

Approval Resolutions for the Mission Bay South Owner Participation Agreement are as follows:

San Francisco Redevelopment Commission Resolution 193-98, at Tab 29 of Volume Seven

424

DEC 03 1998

CONFORMED COPY of document recorded on _____

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO

at _____ as No. G477258
This document has not been compared with
the original
SAN FRANCISCO ASSESSOR RECORDER

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

DUPLICATE

MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT

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

and

Catellus Development Corporation

REC'T # 0001063764
December 03, 1998 11:53:38

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

Document # 98-6477258-00
REEL 11273 IMAGE 0275
Account Number 26
SFDC Redevelopment Agency
Free Issue

Total fee	\$0.00
Amount Tendered...	\$0.00
Change	\$0.00
od,ER/1	

**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 SOUTH OWNER PARTICIPATION AGREEMENT

**By and between the Redevelopment Agency
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Catellus Development Corporation

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Description of Attachments:

- A. Land Use Plan and Legal Description**
- B. Scope of Development**
- C. Housing Program**
 - Exhibit A Affordable Housing Parcel Deed**
 - Exhibit B Approved Title Exceptions**
 - Exhibit C Memorandum of Option**
 - Exhibit D Quit Claim Deed**
 - Exhibit E Major Housing Phase Data Table**
 - Exhibit F Approved Sites**
 - Exhibit G Advance Delivery Affordable Housing Data Table**
 - Exhibit H Advance Delivery Blocks**
 - Exhibit I Rental Use Restriction**
- D. Infrastructure Plan**
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 - Exhibit 2 Signalization and Restriping**
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 - Table 1 Peak Hour Vehicle General Rates**
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- E. Financing Plan**
 - Exhibit A Acquisition Agreement**
 - Exhibit B Mission Bay South Tax Allocation Debt Promissory Note**
 - Exhibit C Mission Bay South Tax Allocation Debt Guaranty Agreement**

Exhibit D Description of Infrastructure - Primary Benefit to South 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. South Environmental Investigation and Response Program

L. CEQA Mitigation Measures

M. Transportation Management Plan

Documents Attached for Convenience Only:

Mission Bay South Interagency Cooperation Agreement

Mission Bay South Tax Allocation Agreement

MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT

This Mission Bay South Owner Participation Agreement ("South 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 South OPA are defined in Article 1 or have the meanings given when first defined.

RECITALS

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 South Redevelopment Project by Ordinance No. 335-98 adopted on November 2, 1998. The Redevelopment Plan, as it may be amended subject to the provisions of this South OPA, is referred to as the "Mission Bay South 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 South Redevelopment Plan. The Mission Bay South Redevelopment Plan was recorded on _____, 1998 as Document No. _____ in the Official Records of the City.

A. The Mission Bay South Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by Seventh Street, Mariposa Street, relocated Terry François Boulevard and China Basin Channel and containing approximately two hundred thirty-eight (238) acres of land, as shown on the Land Use Plan and more particularly described in the Legal Description attached to this South OPA as Attachment A (the "South Plan Area").

B. The Mission Bay South Redevelopment Plan describes a mixed-use development on Owner's and Agency's property of up to approximately three thousand (3,000) units of housing, including approximately one thousand nine hundred (1,900) market-rate units and approximately one thousand one hundred (1,100) Affordable Housing Units, approximately up to two hundred sixty thousand (260,000) Leasable square feet of retail, commercial and entertainment uses, approximately up to five million (5,000,000) Leasable square feet of commercial industrial uses (including office, research and development and light manufacturing), a five hundred (500) room hotel and parking and loading uses, all as more particularly described in the Scope of Development attached to this South OPA. The South Plan Area also includes over forty-three (43) acres of public open space, an approximately forty-three (43) acre campus site for the University of California, San Francisco ("UCSF"), including approximately two

million six hundred fifty thousand (2,650,000) square feet of UCSF facilities ("UCSF Campus"), and other uses on property owned by others.

C. In accordance with the terms and conditions of this South OPA, the Owner will develop the Improvements in the South 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 South OPA sets forth phasing principles that will govern the Owner's development in the South Plan Area, including, without limitation, linkages relating to Owner's delivery to the Agency of the Agency Affordable Housing Parcels, open space and Infrastructure requirements.

