrastructure Plan shall only be relieved if Agency or
12 City Agency, as applicable, shall have acted in bad faith in addition to being in Material Breach.

13 (f) Provided that Owner shall have timely applied for and diligently
14 pursued all such approvals, as to any Major Phase or Project to which such obligations relate, the
15 Agency, City and all City Agencies, as applicable, shall have granted all approvals, entitlements,
16 permits or agreements including, without limitation, those required in connection with the
17 Mission Bay Subdivision Code and Mission Bay Subdivision Regulations required to Commence
18 or Complete Construction of the Improvements, as applicable, for each Project in each Major
19 Phase and have charged no Development Fees or Exactions, nor imposed obligations, procedures
20 or requirements which are inconsistent with or in addition to those set forth in this North OPA,
21 the Mission Bay North Redevelopment Plan, Plan Documents or the Interagency Cooperation
22 Agreement. As used in this subsection 3.4(f), "finally granted" shall mean any and all applicable
23 appeal periods for the filing of any administrative appeal challenging the issuance or
24 effectiveness of any approvals, entitlements, permits or agreements, shall have expired and no
25 such appeal shall have been filed, or if such an administrative appeal is filed, the approvals,
26 entitlements, permits or agreements shall have been upheld by a final decision in each such
27 appeal without any adverse effect on the approval, entitlement, permit or agreement.

28 (g) As to any Major Phase or Project which requires entry or access
29 upon Agency Property or real property owned, leased or controlled by any City Agency, a Permit
30 to Enter substantially in the form attached hereto as Attachment F shall have been executed and
31 delivered to Owner by the appropriate property owner to the extent required for the Owner's
32 performance of its obligations in connection with the applicable Major Phase or Project.

33 (h) Provided funds are available in accordance with the provisions of
34 the Financing Plan relating thereto, prior to the Commencement of Construction of
35 Improvements within each Major Phase, the Agency has certified that it is ready, willing and
36 able to operate and maintain and, if applicable, continue to do so, through the life of the Mission
37 Bay North Redevelopment Plan, the Open Space Parcels required to be developed in accordance
38 with the Redevelopment Requirements for the applicable Major Phase consistent with the
39 standards for open space maintenance set forth in the Financing Plan.

1 (i) As to each Major Phase and Project to which such obligations
2 relate, this North OPA is valid, binding and in full force and effect, and the applicable Major
3 Phase or Project and the uses therein proposed are consistent with the Redevelopment
4 Requirements.

5 3.4.1 Conditions for Benefit of Owner/Suspension of Obligations. The
6 conditions set forth in Section 3.4 are solely for the benefit of the Owner and may be waived
7 only by the Owner. The Owner shall not act, or fail to act, for the primary purpose of permitting
8 or causing such conditions not to be satisfied. If any such conditions are not satisfied or waived
9 by the time required under this North OPA, the Owner shall give written notice to the Agency
10 (with a copy to the City at the address and in the manner provided in the Interagency
11 Cooperation Agreement) describing the condition or conditions that have not been satisfied or
12 waived, and the Owner may elect, by such written notice, to suspend performance of the
13 obligations as set forth in Section 3.4 for such period as the condition remains unsatisfied (or
14 unwaived by Owner).

15 3.4.2 Subsequent Satisfaction Of Conditions/Relief from Obligations.
16 The Agency shall use its best efforts to cause any unsatisfied condition to be satisfied within a
17 reasonable time, provided that nothing herein shall require the Agency or any City Agency to pay
18 any material sum of money not otherwise contemplated under this North OPA or to take any
19 action inconsistent with the Redevelopment Requirements to satisfy such condition. If a
20 condition set forth in Section 3.4(a) is satisfied within the time permitted by law for Agency
21 satisfaction of the Agency's affordable housing requirements under Section 33413(b) of the
22 Community Redevelopment Law for the North Plan Area prior to Owner's election under
23 Section 3.4.3(b), and (b) the obligations of Owner which were suspended as a result of the failure
24 of timely performance of the condition can be performed by Owner without (x) materially
25 increasing the costs of developing a Project or Infrastructure within a Major Phase or
26 (y) materially affecting the timing, financeability or other aspects of development, including
27 without limitation any obligation of Owner which might otherwise have arisen under the North
28 Environmental Investigation and Response Program, then Owner shall proceed to perform the
29 obligations so suspended within a reasonable period of time after the condition has been
30 satisfied, which period of time shall in no event be less than the period of time equal to the
31 period of time for Owner's performance had the condition been originally timely satisfied.
32 Notwithstanding the foregoing provisions of this Section 3.4.2, if the Agency or City Agencies
33 were not acting in bad faith in the exercise of its or their discretion in connection with the
34 conditions set forth in Subsections 3.4(e) through 3.4(i) which exercise shall, nonetheless, have
35 caused the failure of such condition, then the obligations of Owner under this Section 3.4.2 with
36 respect to subsequent satisfaction of said condition shall not be subject to the limitations
37 contained in clauses (x) or (y) above. In all events, the Agency may elect, in its sole and absolute
38 discretion, timely exercised, to pay to Owner a sum equal to the additional cost of development
39 as described in clause (x) above and, if clause (y) does not pertain, then Owner shall proceed as if
40 the factors described in such clauses had not occurred.

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3.4.3 Effect of Failure of Condition.

(a) Notwithstanding any other provision in this North OPA to the contrary, the parties expressly acknowledge and agree that a failure of condition with respect to one Major Phase or Project shall not be deemed a failure of condition with respect to any other Major Phase or Project unless it pertains to said Major Phase or Project (e.g., an obligation under the Housing Program which arose in one Major Phase, but is to be performed in a subsequent Major Phase shall not be affected), nor shall such failure relieve Owner or Agency of an obligation which arose prior to the failure of condition. It is the intention of the parties that the failure of condition shall have no effect other than as to the Major Phase or Project to which it pertains.

(b) If any of the conditions set forth in Section 3.4 are not satisfied for any reason and the Owner's obligations relating to the Agency Affordable Housing Parcels are suspended, but the Owner proceeds with construction of Owner's Improvements, then Owner shall elect in the exercise of its sole and absolute discretion by notice to Agency given at any time prior to the last date for the satisfaction of the condition either (i) to waive the condition and, if not already delivered, deliver the applicable Memorandum of Option as provided in the Housing Program (but all other Owner obligations under the Housing Programs relative to Agency Affordable Housing Parcels shall be relieved and the subject parcel shall be delivered in "as is" condition as specified in Section 17.1 of this North OPA) or (ii) utilizing the parcels which otherwise would have been delivered to Agency to meet the affordable housing requirements under Section 33413(b) of the Community Redevelopment Law as if and to the extent same would otherwise have applied to Agency. If Owner elects to proceed in accordance with clause (ii) above, then the Agency agrees to use its good faith efforts to assist the Owner in obtaining tax-exempt financing (such as mortgage revenue bonds, tax-exempt private activity bonds for multi-family residential rental projects or similar financings) for the development of such additional affordable housing units as are necessary to meet such statutory requirement, provided that the Agency shall not be required to incur costs or expenses in connection therewith (other than administrative expenses subject to the Agency's right to recover Agency Costs as provided in this North OPA). The Owner shall be responsible for satisfying all of the requirements and conditions for such financing. The affordability restrictions, including, without limitation, the period of time during which the affordability requirements must be met, shall be determined by the applicable requirements of the Internal Revenue Code of 1986, as amended, and any other applicable laws and regulations, including Section 33413(b) of the Community Redevelopment Law then applicable, and any conflicting provisions of the Housing Program with respect to affordability restrictions governing such Affordable Housing Units shall not apply. No failure by the Owner to obtain any such tax exempt financing shall relieve the Owner of its obligation under this Subsection 3.4.3(b) to satisfy such statutory requirements of Section 33413(b) of the Community Redevelopment Law. In addition, provided Owner satisfies the requirements of the Community Redevelopment Law provided in clause (ii) above, Owner may develop the remaining portion of said parcels as market rate units to the density permitted under the Redevelopment Requirements.

1 3.5. Conditions to the Owner's Commencement of Development. Prior to
2 Commencing Construction of a Project or Major Phase, as applicable, the Owner shall satisfy the
3 following conditions precedent, to the extent not expressly waived by the Agency:

4 (a) The Owner shall have submitted Construction Documents for a
5 Project (or if a Major Phase, a Concept Plan) to the Agency or its staff for review and have
6 obtained Agency approval of same pursuant to the Design Review and Document Approval
7 Procedure.

8 (b) A Building Permit (or if the site permit type of Building Permit
9 process is utilized, the first addenda to the site permit) for the Project proposed to be commenced
10 shall have been issued.

11 (c) The Owner shall have certified in writing to the Agency (i) as to
12 the date it anticipates it will Commence Construction of the Project or Major Phase, as
13 applicable, and (ii) that it is ready, willing and able to Commence Construction of the Project and
14 complete the construction of same in accordance with the terms and conditions of this North
15 OPA and the approved Construction Documents.

16 (d) The Owner shall not be in Material Breach of its obligations
17 hereunder with respect to the Major Phase of which the Project is a part (following expiration of
18 any notice and cure periods).

19 3.6. Issuance of Certificates of Completion.

20 (a) From and after the date on which the Owner shall have Completed
21 Construction of a Project or Major Phase, in accordance with the provisions of this North OPA,
22 within twenty (20) days of the Owner's request, the Agency shall issue to the Owner, in
23 recordable form, a Certificate of Completion substantially in the form of Attachment I, as
24 applicable. The Certificate of Completion shall be a conclusive determination of the completion
25 of construction of the applicable Improvements in accordance with this North OPA and the full
26 performance of the agreements and covenants contained in this North OPA, including without
27 limitation any Infrastructure required to be completed in connection with said Project or Major
28 Phase, as applicable, with respect to the obligations of the Owner, to construct the Improvements
29 in accordance with Agency-approved Construction Documents. Prior to issuance of a Certificate
30 of Completion, the architect shall provide a certificate substantially in the form of Attachment J.

31 (b) The Agency agrees, upon the written request of the Owner or a
32 Mortgagee, to execute, acknowledge and deliver a quitclaim deed or other document or
33 instrument reasonably required by the Owner or such Mortgagee to evidence the termination of
34 this North OPA of record, as to the applicable Major Phase or Project, provided that the Owner
35 or such Mortgagee simultaneously enters into a new agreement with the Agency, which new
36 agreement shall specify any agreements, terms, covenants, conditions and restrictions contained
37 in this North OPA which (i) have not expired by their terms, (ii) are not otherwise contained in
38 another instrument and (iii) have not been fully performed pursuant to this North OPA or been
39 deemed performed by the issuance of the Certificate of Completion.

1 (c) Following recordation of the Certificate of Completion, except as
2 may be provided in an agreement entered into pursuant to Section 3.6(b) hereof, any Person then
3 owning or thereafter purchasing, leasing or otherwise acquiring any interest in the applicable
4 Major Phase or Project shall not, by virtue of such ownership, purchase, lease, or acquisition, or
5 by virtue of such person's actual or constructive knowledge of the contents of this North OPA,
6 incur any obligation or liability under this North OPA with respect to the construction, operation,
7 restoration or rehabilitation of the Improvements.

8 (d) The Agency's issuance of any Certificate of Completion does not
9 relieve the Owner or any other Person from any City Building, Fire or other construction code
10 requirements or conditions to occupancy of any Improvement, which requirements or conditions
11 must be complied with separately.

12 3.7. Failure to Issue A Certificate of Completion.

13 (a) If the Agency shall refuse or fail to issue a Certificate of
14 Completion upon the Owner's written request within the time provided in Subsection 3.6(a)
15 hereof, the Agency shall, within said twenty (20) days, provide the Owner with a written
16 statement setting forth in adequate detail the basis for the Agency's refusal or failure to issue the
17 Certificate of Completion and the measures or acts which, in the opinion of the Agency, the
18 Owner must undertake or perform in order to obtain a Certificate of Completion.

19 (b) Notwithstanding the provisions of Section 3.7(a) hereof or any
20 other provisions of this North OPA to the contrary, the Agency shall nonetheless issue to the
21 Owner a Certificate of Completion if the Owner has completed the Project in accordance with
22 this North OPA, except for Infrastructure and other items which do not adversely affect or impair
23 the Owner's use and occupancy of the Project for the purposes contemplated by this North OPA,
24 and which do not preclude the City's issuance of a Certificate of Occupancy or other certificate
25 or authorization of the Owner's use and occupancy of the Project; provided, however, that the
26 Agency shall not be obligated to issue a Certificate of Completion in such circumstances unless
27 and until the Owner shall have provided to the Agency, at the Agency's request, improvement
28 security consistent with the provisions of Government Code Section 66499, including a bond or
29 bonds, letter of credit, certificate of deposit or any other form or security for the faithful
30 performance of the remaining portion of the Project reasonably acceptable to the Agency and as
31 specified by the Mission Bay Subdivision Code and Mission Bay Subdivision Regulations in an
32 amount equal to the estimated cost of completing the items described in the foregoing clauses, as
33 reasonably determined by the Agency but not to exceed the amount permitted in the Mission Bay
34 Subdivision Code and Mission Bay Subdivision Regulations. Notwithstanding the foregoing,
35 Owner shall not be required to provide such improvement security to Agency if and to the extent
36 it has already provided same to any City Agency in connection with a subdivision improvement
37 agreement or the Financing Plan.

38 3.8. Plan Amendment/Consent Required. Except as may be required by a
39 Conflicting Law, the Agency shall not amend the Mission Bay North Redevelopment Plan or the

1 Plan Documents with respect to the North Plan Area unless consistent with Subsections 3.8(a),
2 3.8(b) and 3.8(c).

3 (a) So long as the Agency has any outstanding obligations under the
4 Financing Plan (including without limitation delivery of Net Available Increment pursuant to the
5 Financing Plan), the Agency may not amend the Mission Bay North Redevelopment Plan or Plan
6 Documents without Owner's consent, which consent will not be unreasonably withheld or
7 delayed, provided (i) Owner shall have first determined, in the exercise of its reasonable business
8 judgment, that the proposed amendment will not adversely affect the ability of the Agency to
9 fulfill its obligations under the Financing Plan and (ii) that the Agency shall have timely
10 provided Owner with information appropriate to an informed determination regarding same.

11 (b) Prior to issuance of a Certificate of Completion for the last Project
12 within a Major Phase, Agency may not amend the Mission Bay North Redevelopment Plan or
13 Plan Documents as to a Project or the Major Phase of which the Project is a part, without
14 Owner's consent, which may be given or withheld in its sole and absolute discretion if such
15 amendment would (i) alter the permitted uses of land, (ii) decrease the maximum height of
16 buildings, (iii) reduce the density or intensity of development permitted or increase density on
17 Agency Property, (iv) other than negligibly increase the cost of developing a Project or any
18 Infrastructure within the Major Phase, (v) delay development, (vi) limit or restrict the availability
19 of Infrastructure, including existing infrastructure, to the Project or the Major Phase, (vii) impose
20 limits or controls on the timing, phasing, or sequencing of the development, or (viii) modify the
21 provisions relating to Development Fees or Exactions.

22 (c) Following the issuance of a Certificate of Completion for the last
23 Project in a Major Phase, the Agency may amend the Mission Bay North Redevelopment Plan or
24 Plan Documents as to a Project within any Major Phase without Owner's consent, except as
25 provided in Subsection 3.8(a) above, if such amendment will not (i) alter the permitted use,
26 (ii) decrease the maximum height of any buildings, (iii) reduce the density or intensity of the
27 development permitted, (iv) modify the provisions relating to Development Fees or Exactions, or
28 (v) have the effect of materially increasing or adversely affecting any Owner obligations under
29 this North OPA remaining after the issuance of a Certificate of Completion, including without
30 limitation obligations under the Program in Diversity/Economic Development Program or
31 Transportation Management Plan.

32 (d) As used in this Section 3.8, "Owner's consent" means the prior
33 written consent of solely Catellus Development Corporation, except to the extent that the right to
34 provide such consent (i) has been Transferred pursuant to Sections 14.1(a)(1) or 14.1(a)(3), or
35 (ii) has otherwise been Transferred pursuant to Article 14 and such Transferee is the owner of all
36 or substantially all of the undeveloped property in the North Plan Area. If Catellus Development
37 Corporation (or its Transferee under this subsection) has Transferred its obligations to an
38 association pursuant to Section 14.5, "Owner's consent" shall mean the consent of the Owners of
39 fifty-one percent (51%) of the real property in the North Plan Area, excluding any property
40 which is publicly owned or any Agency Affordable Housing Parcel. A Transferee as to less than
41 substantially all of the Owner's undeveloped property in the North Plan Area shall have no right

1 to consent to an amendment under this Section 3.8 except and only to the extent an amendment
2 arises under Subsections 3.8(b) or 3.8(c) which would directly, adversely and materially affect
3 the rights of the Transferee therein described with respect to the Transferred Property, and, for
4 such purposes, a Transferee shall only include the owner of the Transferred Property and, in the
5 case of a condominium or similar Project, the owner of the Transferred Property shall be deemed
6 to be the homeowner's association, but in no event shall the consent of the owner of any publicly
7 owned property or any Agency Affordable Housing Parcel or any owner of an individual
8 Residential Unit be required.

9 3.9. Issuance of Building Permits/Coordination.

10 (a) Except as provided in Article 5, the Owner shall have the sole
11 responsibility for obtaining all necessary Building Permits and subdivision maps and shall make
12 application for such permits directly to the Central Permit Bureau of the City or other applicable
13 City Agency.

14 (b) The Owner is advised that the Central Permit Bureau forwards all
15 building permits to the Agency and the Department of Streets and Mapping forwards all maps for
16 the Agency's approval of compliance with Redevelopment Requirements and this North OPA.
17 The Agency's review of such permits and maps does not include any review of compliance
18 thereof with the requirements and standards other than as referred to in the Design Review and
19 Document Approval Procedure hereof, and the Agency shall have no obligations or
20 responsibilities for such compliance. A signature by an authorized representative of the Agency
21 on the permit, map or other applicable document shall be conclusive evidence that there is no
22 conflict with the Redevelopment Requirements and this North OPA arising out of such permit,
23 map or other applicable document.

24 4. Agency Development Of North Plan Area

25 4.1. Agency Sponsored Affordable Housing. The Agency may construct or
26 cause to be constructed one half of the Total Affordable Housing Requirement, plus an additional
27 forty-five (45) to eighty (80) Residential Units subject to and in accordance with the Housing
28 Program and the Redevelopment Requirements.

29 4.2. Conditions to The Agency's Commencement of Development. The
30 Agency shall use good faith efforts to Commence Construction of Agency Sponsored Affordable
31 Housing at such times as the Agency, in the exercise of its reasonable discretion, determines that
32 adequate Housing Increment, Agency Excess Increment or other funding (though determination
33 of availability of other funding shall be based upon the exercise of the Agency's sole and
34 absolute discretion) is available to satisfactorily fulfill the Agency's obligations to construct
35 Affordable Housing hereunder. Prior to Commencing Construction, the Agency shall satisfy the
36 following conditions, to the extent not expressly waived by the Owner:

37 (a) The Agency shall not be in bad faith Material Breach of its
38 obligations hereunder or under the Mission Bay North Redevelopment Plan and Plan Documents

1 (including the Interagency Cooperation Agreement) following expiration of any notice and cure
2 periods.

3 (b) As to the Major Phase of which the Agency Project is a part, all
4 City Agencies shall have granted all approvals required to Commence Construction of the
5 Agency Affordable Housing Project proposed to be commenced;

6 (c) The Agency shall have certified in writing to the Owner (as
7 defined in Section 3.8(d)) that the Agency or its Qualified Housing Developer is ready, willing
8 and able to Commence Construction of the Agency Affordable Housing Project and complete the
9 construction of same in accordance with the terms and conditions of this North OPA and the
10 approved Construction Documents; and

11 (d) The Agency shall have approved Construction Documents for its
12 Affordable Housing Projects as consistent with the Redevelopment Requirements.

13 4.3. North Plan Area Maintenance District. In accordance with the provisions
14 of and subject to the Financing Plan, the Agency shall establish a CFD for the purpose of
15 providing ongoing maintenance of Open Space Parcels within the North Plan Area.

16 5. Cooperation and Assistance

17 5.1. Interagency Cooperation Agreement. Concurrently herewith, Agency and
18 City have entered into the Interagency Cooperation Agreement of which Owner is an express
19 third-party beneficiary. The Agency shall use its best efforts to cause the timely performance
20 under the Interagency Cooperation Agreement of the necessary City Agencies, to issue such
21 approvals, permits, entitlements, agreements, permits to enter, and subdivision maps, and
22 perform such other acts as may be required by the Agency and the Owner to permit the
23 development and timely performance contemplated by this North OPA.