D. As set forth in the Housing Program, the Owner will donate at no cost to the Agency approximately twelve and two-tenths (12.2) acres of land suitable for development of Affordable Housing Units by Qualified Housing Developers and the Agency will oversee development of up to one thousand one hundred (1,100) Affordable Housing Units out of the up to approximately three thousand (3,000) units of housing that may be constructed on Owner and Agency sites in the South Plan Area. The delivery of Agency Affordable Housing Parcels to the Agency is linked to the rate at which Owner develops market rate housing or commercial space.

E. The Agency Affordable Housing Parcels are distributed throughout the residential districts of the South Plan Area. The Owner is responsible for providing Infrastructure to the Affordable Housing Parcels and remediating such sites in accordance with the provisions of this South OPA. To facilitate the development of the Agency Affordable Housing Units on the Affordable Housing Parcels contributed to the Agency, the Owner will establish a revolving loan fund of Five Hundred Thousand Dollars (\$500,000) to provide pre-development funding.

F. Approximately twenty percent (20%) of the total tax increment generated by development in the South Plan Area will be used for the development of Affordable Housing Units on the Agency Affordable Housing Parcels contributed to the Agency in the South Plan Area, as further provided in the Financing Plan.

G. As provided in the Infrastructure Plan, in connection with the Owner's development within the South Plan Area, the Owner will construct approximately thirty-five (35) acres of public open space. The public open space will include major public parks and recreation areas in the retail, commercial and residential areas, as well as other open space. In addition, approximately two (2) acres of open space will be created east of a relocated Terry François Boulevard. Also, at least eight (8) acres of publicly accessible open space will be provided within the UCSF Campus Site, which will also include a 0.7 acre elementary and secondary school site and a one and half (1.5) acre public school play yard. As provided in this South OPA, the Owner shall remediate the Open Space Parcels in accordance with the provisions of this South OPA. In addition, as provided herein, the Owner shall pay for the maintenance of the open space through special taxes or bonds secured by special taxes levied on the Owner's property as more particularly provided in the Financing Plan.

H. Owner will also donate approximately one and twenty-seven one-hundredths (1.27) acres of land to the City to augment the existing fire station for a new combined police and fire facility. Owner will also provide through the CFD up to three million nine hundred thousand dollars (\$3,900,000) to construct a combined police and fire station as provided in this South OPA.

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

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

K. In furtherance of the Mission Bay South Redevelopment Plan, the Agency caused a Declaration of Restrictions affecting all of the South Plan Area to be recorded in the Office of the Recorder of the City and County of San Francisco, State of California, at page ___, as Document No. _____ on _____ and the Agency has approved, by Resolution No. 191-98 on September 17, 1998 the Mission Bay South Design for Development ("Design for Development").

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

In order to further effectuate the foregoing program of development contemplated by the Mission Bay South Redevelopment Plan, and for good and valuable consideration the amount and sufficiency of which is hereby acknowledged, the parties have entered into this South OPA to memorialize their understandings and commitments concerning the matters generally described above.

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

1. Definitions

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

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

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

1.3. Additional Payments has the meaning set forth in the Financing Plan.

1.4. Advance Delivery Affordable Housing Parcels has the meaning set forth in the Housing Program.

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

1.6. Affordable Housing Units has the meaning set forth in the Housing Program.

1.7. Agency has the meaning set forth in the opening paragraph of this South OPA.

1.8. Agency Affordable Housing Parcel has the meaning set forth in the Housing Program.

1.9. Agency Affordable Housing Unit Projects has the meaning set forth in the Housing Program.

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

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

1.12. Agency Property means any real property within the South Plan Area owned, leased or controlled by Agency.

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

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

1.15. Building Permit means a building or site permit issued by the Central Permit Bureau of the City which will allow the Owner to Commence Construction of a Project pursuant to this South OPA.

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

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

1.18. City means the City and County of San Francisco.

1.19. City Agency/City Agencies has the meaning set forth in the Mission Bay South Redevelopment Plan.

1.20. Commence Construction means groundbreaking in connection with the commencement of physical construction of the Improvements.

1.21. CFD has the meaning set forth in the Financing Plan.

1.22. Complete Construction means (i) with respect to Residential Units within a Residential Project, the issuance of a final Certificate of Occupancy for such development, and with respect to a non-residential Project, the issuance of a temporary certificate of occupancy and (ii) as to either, the delivery of an Architect's certificate from the Owner's architect in the form of Attachment J.

1.23. Conflicting Law means applicable state or federal laws and any rules, regulations, orders, executive mandate or any state or federal court decision thereunder (or any approvals permits, authorizations or conditions thereto) which precludes or substantially increases the cost of performance of or compliance with any provision of this South OPA by either Owner or Agency.