24 5.2. Authorization of Permits.

25 (a) Except for Construction Documents obtained by Agency or its
26 Transferee in connection with the Agency Affordable Housing Parcels and, except as provided
27 under the Interagency Cooperation Agreement, Owner is responsible for obtaining any permit,
28 approval, entitlement, agreement, subdivision map or other authorization (“Authorization”) as
29 may be necessary or desirable to effectuate and implement the development hereby contemplated
30 from any City Agency or other governmental agency having or claiming jurisdiction over all or
31 portion of the North Plan Area; provided, however, that the Agency shall execute any such
32 permits, applications or maps which it is required to execute as co-applicant or co-permittee and
33 shall cooperate reasonably with Owner in its efforts to obtain any Authorization. The Owner,
34 however, shall not agree to the imposition of any conditions or restrictions in connection with
35 obtaining any such Authorization where Agency is required to be a co-applicant or co-permittee
36 which would create any obligations on the part of Agency not otherwise contemplated under this
37 North OPA without the approval of the Agency which shall not be unreasonably withheld or

1 delayed and, in all events, shall be at no cost or expense to Agency_(other than administration
2 costs) except as otherwise provided in this North OPA.

3 (b) Owner, at no cost or expense to Agency, unless otherwise provided
4 in this North OPA, shall be solely responsible in the construction of the Improvements for
5 complying with any and all conditions or restrictions imposed by any City Agency or other
6 governmental agency in connection with any Authorization, whether such conditions are on the
7 site of a Major Phase or Project or required off-site Improvements as a result of the Major Phase
8 or Project. The Owner shall not be responsible for complying with such conditions or
9 restrictions required for Improvements within any Agency Affordable Housing Parcels except to
10 the extent as may be provided in the Environmental Investigation and Response Program.
11 Owner shall have the right to appeal or contest any condition in any manner permitted by law
12 imposed by any City Agency or other governmental agency, provided, however, that the Agency
13 shall have the right to approve such appeal or contest if the Agency is a co-applicant or co-
14 permittee. Such consent shall not be unreasonably withheld or delayed if Owner can
15 demonstrate to the Agency's reasonable satisfaction that such appeal would not affect the
16 Agency's responsibility or liability for any conditions which are or could otherwise be the
17 responsibility of Agency under such City Agency or other governmental agency Authorization.
18 In all other cases, the Agency shall have the right to withhold its consent in its sole and absolute
19 discretion. Any fines, penalties or corrective actions imposed as a result of the failure of the
20 Owner to comply with the terms and conditions of any such Authorization shall be paid or
21 otherwise discharged by the Owner and Agency shall have no liability, monetary or otherwise,
22 for such fines and penalties except as may otherwise be provided under this North OPA or other
23 agreement between Agency and Owner.

24 (c) Certain Authorizations from City Agencies or other governmental
25 agencies may include conditions that entail maintenance or obligations on the part of the
26 permittee or co-permittees that continue after the City (or, if applicable, the Agency) accepts the
27 dedication of completed Infrastructure. Upon such acceptance in accordance with this North
28 OPA and the Plan Documents, where any such continuing obligations exist under the applicable
29 Authorization, the Agency shall, at Owner's request, take such steps as are reasonably necessary
30 to remove the Owner as the named permittee or co-permittee from such Authorization if either
31 (i) such continuing obligations are designated as the responsibility of the Agency under this
32 North OPA, the Plan Documents or the Authorizations granted in connection with a Major Phase
33 or Project or (ii) the Agency has otherwise, in its sole discretion, agreed to accept sole
34 responsibility for such conditions in accordance with Section 5.2(a).

35 5.3. Rail Crossing. The Agency shall use good faith efforts to assist the
36 Owner in the relocation of the rail crossing on and adjacent to block N5 from King Street to the
37 area depicted in the Infrastructure Plan and termination of the related rail franchises.

38 6. Agency Administration Costs.

39 The Agency shall from time to time establish a fee for service mechanism for Agency
40 Costs incurred by it pursuant to this North OPA in connection with its review, approval and

1 implementation of a Project or a Major Phase. The Agency will use its best efforts to recapture
2 all such Agency Costs through the fee-for-service mechanism imposed on a Project and/or Major
3 Phase basis, as applicable. Agency and Owner acknowledge that the purpose of this Article 6 is
4 to minimize, to the maximum extent feasible, the Agency Costs to be included in calculating the
5 Net Available Increment each year pursuant to the Financing Plan and to charge to individual
6 Projects or Major Phases, as applicable, the Agency Costs associated therewith. In all events, if
7 the Agency determines in the exercise of its reasonable judgment that the sums collected on a
8 Project or Major Phase basis will not be sufficient to pay the Agency Costs in any year and that
9 the Agency seeks to deduct such excess Agency Costs in determining the Net Available
10 Increment, then the Agency shall first notify Owner and, Owner, in the exercise of its sole and
11 absolute discretion, may elect to pay directly to Agency the amount or any portion thereof of the
12 Agency Costs which the Agency proposes to include in calculating the Net Available Increment.
13 Accompanying any such notice, the Agency shall provide reasonably detailed supporting
14 documentation, including time records and expense details in order for Owner to verify that such
15 Agency Costs are reasonable administrative costs within the meaning of this Article 6. Agency
16 shall provide Owner with copies of its annual Statement of Indebtedness and audited financial
17 statements as soon as practicable following their approval by Agency. Agency shall provide
18 Owner with a summary of Agency Costs for each quarter, with the same standard of supporting
19 documentation as described in any notice required in this Article 6. Provided consistent with the
20 requirements and standards of this North OPA, such summary shall be binding in the absence of
21 manifest error. The Agency will maintain records, in reasonable detail, with respect to any
22 Agency Costs deducted from tax increment revenues in arriving at Net Available Increment, and,
23 upon written request of the Owner, will make such records available for inspection by the Owner.

24 Notwithstanding anything otherwise contained in the Financing Plan, no costs incurred
25 by Agency in connection with Agency Sponsored Affordable Housing shall be reimbursed or
26 paid from the Net Available Increment or Owner Excess Increment until all Agency obligations
27 under the Financing Plan regarding Infrastructure and Owner VLI have been satisfied.

28 For the purposes of this Article 6, "Owner" shall have the same meaning as "Owner's
29 Representative" as set forth in the Financing Plan.

30 7. Agency Obligation to Enter into Agency Lease.

31 Provided that the conditions set forth in Section 3.5 have been met or waived by the time
32 of execution of the Agency Lease, within thirty (30) days following notice from the Owner of its
33 intention to Commence Construction of a Project which involves the development of
34 Infrastructure on or for the development of an Open Space Parcel which is proposed to be the
35 subject of an Agency Lease under a Land Transfer Agreement, Agency shall enter into the
36 Agency Lease, unless the Project will be constructed on property which is considered an
37 "Agency Leasehold Parcel" under the Land Transfer Agreements or the Agency Lease is being
38 entered into pursuant to Section 6.2 of the Amended and Restated City Land Transfer
39 Agreement, in which case the Agency shall enter into the Agency Lease within sixty (60) days
40 following notice from the Owner.

1 8. Restrictions On The Site And The Development.

2 8.1. Covenants Running With the Land. Subject to the terms, conditions and
3 exceptions set forth in Section 3.6, this North OPA shall run with the land, and shall be binding
4 upon and inure to the benefit of the parties' respective successors and assigns (including without
5 limitation all Transferees). Such covenants shall be covenants running with the land in the North
6 Plan Area, as follows:

7 (a) The North Plan Area and any development thereof or any part
8 thereof is and shall be subject to the Mission Bay North Redevelopment Plan, the Declaration of
9 Restrictions and this North OPA and shall be maintained in accordance therewith and shall not
10 be devoted to any other use or used for any other purpose.

11 (b) There shall be no discrimination against or segregation of persons
12 or groups of persons on account of race, color, creed, religion, national origin, ancestry, sex,
13 marital status, familial status, lawful source of income (as defined in Section 3304 of the San
14 Francisco Police Code), sexual orientation or disability in the sale, lease, sublease, transfer, use,
15 occupancy, tenure or enjoyment of the North Plan Area.

16 (c) Every conveyance of the North Plan Area or any part thereof
17 covered by this North OPA shall, in addition to any other covenants, contain covenants on the
18 part of the grantee, for the grantee and the grantee's heirs, successors and assigns of the North
19 Plan Area or portion thereof and shall bind the grantee, and the grantee's heirs, its successors and
20 assigns, and all persons claiming under or through them to the restrictions set forth in this
21 Article 8.

22 9. Permit To Enter For Infrastructure.

23 When and as required, the Agency shall, upon the Owner's reasonable prior request,
24 execute a Permit to Enter substantially in the form of Attachment F to permit the Owner or its
25 agents or designees to enter and access any Agency Property in the North Plan Area or any
26 property subject to the Agency Lease, and, where applicable, assist in obtaining same as to real
27 property leased, owned or controlled by any City Agency in the North Plan Area for any purpose
28 associated with the Owner's construction of Infrastructure, in connection with any Project or
29 Major Phase. The Agency, may from time to time amend the attached form of Permit to Enter
30 and impose such insurance, bond, guaranty and indemnification requirements as the City,
31 including the Port, determines are necessary or appropriate to protect its interests, consistent with
32 the Agency's custom and practice and in a manner that will not unnecessarily interfere with or
33 materially increase the cost or risk of the Owner's ability to perform under this North OPA or if
34 it would unnecessarily interfere with or materially increase the cost or risk, such amendment
35 must be consistent with commercial industry practice; provided, further, in no event shall any
36 such modification conflict with the Environmental Investigation and Response Program or
37 expand the scope of the basic indemnities or principal provisions or rights or obligations of
38 Owner under the Land Transfer Agreements with respect to Hazardous Substances. Nothing
39 herein shall permit the Agency to modify any executed Permit to Enter without the consent of
40 Owner.

1 10. Relocation Assistance.

2 In the event there are tenants or other lawful occupants on any portion of the North Plan
3 Area who require relocation, the Agency shall comply with the requirements of the California
4 Relocation Act (California Government Code § 7260 et seq.) (“Act”) to the extent said Act is
5 applicable to such tenant. Agency shall consult with Owner regarding, and Agency and Owner
6 shall cooperate in effecting, such relocations in an efficient manner. Agency shall provide
7 Owner with ten (10) days advance notice of its intention to expend funds (including the amount
8 of and reason therefor) which are subject to reimbursement by Owner under this Article 10.
9 Except to the extent that Agency practices or activities subsequent to its entering into the Agency
10 Lease create relocation costs, Owner shall reimburse Agency for any relocation costs which
11 Agency is required to pay pursuant to the requirements of said Act within thirty (30) days
12 following receipt of an invoice setting forth in reasonable detail the amount of such cost and the
13 basis for payment under the Act, or at Owner’s election, such relocation costs shall be deemed an
14 Agency Cost attributed to the applicable Project or Major Phase pursuant to Section 6 hereof.
15 For the purposes of this Article 10, “Owner” shall have the same meaning as “Owner’s
16 Representative” set forth in the Financing Plan.

17 11. Resolution of Certain Disputes.

18 Notwithstanding the provisions of Subsection 12.1(a) and 12.1(b), after notice to Agency
19 of the basis of the Owner’s belief that there exists a dispute as to (i) Agency disapproval or
20 conditional approval of Constructions Documents, or (ii) costs of remediation under the Housing
21 Program Subsections 3.5(e) or 3.7(b), the parties will have a thirty (30) day period to attempt to
22 resolve the dispute through informal discussions. If the dispute is not resolved to the satisfaction
23 of both parties at the end of the thirty (30) day informal dispute resolution period, the parties
24 agree that Owner may at its discretion initiate a declaratory relief action in the Superior Court for
25 the City and County of San Francisco under California Code of Civil Procedure Sections 1060
26 and 1062.3 for resolution of the dispute. The parties agree that the circumstances of this matter
27 make it imperative that the dispute be resolved at the earliest possible date. Toward that end, the
28 parties agree the Agency’s response time to the complaint shall be shortened to fifteen (15) days,
29 that the parties shall exchange all documents upon which they rely to support their respective
30 positions regarding the disputed matter within thirty (30) days after the complaint has been
31 served, that all motions other than summary judgment motions will be heard on ten (10) days
32 notice, that summary judgment motions will be heard on thirty (30) days notice and that the
33 parties waive their rights to discovery, provided, however, that no motion for summary judgment
34 may be filed by a party which has not completed such document exchange.

35 12. Remedies

36 12.1. General.

37 (a) Except as otherwise provided in this North OPA, in the event of
38 any default in or breach of this North OPA, by either the Owner or the Agency, the non-
39 defaulting party may deliver a notice of default to the other regarding such default or breach.
40 The notice of default shall state with reasonable specificity the nature of the alleged default, the

1 provisions under which the default is claimed to arise, and the manner in which the failure of
2 performance may be satisfactorily cured. Upon receipt of such notice of default, either the
3 Owner or the Agency, as applicable, shall commence within a reasonable time not to exceed
4 sixty (60) days to cure or remedy such default or breach, and shall thereafter pursue such cure or
5 remedy diligently to completion.

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

14 If (i) action is not diligently taken or pursued, or the default or breach shall not be cured
15 or remedied within a reasonable time or (ii) either the Owner or the Agency shall refuse to meet
16 and discuss as described above, then the aggrieved party may institute such proceedings (except
17 as otherwise limited by or provided in this North OPA) as may be necessary or desirable in its
18 opinion to cure and remedy such default or breach, including without limitation, proceedings to
19 compel specific performance by the party in default or breach of its obligations. Nothing in this
20 Section 12.1(b) shall require a party to postpone instituting any injunctive proceeding if it
21 believes in good faith that such postponement will cause irreparable harm to such party. In the
22 event of a default by Owner described in the Program in Diversity/Economic Development
23 Program, the Agency's remedies shall be limited as therein provided. The parties expressly
24 acknowledge that termination as a remedy for default under this North OPA is only permitted to
25 the extent provided in Section 12.2.

26 (c) Notwithstanding any other provision herein to the contrary, no
27 Owner or Transferee of an Owner shall be deemed in default with respect to the portion of the
28 North Plan Area owned by said Owner or Transferee so long as that Owner or Transferee
29 performs all of its obligations under this North OPA in accordance with the provisions of this
30 North OPA. Owner and Agency expressly recognize and agree that a default as to a Project or
31 Major Phase shall not give rise to any right or remedy with respect to any other Project or Major
32 Phase (or Owner thereof) which is not, in and of itself, in default under this Agreement;
33 provided, however, nothing in this Article 12 shall be deemed to supersede or preclude
34 Agency's, City's or any City Agencies' rights and remedies under any permit, approval,
35 subdivision map, or other entitlement granted for the development and use of the Project or with
36 respect to any other Project, which rights and remedies shall be in addition to the rights and
37 remedies under this Article 12.

38 (d) Owner and Agency have determined that monetary damages
39 generally are inappropriate and it would be extremely difficult and impractical to fix or
40 determine the actual damages arising to either as a result of a breach or default hereunder and
41 that equitable remedies and remedies at law not including damages are particularly appropriate

1 remedies for enforcement of this Agreement. Except as otherwise provided herein to the
2 contrary (and then only to the extent of actual damage and not consequential or special damages),
3 neither Agency nor Owner would have entered into this Agreement if either were to be liable in
4 damages under or with respect to this Agreement. Consequently, the parties have agreed that no
5 party shall be liable in damages to the other, to any other Owner or Transferee, or any other
6 Person, and each covenants not to sue for or claim any damages under this North OPA and
7 expressly waives its right to do so; provided, however that damages shall be available as to
8 defaults which arise out of the failure to pay any monetary fee or reimbursement required to be
9 paid under this North OPA, including failure to repay the Owner VLI Note or the Owner N5
10 Note (as same is described in the Housing Plan), sums due pursuant to the Acquisition
11 Agreement or any obligation to pay any Additional Payments then in effect under the Financing
12 Plan or due under any indemnity.

13 12.2. Termination. Whether or not Agency or Owner is in default hereunder,
14 this Agreement, at the option of the party provided and for the cause stated below, may be
15 terminated by notice thereof to the other party, which notice shall state the cause therefor, the
16 portion of the North Plan Area to which it pertains, and the effective date of termination, which
17 date shall be no less than thirty (30) days following the date of the notice, except as otherwise
18 provided in Subsection 12.2(c). Upon termination, neither party shall have any further rights
19 against or liability to the other under this North OPA, except to the extent of any obligation or
20 right which has arisen prior to the date of the termination which is not affected by a Conflicting
21 Law.

22 (a) Termination by Owner.

23 (1) Agency shall fail to form the CFD by January 1, 2000 or
24 otherwise implement the financings contemplated under and in accordance with the Financing
25 Plan; or

26 (2) The Initial Closing of the Land Transfer Agreements does
27 not occur by November 1, 1999 (unless caused by Default (as same is defined in the Land
28 Transfer Agreements) by Owner); or

29 (3) Prior to expiration, the City's NPDES Permit shall have
30 been renewed in a manner which will substantially adversely affect the timing or cost of
31 development contemplated by this North OPA. Termination pursuant to Subsection 12.2(a)(3)
32 shall be subject to the process and notice provisions of Subsection 12.2(c)(1).

33 (b) Agency's Right to Terminate.

34 (1) The Owner shall have failed to Commence Construction
35 within ten (10) years of the Effective Date hereof.

36 (2) Having Commenced Construction, the Owner Abandons
37 same for a period of ten (10) consecutive years. The ten (10) year period shall be extended for a
38 period equal to the period of any default by Agency hereunder and also extended by the period of

1 any delay by Agency or any City Agency in issuing any permits, approvals, entitlements or
2 authorizations predicate to Owner Commencing Construction in addition to any other extensions
3 permitted under this North OPA.

4 (c) Conflicting Law: Agency or Owner's Right to Terminate.

5 (1) If a Conflicting Law is enacted, the Owner and Agency
6 shall meet and confer in good faith for a period of no less than thirty (30) and no more than
7 ninety (90) days to determine the feasibility of any proposed modification to this North OPA, the
8 Mission Bay North Redevelopment Plan, Plan Documents, or Redevelopment Requirements in
9 response to the Conflicting Law. Subject to Subsection 12.2(c)(2), if, after the exercise of good
10 faith efforts and due diligence, either party determines in the exercise of its reasonable business
11 judgment that there is no feasible modification that is acceptable to it, then it may by sixty (60)
12 days' prior notice to the other terminate this North OPA. Nothing herein shall preclude either
13 Agency or Owner from challenging the validity of the Conflicting Law.

14 (2) If either party shall tender notice to the other to terminate
15 this North OPA and the Conflicting Law is susceptible to satisfaction by the payment of a
16 liquidated sum of money within such sixty (60) day period, then the other party may, in the
17 exercise of its sole and absolute discretion, elect to pay such sum and the other party's notice of
18 termination shall be null and void; provided the other party shall pay said sum when due.

19 (d) Recording Notice of Termination. If the terminating party shall
20 have first provided the other party with no less than fifteen (15) days prior notice by delivery of a
21 copy of the proposed notice of termination, then either party may cause to be recorded in the
22 Official Records of the San Francisco County Recorder a notice of termination of this North
23 OPA, which notice shall describe the portion of the North Plan Area to which the termination
24 pertains.

25 (e) Termination Only by "Owner's Representative". As used in this
26 Section 12.2 "Owner" shall have the same meaning as "Owner's Representative" as set forth in
27 the Financing Plan.

28 12.3. Rights and Remedies Cumulative. Except with respect to any provision in
29 this North OPA to the contrary, the rights and remedies of the parties, whether provided by law
30 or this North OPA, shall be cumulative, and the exercise by either party of any one or more of
31 such remedies shall not preclude the exercise by it, at the same or different times, of any other
32 remedies for the same default or breach by the other party.

33 12.4. No Implied Waiver. No waiver made by the other party with respect to
34 the performance or manner or time thereof (including an extension of time for performance), or
35 any obligations of the other party or any condition to its obligations under this North OPA shall
36 be considered a waiver of the rights of the party making the waiver with respect to a particular
37 obligation of the other party or condition to its own obligation beyond those expressly waived in
38 writing and the extent thereof, or waiver in any respect in regard to any other rights of the party
39 making the waiver or any other obligations of the party.

1 13. Financing: Rights Of Mortgagees

2 13.1. Owner's Right to Mortgage. The Owner and any Transferee shall have the
3 right, at any time and from time to time during the term of this North OPA, to grant Mortgages
4 encumbering all or a portion of Owner's or Transferee's interest in the North Plan Area for the
5 benefit of any Mortgagee as security for one or more loans, subject to the terms and conditions
6 contained in this Article 13.

7 13.2. Mortgagee Not Obligated to Construct. Notwithstanding any of the
8 provisions of this North OPA, including, but not limited to, those which are or are intended to be
9 covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the
10 North Plan Area or any part thereof as a result of foreclosure proceedings, or conveyance or other
11 action in lieu thereof, or other remedial action, including (a) any other Person who thereafter
12 obtains title to the North Plan Area or such part from or through such Mortgagee or (b) any other
13 purchaser at foreclosure sale, shall in no way be obligated by the provisions of this North OPA to
14 construct or complete the Improvements or to guarantee such construction or completion.
15 Nothing in this Section or any other Section or provision of this North OPA shall be deemed or
16 construed to permit or authorize any Mortgagee or any other Person to devote the North Plan
17 Area or any part thereof to any uses, or to construct any improvements thereon, other than uses or
18 Improvements consistent with the Mission Bay Redevelopment Plan and this North OPA.

19 13.3. Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.
20 Whenever the Agency shall deliver any notice or demand to the Owner with respect to any
21 breach or default by the Owner in its obligations or covenants under this North OPA, the Agency
22 shall at the same time forward a copy of such notice or demand to each Mortgagee having a
23 Mortgage on the real property which is the subject of the breach or default who has previously
24 made a written request to the Agency therefor, at the last address of such Mortgagee specified by
25 such Mortgagee in such notice. In addition, if such breach or default remains uncured for the
26 period permitted with respect thereto under this North OPA, the Agency shall deliver a notice of
27 such failure to cure such breach or default to each such Mortgagee at such applicable address. A
28 delay or failure by the Agency to provide such notice required by this Section shall extend for the
29 number of days until notice is given, the time allowed to the Mortgagee for cure.

30 13.4. Mortgagee's Option to Cure Defaults. After receiving any notice of
31 failure to cure referred to in Section 13.3 hereof, each Mortgagee shall have the right, at its
32 option, to commence within the same period as the Owner to remedy or cause to be remedied any
33 event of default, plus an additional period of: (a) thirty (30) days to cure a monetary event of
34 default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of
35 cure by the Mortgagee without obtaining title to the applicable property. If an event of default is
36 not cured within the applicable cure period, the Agency nonetheless shall refrain from exercising
37 any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure
38 period: (i) the Mortgagee notifies the Agency that it intends to proceed with due diligence to
39 foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee
40 commences foreclosure proceedings within sixty (60) days after giving such notice, and
41 thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the

1 Mortgagee diligently proceeds to cure those events of default: (A) which are required to be
2 cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the
3 Mortgagee has been given notice by the Agency pursuant to Section 13.3. Any such Mortgagee
4 who shall properly complete the Improvements relating to the North Plan Area or applicable part
5 thereof shall be entitled, upon written request made to the Agency, to a Certificate of
6 Completion.

7 13.5. Mortgagee's Obligations with Respect to the Property. Notwithstanding
8 anything to the contrary in this North OPA, no Mortgagee shall have any obligations or other
9 liabilities under this North OPA unless and until it acquires title by any method to all or some
10 portion of the North Plan Area (referred to hereafter as "Foreclosed Property"). A Mortgagee
11 that acquires title by foreclosure to any Foreclosed Property shall take title subject to all of the
12 terms and conditions of this North OPA, to the extent applicable to the Foreclosed Property,
13 including any claims for payment or performance of obligations which are due as a condition to
14 enjoying the benefits of this North OPA. Upon the occurrence and continuation of an uncured
15 default by a Mortgagee or Transferee in the performance of any of the obligations to be
16 performed by such Mortgagee or Transferee pursuant to this North OPA, the Agency shall be
17 afforded all its remedies for such uncured default as provided in this North OPA.

18 13.6. No Impairment of Mortgage. No default by the Owner under this North
19 OPA shall invalidate or defeat the lien of any Mortgagee. Neither a breach of any obligation
20 secured by any Mortgage or other lien against the mortgaged interest nor a foreclosure under any
21 Mortgage or other lien, shall defeat, diminish, render invalid or unenforceable or otherwise
22 impair the Owner's rights or obligations or constitute a default under this North OPA.

23 13.7. Multiple Mortgages. If at any time there is more than one Mortgage
24 constituting a lien on a single portion of the North Plan Area, the lien of the Mortgagee prior in
25 time to all others on that portion of the mortgaged property shall be vested with the rights under
26 this Article 13 to the exclusion of the holder of any junior mortgage; provided, however, that if
27 the holder of the senior Mortgage fails to exercise the rights set forth in this Article 13, each
28 holder of a junior Mortgage shall succeed to the rights set forth in this Article 13 only if the
29 holders of all Mortgages senior to it have failed to exercise the rights set forth in this Article 13.
30 No failure by the senior Mortgagee to exercise its rights under this Article 13 and no delay in the
31 response of any Mortgagee to any notice by the agency shall extend any cure period or the
32 Owner's or any Mortgagee's rights under this Article 13. For purposes of this Section 13.7, in
33 the absence of an order of a court of competent jurisdiction that is served on the Agency, a title
34 report prepared by a reputable title company licensed to do business in the State of California and
35 having an office in City, setting forth the order of priority of lien of the mortgages, may be relied
36 upon by the Agency as conclusive evidence of priority.

37 13.8. Cured Defaults. Upon the curing of any event of default by a Mortgagee
38 within the time provided in this Article 13, the Agency's right to pursue any remedies with
39 respect to the cured event of default shall terminate.

1 14. Transfers And Assignment.

2 14.1. Owner's Right to Transfer. The Owner (and any Transferee) shall have
3 the right to Transfer all or any portion of the North Plan Area (the "Transferred Property"), to
4 any Person at any time and from time to time during the Term of this North OPA, subject to the
5 following terms and conditions:

6 (a) Subject to the provisions of Section 14.1(b), the Owner shall have
7 the right at any time to assign all or a portion of its rights and obligations under this North OPA
8 without the consent of the Agency if:

9 (1) The Transferee is an Affiliate; or

10 (2) The Transferee has experience developing or operating
11 major commercial or industrial or residential projects reasonably related to those contemplated
12 under this North OPA or, if applicable, to the Major Phase or Project contemplated on the
13 Transferred Property and has either (x) a Net Worth equal to at least Twenty-Five Million
14 Dollars (\$25,000,000) or (y) the Owner is a general partner in such Transferee; or

15 (3) The Transfer is effected by the consolidation or merger of
16 the Owner into or with any other business organization whether or not the Owner is the surviving
17 entity pursuant to Subchapter IX of the Delaware General Corporation Law or the equivalent of
18 the jurisdiction of the Owner's incorporation if the Owner reincorporates in another jurisdiction;
19 or

20 (4) The Transferee is neither an Affiliate nor of the experience
21 or net worth as specified in Sections 14.1(a)(1) and 14.1(a)(2) above so long as the Owner has
22 satisfied or remains obligated to satisfy the following obligations as they may relate to the North
23 Plan Area or the portion thereof transferred by the Owner: delivery of the Agency Affordable
24 Housing Parcels; Owner's obligations under the North Environmental Investigation and
25 Response Program; the funding of both the Mission Bay North Job Training and Hiring Fund (as
26 same is defined in the Program in Diversity/Economic Development Program) and the North
27 Affordable Housing Loan Fund (as same is defined in the Housing Program); any indemnity; pay
28 any reimbursement or perform any obligation with respect to any Additional Payments then in
29 effect pursuant to the Financing Plan; or

30 (5) A Certificate of Completion has been issued for all of the
31 North Plan Area or the portion thereof to be Transferred.

32 (b) Upon any such Transfer to an Affiliate with a Net Worth equal to
33 at least Twenty-Five Million Dollars (\$25,000,000) or a Transfer as described in
34 Subsection 14.1(a)(2) through Section 14.1(a)(5) and provided Agency shall have received the
35 Assumption Agreement as provided in Subsection 14.1(e), the Agency shall provide Owner with
36 a written release from any obligations under this North OPA applicable to the Transferred
37 Property in a form and substance reasonably satisfactory to the Owner (but excluding from such
38 release (i) any default in an obligation to pay money where such default occurred prior to the date

1 of the Transfer or (ii) if prior to issuance of a Certificate of Completion for all of the North Plan
2 Area or the portion thereof to be Transferred, obligations which may remain pursuant to
3 Subsection 14.1(a)(4)) within thirty (30) days of such Transfer in a form and substance
4 reasonably satisfactory to the Owner.

5 (c) In addition to the Transfers permitted by Subsection 14.1(a), the
6 Owner may Transfer all or a portion of its interest in the North Plan Area or its interest in this
7 North OPA or any of the rights and obligations of the Owner hereunder, if the Agency approves
8 the proposed Transferee, which approval shall not be unreasonably withheld or delayed, provided
9 Agency may condition such approval in a manner consistent with Section 14.1(a)(4) as to
10 Transfers arising under Section 14.1(a)(4). Written notice of the Agency approval shall be
11 delivered to the Owner within thirty (30) days of the Agency's receipt of written notice of such
12 proposed Transfer. If such written notice of the Agency approval is not received within said
13 thirty (30) days, the proposed Transferee shall be deemed disapproved. Upon Agency's approval
14 of the Transferee and Transferee's written assumption pursuant to an Assumption Agreement of
15 the Owner's obligations applicable to the Transferred Property hereunder, the Owner shall be
16 released from all obligations under this North OPA (but excluding from such release any default
17 in an obligation to pay money where such default occurred prior to the date of the Transfer), and
18 the Agency shall provide the Owner a written instrument to such effect in a form and substance
19 reasonably satisfactory to the Owner.

20 (d) The provisions of this Article 14 shall not be deemed to prohibit or
21 otherwise restrict (1) the granting of easements, leases, subleases, licenses or permits to facilitate
22 the development, operation and use of the North Plan Area, in whole or in part, (2) the grant or
23 creation of a Mortgage, (3) the sale or transfer of the North Plan Area or a portion thereof or any
24 interest therein pursuant to foreclosure or the exercise of a power of sale contained in a Mortgage
25 or any other remedial action in connection therewith, or a conveyance or transfer thereof in lieu
26 of foreclosure or exercise of such power of sale, or (4) any Transfer to Agency, City, Port or City
27 Agencies or any other governmental agency contemplated by this North OPA.

28 (e) Whether or not any consent of the Agency is required, Owner shall
29 provide Agency no less than ten (10) days' prior notice of the proposed Transfer, including the
30 identity, address and telephone number of the proposed Transferee, and the Transferee shall
31 deliver to the Agency an Assumption Agreement stating that it has assumed the obligations of
32 the Owner under this North OPA applicable to the Transferred Property (except as may be
33 excluded pursuant to Subsection 14.1(a)(4)). This provision shall not create any obligation on or
34 duty of a Mortgagee other than as set forth in Article 14.

35 (f) Except as permitted pursuant to Section 14.5, the Owner's rights
36 and obligations under this North OPA may be Transferred only in conjunction with the Transfer
37 of the portion of the Transferred Property to which the rights and obligations apply and subject to
38 Section 14.2, the Transferee, upon taking title (or in the case of a ground lease, possession), of
39 the Transferred Property shall succeed to all of the Owner's rights (including without limitation
40 the right to Transfer) and obligations under this North OPA which relate to the Transferred
41 Property.

1 14.2. Liability for Default. Except only where the Owner or a Transferee is not
2 released from such obligations, no Transferee shall be liable for the default by the Owner or
3 another Transferee in the performance of its respective obligations under this North OPA, and the
4 Owner shall not be liable for the default by any Transferee in the performance of its respective
5 obligations. Without limiting the foregoing, a default under this North OPA by the Owner or a
6 Transferee shall not entitle the Agency to modify or terminate this North OPA, or otherwise
7 affect any rights hereunder, with respect to any portion of the North Plan Area other than that
8 portion that is owned or leased by the party in default.

9 14.3. Restrictions on Speculation Deemed Unnecessary. Since all of the
10 privately held land in the North Plan Area is owned by the Owner, and the Owner has agreed
11 herein to use such land for the purposes designated in the Mission Bay North Redevelopment
12 Plan, the Agency deems it unnecessary and inappropriate to either include specific covenants,
13 conditions or restrictions herein prohibiting speculation or excess profitability in connection with
14 the land in the North Plan Area or require the Owner's covenant to comply with the same.
15 Accordingly, the obligations and commitments herein regarding the disposition of the land in the
16 North Plan Area satisfy the requirements of the applicable provisions, if any, of Community
17 Redevelopment Law Section 33437.

18 14.4. Restrictions on Agency Transfer. Agency shall not Transfer any portion
19 of the North Plan Area or any interest therein acquired by it to any Person where such Transfer
20 would preclude its or Owner's performance under this North OPA or the uses, densities, rights or
21 intensity of development contemplated under this North OPA or the Mission Bay North
22 Redevelopment Plan or Plan Documents. Agency may only transfer the Agency Affordable
23 Housing Parcels to a Qualified Housing Developer.

24 14.5. Transfer to Association. In addition to the other provisions of this North
25 OPA, following the issuance of a Certificate of Completion for substantially all of the Projects
26 within a Major Phase, Owner may Transfer any remaining obligation which pertains to an area
27 larger than a single Project to a duly formed Person with the financial ability and capacity to
28 perform the duties so Transferred, including obligations associated with the Transportation
29 Systems Management Plan and Program in Diversity/Economic Development Program; provided
30 the consent of the Agency shall have first been obtained, which consent shall not be
31 unreasonably withheld or delayed and thereupon, Agency shall provide Owner with a written
32 release in a form and substance reasonably satisfactory to Owner from the obligations so
33 Transferred (but excluding therefrom any default which occurred prior to the date of the
34 Transfer).

35 15. General Owner Indemnity

36 15.1. General Indemnification. Except as provided in Section 15.4, the Owner
37 agrees to and shall indemnify, defend, and hold the Agency and its respective commissioners,
38 members, officers, employees, agents, successors and assigns, harmless from and against all
39 claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines,
40 lawsuits or other proceedings, judgments and awards and costs and expenses (including

1 reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever
2 kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the
3 Agency of carrying out the terms of any judgment, settlement, consent, decree, stipulated
4 judgment or other partial or complete termination of an action or procedure that requires the
5 Agency to take any action (collectively "Losses") arising from or as a result of (a) the
6 noncompliance of the Owner Improvements with any Federal, state or local laws or regulations
7 (except as to those obligations accepted by Agency under Section 5.2), including those relating to
8 handicap access (excluding therefrom any Agency Property or portion thereof on which Owner
9 has not constructed Improvements), or (b) the death of any person or any accident, injury, loss or
10 damage whatsoever caused to any person or to the property of any person which shall occur in
11 the North Plan Area (excluding therefrom any Agency Property or portion thereof on which
12 Owner has not constructed Improvements) and which shall be directly or indirectly caused by the
13 negligent act or omission of the Owner or its agents, servants, employees or contractors, except
14 to the extent such Losses are directly or indirectly caused by the negligent act or omission or
15 willful act of the Agency or its respective commissioners, members, officers, employees, agents,
16 successors and assigns including the negligence or other actionable misconduct of Agency,
17 acting (or failing to act) in its governmental capacity, in the exercise of its police powers.

18 In addition to the foregoing, Owner shall defend, hold harmless and indemnify the
19 Agency and its respective commissioners, members, officers, agents and employees of and from
20 all Losses arising directly or indirectly out of or connected with contracts or agreements entered
21 into by Owner in connection with its performance under this North OPA, except to the extent
22 caused by the willful misconduct or the negligence of the Agency or arising from obligations to
23 Agency, City or any City Agency arising under the Program in Diversity/Economic
24 Development Program or arising from compliance with Section 19.32 of this North OPA.

25 15.2. Common Law Remedies. The agreement to indemnify, defend and hold
26 harmless set forth in Section 15.1 is in addition to, and in no way shall be construed to limit or
27 replace, any other obligations or liabilities which the Owner may have to the Agency in this
28 North OPA, at common law or otherwise except as same may be limited by the provisions of
29 Article 12 hereof.

30 15.3. Defense of Claims. The Agency agrees to give prompt notice to the
31 Owner with respect to any suit or claim initiated or threatened against the Agency, and in no
32 event later than the earlier of (a) ten (10) days after valid service of process as to any filed suit or
33 (b) fifteen (15) days after receiving notification of the filing of such suit or the assertion of such
34 claim, which the Agency has reason to believe is likely to give rise to a claim for indemnity
35 hereunder. If prompt notice is not given to the Owner, then the Owner's liability hereunder shall
36 terminate as to the matter for which such notice is not given, provided that failure to notify the
37 Owner shall not affect the rights of the Agency or the obligations of the Owner hereunder unless
38 the Owner is prejudiced by such failure, and then only to the extent of such prejudice. The
39 Owner shall, at its option but subject to the reasonable consent and approval of the Agency, be
40 entitled to control the defense, compromise or settlement of any such matter through counsel of
41 the Owner's own choice; provided, however, that in all cases the Agency shall be entitled to
42 participate in such defense, compromise or settlement at its own expense. If the Owner shall fail,

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

7 15.4. Limitations of Liability. It is understood and agreed that no
8 commissioners, members, officers, agents, or employees of the Agency (or of its successors or
9 assigns) shall be personally liable to the Owner nor shall any officers, directors, shareholders,
10 agents or employees of Owner (or of its successor or assigns) be personally liable to Agency in
11 the event of any default or breach of this North OPA by the Agency or Owner or for any amount
12 which may become due to the Owner or Agency or any obligations under the terms of this North
13 OPA. Further, notwithstanding anything to the contrary set forth in this Article 15, the foregoing
14 indemnities of Owner shall exclude any Losses relating to Hazardous Substances. The Owner's
15 contractual obligations and indemnities regarding Hazardous Substances shall be governed by
16 the Environmental Investigation and Response Plan, the Land Transfer Agreements or Permits to
17 Enter, as applicable.

18 16. Agency Indemnity.

19 16.1. Indemnity. The Agency agrees to and shall indemnify and defend and
20 hold Owner and its respective directors, officers, partners, employees, agents, successors and
21 assigns harmless from and against all Losses arising from or as a result of the noncompliance of
22 Agency with the provisions of Sections 33413 or 33490 of the Community Redevelopment Law
23 or other requirements mandating the use of the Housing Increment for the construction of
24 Agency Sponsored Affordable Housing, except to the extent that such Losses are directly or
25 indirectly caused by the negligent or willful act of the Owner including Owner's failure to
26 comply with Owner Affordable Housing Unit Requirement.

27 16.2. Common Law Remedies. The agreement to indemnify, defend and hold
28 harmless set forth in Section 16.1 is in addition to, and in no way shall be construed to limit or
29 place, any other obligations or liabilities which Agency may have to Owner pursuant to this
30 North OPA at common law or otherwise except as same may be limited by the provisions of
31 Article 12 hereof.

32 17. No Representations Beyond Agreement.

33 17.1. Condition of Agency Affordable Housing Parcels, Open Space Parcels and
34 Other Land Transferred to the Agency. Except as set forth in this North OPA, the Owner
35 disclaims the making of any representations or warranties, express or implied, regarding the
36 Agency Affordable Housing Parcels, the Open Space Parcels or any other land transferred to the
37 Agency or any City Agency or matters affecting such parcels, including, without limitation,
38 physical condition, title, soil condition, topography, subsurface conditions (e.g., the presence of
39 pile foundations), environmental matters, their developmental potential and the use, fitness, value
40 or adequacy of the same for any particular purpose. The Agency, moreover, acknowledges that it

1 has entered into this North OPA with the intention of making and relying upon its own
2 investigation of the physical, environmental, economic and legal condition of the such
3 transferred parcels, except as expressly set forth in this North OPA. The Agency is not relying
4 upon any representations and warranties made by the Owner, the Owner's agents, brokers, or
5 anyone else acting or claiming to act on the Owner's behalf concerning the such transferred
6 parcels. SUBJECT TO THE PROVISIONS OF THIS NORTH OPA, THE OWNER SHALL
7 TRANSFER SUCH PARCELS TO THE AGENCY IN THEIR "AS IS" CONDITION, WITH
8 ALL FAULTS, ON THE DATES REQUIRED, AND THE AGENCY ASSUMES THE RISK
9 THAT ADVERSE PHYSICAL, ENVIRONMENTAL, ECONOMIC OR LEGAL
10 CONDITIONS MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION.

11 17.2. Agency Affordable Housing Parcels, Open Space Parcels and Other Lands
12 Transferred to the Agency in Area of Seismic Activity. The Agency is aware and acknowledges
13 that the Agency Affordable Housing Parcels, Open Space Parcels and other lands Transferred to
14 the Agency are in a seismically active area and are blanketed by substantial heterogeneous fill
15 varying in thickness and density that includes rubble. The fill is underlain by a significant and
16 varying thickness of mud from the San Francisco Bay and it is likely that all structures on the
17 Agency Affordable Housing Parcels, Open Space Parcels and other lands Transferred to the
18 Agency, City or City Agencies will need to be supported on pile foundations. Groundwater is
19 near the surface and substantial fill may be required to conform such Transferred lands to
20 overland flow requirements.

21 18. CEQA Mitigation Measures.

22 In order to mitigate the significant environmental impacts of the development
23 contemplated hereby the Owner and the Agency agree that the construction and subsequent
24 operation of all or any part of the Improvements shall be in accordance with the mitigation
25 measures (including without limitation those measures relating to archeological investigation,
26 study and removal) set forth in and shall be the obligation of the Person denoted on
27 Attachment L. As appropriate, these mitigation measures shall be incorporated by the Owner or
28 Agency into any contract or subcontract for the construction or operation of the Improvements.

29 19. Miscellaneous Provisions.

30 19.1. Incorporation of Attachments. Except for the Tax Allocation Agreement
31 and the Interagency Cooperation Agreement which are attached hereto solely for the convenience
32 of the parties, each Attachment to this North OPA is incorporated herein and made a part hereof
33 as if set forth in full.

34 19.2. Notices. A notice or communication under this North OPA by either party
35 to the other shall be sufficiently given or delivered if dispatched by hand or by registered or
36 certified mail, postage prepaid, addressed as follows:

1 (i) in the case of a notice or communication to the Agency,

2 San Francisco Redevelopment Agency
3 770 Golden Gate Avenue
4 San Francisco, CA 94102-3102
5 Attn: Executive Director
6 Telefacsimile: 415/749-2575

7 with a copy to:

8 San Francisco Redevelopment Agency
9 770 Golden Gate Avenue
10 San Francisco, CA 94102-3102
11 Attn: Legal Division
12 Telefacsimile: 415/749-2525

13 (ii) in the case of a notice or communication to the Owner,

14 Catellus Development Corporation
15 201 Mission Street, Second Floor
16 San Francisco, CA 94105
17 Attn: Mission Bay Development Office
18 Telefacsimile: 415/974-3724

19 with copies to:

20 Catellus Development Corporation
21 201 Mission Street, Second Floor
22 San Francisco, CA 94105
23 Attn: General Counsel
24 Telefacsimile: 415/974-4613

25 and

26 Coblentz, Patch, Duffy & Bass, LLP
27 222 Kearny Street, 7th Floor
28 San Francisco, CA 94108
29 Attn: Pamela S. Duffy
30 Telefacsimile: 415/989-1663

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

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

34 (a) the Section of this North OPA pursuant to which the notice is
35 given and the action or response required, if any;

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

1 (c) if applicable, that the failure to object to the notice within a stated
2 time period will be deemed to be the equivalent of the recipient's approval or disapproval of or
3 consent to the subject matter of the notice;

4 (d) if approval is being requested, shall be clearly marked "Request for
5 Approval"; and

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

8 Any mailing address or telefacsimile number may be changed at any time by giving
9 written notice of such change in the manner provided above at least ten (10) days prior to the
10 effective date of the change. All notices under this North OPA shall be deemed given, received,
11 made or communicated on the date personal receipt actually occurs or, if mailed, on the delivery
12 date or attempted delivery date shown on the return receipt. No party may give official or
13 binding notice by telefacsimile. The effective time of a notice shall not be affected by the
14 receipt, prior to receipt of the original, of a telefacsimile copy of the notice.

15 19.3. Time of Performance.

16 (a) Except as provided in Section 19.19, all performance (including
17 cure) dates expire at 5:00 p.m. (San Francisco, California time) on the performance or cure date.

18 (b) Time is of the essence in the performance of all the terms and
19 conditions of this North OPA.

20 19.4. Unavoidable Delay.

21 (a) Postponement. A party who is subject to Unavoidable Delay in the
22 performance of an obligation hereunder, or in the satisfaction of a condition to the other party's
23 performance hereunder, shall be entitled to a postponement of the time for performance of such
24 obligation or satisfaction of such condition during the period of enforced delay attributable to an
25 event of Unavoidable Delay, subject to the provisions of this Section 19.4.

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

33 19.5. Extensions. The Agency or Owner may extend time for the other party's
34 performance of any term, covenant or condition of this North OPA or permit the curing of any
35 default upon such terms and conditions as it determines appropriate, provided, however, that any
36 such extension or permissive curing of any particular default shall not operate to release any of

1 the other party's obligations nor constitute a waiver of the extending party's rights with respect
2 to any other term, covenant or condition of this North OPA or any other default in, or breach of,
3 this North OPA.

4 In addition to matters set forth in the immediately preceding paragraph, the parties hereto
5 may extend the time for performance by either or both parties of any term, covenant or condition
6 of this North OPA by a written instrument signed by authorized representatives of both parties
7 hereto without the execution of a formal recorded amendment to this North OPA, and any such
8 written instrument shall have the same force and effect and impart the same notice to third parties
9 as a formal recorded amendment to this North OPA.

10 19.6. Attorneys' Fees.

11 (a) Should either party hereto institute any action or proceeding in
12 court or other dispute resolution mechanism (DRM) to enforce any provision hereof or for
13 damages by reason of an alleged breach of any provision of this North OPA, the prevailing party
14 shall be entitled to receive from the losing party court or DRM costs or expenses incurred by the
15 prevailing party including, without limitation, expert witness fees, document copying expenses,
16 exhibit preparation costs, carrier expenses and postage and communication expenses, and such
17 amount as the court or DRM may adjudge to be reasonable attorneys' fees for the services
18 rendered the prevailing party in such action or proceeding. Attorneys' fees under this
19 Section 19.6 include attorneys' fees on any appeal, and, in addition, a party entitled to attorneys'
20 fees shall be entitled to all other reasonable costs and expenses incurred in connection with such
21 action.

22 (b) For purposes of this North OPA, reasonable fees of attorneys and
23 any in-house counsel for the Agency or the Owner shall be based on the fees regularly charged
24 by private attorneys with an equivalent number of years of professional experience in the subject
25 matter area of the law for which the Agency's or the Owner's in-house counsel's services were
26 rendered who practice in the City in law firms with approximately the same number of attorneys
27 as employed by the City, or, in the case of the Owner's in-house counsel, as employed by the
28 outside counsel for the Owner.

29 19.7. Eminent Domain. The exercise by the Agency of its eminent domain
30 power with regard to any portion of the North Plan Area owned by the Owner in a manner which
31 precludes performance by the Owner of any of its material obligations (or would otherwise give
32 rise to a default by Owner) hereunder shall constitute a default by the Agency of its obligations
33 under this North OPA.

34 19.8. Intentionally omitted.

35 19.9. Successors and Assigns/No Third Party Beneficiary. Subject to the
36 provisions of Article 14, this North OPA shall be binding upon and inure to the benefit of the
37 successors and assigns of the Agency and the Owner. This North OPA is made and entered into
38 only for the protection and benefit of the parties and their successors and assigns. No other
39 Person shall have or acquire any right or action of any kind based upon the provisions of this

1 North OPA except as expressly provided in Article X of the Program in Diversity/Economic
2 Development Program.

3 19.10. Estoppel Certificates. The Agency or Owner, within fifteen (15) days
4 after notice from the other, shall execute and deliver to the requesting party an estoppel
5 certificate certified by the Owner or Agency, as applicable, and containing the following
6 information:

7 (a) Whether or not this North OPA is unmodified and in full force and
8 effect. (If there has been a modification of this North OPA, the certificate shall state that this
9 North OPA is in full force and effect as modified, and shall set forth the modification, and if this
10 North OPA is not in full force and effect, the certificate shall so state);

11 (b) Whether or not the Agency or Owner contends that the other party
12 is in default under this North OPA in any respect; and

13 (c) Whether or not there are then existing set-offs or defenses against
14 the enforcement of any right or remedy of any party, or any duty or obligation of the Agency or
15 Owner.

16 19.11. Counterparts/No Oral Modification. This North OPA is executed in three
17 (3) counterparts, each of which shall be deemed to be an original, and such counterparts shall
18 constitute one and the same instrument. Any modification or waiver of any provision of this
19 North OPA or any amendment thereto must be in writing and signed by a Person having
20 authority to do so, on behalf of both the Agency and the Owner.

21 19.12. Authority and Enforceability. The Owner and Agency each represents and
22 warrants that the execution and delivery of this North OPA, and the performance of their
23 respective obligations hereunder, have been duly authorized by all necessary action, and will not
24 conflict with, result in any violation of, or constitute a default under, any provision of any
25 agreement or other instrument binding upon or applicable to it, or any present law or
26 governmental regulation or court decree.

27 19.13. References. Wherever in this North OPA the context requires, references
28 to the masculine shall be deemed to include the feminine and the neuter, and references to the
29 singular shall be deemed to include the plural.

30 19.14. Correction of Technical Errors; Amendments. If by reason of
31 inadvertence, and contrary to the intention of the Owner and the Agency, errors are made in this
32 North OPA in the identification or characterization of any title exception, in a legal description or
33 the reference to or within any Attachment with respect to a legal description, in the boundaries of
34 any parcel in any map or drawing which is an Attachment, or in the typing of this North OPA or
35 any of its Attachments, the Owner and the Agency by mutual agreement may correct such error
36 by memorandum executed by them without the necessity of amendment of this North OPA.

1 19.15. Brokers. The Owner and Agency each represents to the other that it has
2 not employed a broker or a finder in connection with the transactions contemplated by this North
3 OPA, and agrees to hold the other harmless from the claims of any broker or finder asserted
4 through such party.

5 19.16. Governing Law. This North OPA shall be governed by and construed in
6 accordance with the laws of the State of California.

7 19.17. Effect on Other Party's Obligation. In the event either the Owner's or the
8 Agency's performance is excused or the time for performance is extended hereunder, the
9 performance of the other party that is conditioned on such excused or extended performance is
10 also excused or extended.

11 19.18. Table of Contents. The Table of Contents is for the purpose of
12 convenience of reference and is not to be deemed or construed in any way as a part of this North
13 OPA or as supplemental thereto or amendatory thereof.

14 19.19. Number of Days. Provisions in this North OPA relating to number of days
15 shall be calendar days, unless otherwise specified, provided that if the last day of any period to
16 give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a
17 bank, City, or Agency holiday, then the last day for undertaking the action or giving or replying
18 to the notice shall be the next succeeding Agency working day.

19 19.20. No Gift or Dedication. Except as otherwise specified in this North OPA,
20 this North OPA shall not be deemed to be a gift or dedication of any portion of the North Plan
21 Area to the general public, for the general public, or for any public use or purpose whatsoever.
22 The Owner shall have the right to prevent or prohibit the use of any portion of the property
23 owned by the Owner, including common areas and buildings and improvements, by any persons
24 for any purpose inimical to the operation of a private, integrated mixed-use project as
25 contemplated by this North OPA. Where in fact dedication occurs, it must be evidenced by an
26 express written offer of dedication to and written acceptance by the Agency, City, Port, City
27 Agency or Community Facilities District formed in accordance with the Financing Plan, as
28 applicable, for such purposes by a recorded instrument executed by the Owner.

29 19.21. Severability. Except as is otherwise specifically provided for in this North
30 OPA with respect to Conflicting Laws, invalidation of any provision of this North OPA, or of its
31 application to any Person, by judgment or court order shall not affect any other provision of this
32 North OPA or its application to any other Person or circumstance, and the remaining portions of
33 this North OPA shall continue in full force and effect, unless enforcement of this North OPA as
34 invalidated would be unreasonable or grossly inequitable under all the circumstances or would
35 frustrate the fundamental purposes of this North OPA.

36 19.22. Entire Agreement; Supersedure. Except as to the Agency Lease, this
37 North OPA, the Mission Bay North Redevelopment Plan and Plan Documents (including the Tax
38 Allocation Agreement and Interagency Cooperation Agreement) contain all the representations
39 and the entire agreement between the Owner and the Agency with respect to the subject matter of

1 this North OPA. Any prior correspondence, memoranda, agreements, warranties or
2 representations relating to such subject matter are superseded in total by this North OPA. No
3 prior drafts of this North OPA or changes from those drafts to the executed version of this North
4 OPA shall be introduced as evidence in any litigation or other dispute resolution proceeding by
5 either the Owner or the Agency or other Person and no court or other body shall consider those
6 drafts in interpreting this North OPA.

7 19.23. No Party Drafter: Captions. Although certain provisions of this North
8 OPA were drawn by the Agency and certain provisions were drawn by the Owner, the provisions
9 of this North OPA shall be construed as a whole according to their common meaning and not
10 strictly for or against either one in order to achieve the objectives and purposes of the parties.
11 Any caption preceding the text of any Section, paragraph or subsection or in the Table of
12 Contents is included only for convenience of reference and shall be disregarded in the
13 construction and interpretation of this North OPA.

14 19.24. Conduct. In all situations arising out of this North OPA, the Owner and
15 the Agency shall each attempt to avoid and minimize the damages resulting from the conduct of
16 the other and shall take all reasonably necessary measures to achieve the provisions of this North
17 OPA.

18 19.25. Further Assurances. The Owner and the Agency each covenant, on behalf
19 of itself and its successors, heirs and assigns, to take all actions and to do all things, and to
20 execute, with acknowledgment or affidavit if required, any and all documents and writings that
21 may be necessary or proper to achieve the purposes and objectives of this North OPA. The
22 Executive Director of the Agency is authorized to execute on behalf of the Agency any closing or
23 similar documents and any contracts, agreements, memoranda or similar documents with State,
24 regional and local entities or enter into any tolling agreement with any Person that are necessary
25 or proper to achieve the purposes and objectives of this North OPA, if the Executive Director
26 determines that the document or agreement is necessary or proper and is in the Agency's best
27 interests.

28 19.26. Approvals and Consents. Unless otherwise herein provided, whenever
29 approval, consent or satisfaction is required of either the Owner or the Agency pursuant to this
30 North OPA, it shall not be unreasonably withheld or delayed. The reasons for disapproval of
31 consent shall be stated in reasonable detail in writing. Approval by the Owner or the Agency to
32 or of any act or request by the other shall not be deemed to waive or render unnecessary approval
33 to or of any similar or subsequent acts or requests. The requirements for approvals under this
34 North OPA shall extend to and bind the partners, officers, directors, shareholders, trustees,
35 beneficiaries, agents, elective or appointive boards, commissions, employees and other
36 authorized representatives of the Owner and the Agency, and each such Person shall make or
37 enter into, or take any action in connection with, any approval in accordance with these
38 requirements.

39 19.27. Cooperation and Non-Interference. The Owner and the Agency shall each
40 refrain from doing anything that would render its performance under this North OPA impossible

1 and each shall do everything which this North OPA contemplates that the party shall do to
2 accomplish the objectives and purposes of this North OPA.

3 19.28. Interpretation. Unless otherwise specified, whenever in this North OPA,
4 including its Attachments, reference is made to the Table of Contents, any Section or
5 Attachment, or any defined term, the reference shall be deemed to refer to the Table of Contents,
6 Section or Attachment, or defined term of this North OPA. Any reference to a Section includes
7 all subsections and subparagraphs of that Section. The use in this North OPA of the words
8 “including,” “such as” or words of similar import when following any general term, statement or
9 matter shall not be construed to limit such statement, term or matter to the specific items or
10 matters, whether or not language of non-limitation, such as “without limitation” or “but not
11 limited to”, or words of similar import, is used with reference thereto, but rather shall be deemed
12 to refer to all other items or matters that could reasonably fall within the broadest possible scope
13 of such statement, term or matter. In the event of a conflict between the Recitals and the
14 remaining provisions of the North OPA, the remaining provisions shall prevail.

15 19.29. Represented by Counsel. The Owner and the Agency each acknowledges,
16 warrants and represents that it has been fully informed with respect to, and represented by
17 counsel of its choice in connection with the rights and remedies of and waivers by it contained in
18 this North OPA and after such advice and consultation has presently and actually intended, with
19 full knowledge of its rights and remedies otherwise available at law or in equity, to waive and
20 relinquish those rights and remedies to the extent specified in this North OPA, and to rely solely
21 on the remedies provided for in this North OPA with respect to any breach of this North OPA by
22 the other, or any other right that either the Owner or the Agency seeks to exercise.

23 19.30. Recordation. It is understood and agreed by the Owner or the Agency that
24 this North OPA will be recorded after execution by the Agency at the request of the Agency. If
25 this North OPA is terminated in accordance herewith, either party may record a Notice of
26 Termination as provided in Article 12.

27 19.31. Survival. Notwithstanding anything herein to the contrary, any obligation
28 that arises and was not satisfied prior to termination shall survive any termination of this North
29 OPA, except to the extent of any obligation which is affected by a Conflicting Law.

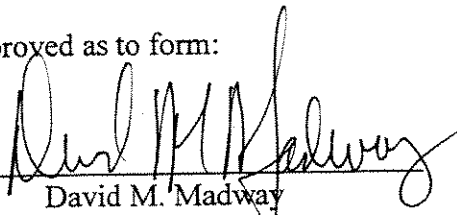
30 19.32. Employee Signature Authorization. If the Agency adopts a resolution
31 which applies the requirements of the City's Employee Signature Authorization Ordinance (S.F.
32 Administrative Code, Chapter 23, Article VII, Section 23.31-23.35) to Agency redevelopment
33 project areas, Owner acknowledges that such requirements will, to the extent same pertains,
34 apply to the applicable uses in the North Plan Area so long as same remains in full force and
35 effect.

1 IN WITNESS WHEREOF, the Agency has caused this North OPA to be duly executed
2 on its behalf and the Owner has signed or caused this North OPA to be signed by a duly
3 authorized person, all as of the day first above written.

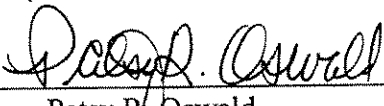
Authorized by Agency Resolution
No. 188-98 adopted
September 17, 1998

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

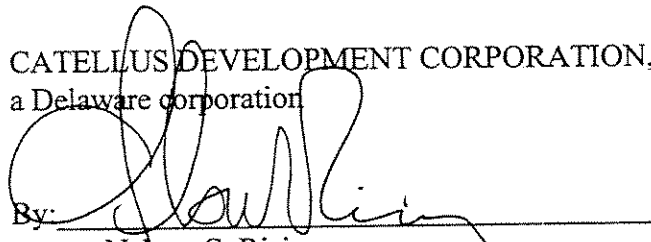
Approved as to form:

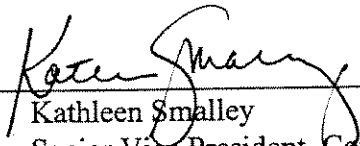
By: 
David M. Madway
Agency General Counsel

By: 
James B. Morales
Executive Director

By: 
Patsy R. Oswald
Assistant Secretary

CATELLUS DEVELOPMENT CORPORATION,
a Delaware corporation

By: 
Nelson C. Rising
President and Chief Executive Officer

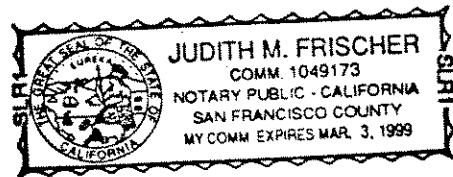
By: 
Kathleen Smalley
Senior Vice President, Corporate
Operations and General Counsel

STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Nelson C. Rising, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Judith M. Frischer
Signature (Seal)

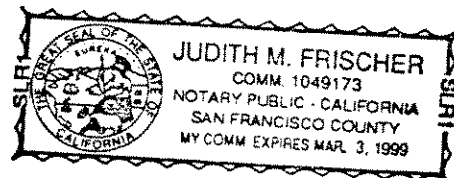


STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Kathleen Smalley, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

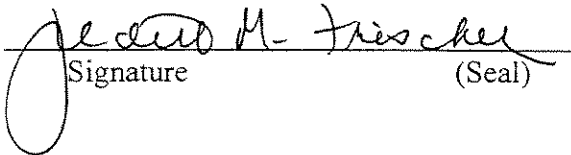
Judith M. Frischer
Signature (Seal)

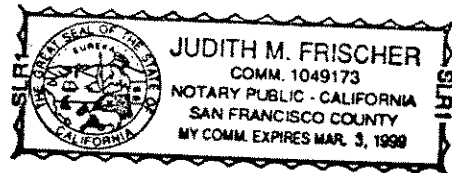


STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared James B. Morales, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

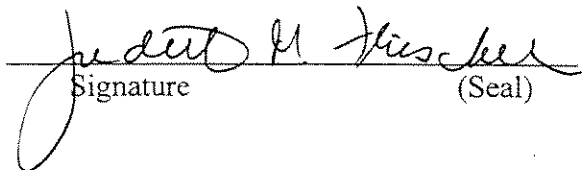

Signature (Seal)



STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared Patsy R. Oswald, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.


Signature (Seal)