1.24. Construction Documents mean Final Construction Documents and the applicable Design Documents.

1.25. Declaration of Restrictions is the document described in Recital K.

1.26. Design for Development means the document described in Recital L and includes any amendments to said document.

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

1.28. Design Review and Document Approval Procedure is attached hereto as Attachment G.

1.29. Development Fees or Exactions has the meaning set forth in the Mission Bay South Redevelopment Plan.

1.30. ENR Index means the Engineering News Record Building Cost Index for San Francisco as of the date of publication most immediately preceding the date of calculation, provided that if no such index is published during the twelve (12) month period immediately preceding the date of the calculation, the parties shall select a similar index on which to make the calculation.

1.31. Effective Date means the later of (i) the date upon which the Mission Bay South Redevelopment Plan becomes effective or (ii) the Effective Date of the Interagency Cooperation Agreement (as therein defined).

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

1.33. Financing Plan is attached hereto as Attachment E.

1.34. For Sale has the meaning set forth in the Housing Program.

1.35. Foreclosed Property has the meaning set forth in Section 13.5.

1.36. Hazardous Substance(s) has the meaning set forth in the South Environmental Investigation and Response Program.

1.37. Housing Increment has the meaning set forth in the Financing Plan.

1.38. Housing Program is attached hereto as Attachment C.

1.39. Improvements means buildings, structures, Infrastructure and other work of improvement described in the Financing Plan, Infrastructure Plan or Scope of Development to be constructed in or for the benefit of the South Plan Area.

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

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

1.42. Interagency Cooperation Agreement is described in Recital A and attached hereto for convenience only.

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

1.43A Land Use Plan and Legal Description has the meaning set forth in Recital A.

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

1.45. Losses has the meaning set forth in Section 15.1.

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

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

1.48. Memorandum of Option has the meaning set forth in the Housing Program.

1.49. Mission Bay South Redevelopment Plan means the document described in Recital A and includes any amendments to said document.

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

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

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

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

1.53A North Plan Area means the area within the Mission Bay North Redevelopment Plan.

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

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

1.56. Owner Improvements means Improvements constructed in the South Plan Area by the Owner.

1.56A Permit to Enter is attached hereto as Attachment F.

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

1.58. Plan Documents means those documents so defined in the Mission Bay South Redevelopment Plan.

1.59. Police/Fire Construction Contribution has the meaning set forth in Section 4.4.

1.60. Port means City acting by and through its Port Commission.

1.61. Program in Diversity/Economic Development Program, Mission Bay South is attached hereto as Attachment H.

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

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

1.64. Redevelopment Requirements means (i) the Mission Bay South Redevelopment Plan, (ii) the Scope of Development and any amendments thereto, (iii) the

Design for Development, and (iv) those elements of the Construction Documents for which approval is required pursuant to the Design Review and Document Approval Procedure.

- 1.65. Rental or For-Rent has the meaning set forth in the Housing Program.
- 1.66. Required Infrastructure Lands has the meaning set forth in Section 5.4.
- 1.67. Residential Project means a Project containing Residential Units and may also contain other uses permitted under the Mission Bay South Redevelopment Plan.
- 1.68. Residential Unit means a dwelling unit as defined in the Mission Bay South Redevelopment Plan.
- 1.69. Scope of Development is attached hereto as Attachment B.
- 1.70. Intentionally Omitted.
- 1.71. South Environmental Investigation and Response Program is attached hereto as Attachment K.
- 1.72. South OPA means this Mission Bay South Owner Participation Agreement, its Attachments and any amendments thereto.
- 1.73. South Plan Area has the meaning set forth in Recital B.
- 1.74. Tax Allocation Agreement is attached hereto for convenience only.
- 1.75. Transfer means to sell, assign, convey, lease, sublease, Mortgage, hypothecate or otherwise alienate, excluding therefrom any grant of occupancy rights for permanent improvements such as space leases or granted in connection with existing improvements within the South Plan Area.
- 1.76. Transferred Property has the meaning set forth in Section 14.1.
- 1.77. Transferee means the Person to whom a Transfer is made.
- 1.78. Transferor means the Person who effects a Transfer pursuant to this South OPA.
- 1.79. UCSF Campus has the meaning set forth in Recital B.
- 1.80. Unavoidable Delay means a delay in the performance of any term or condition of this South OPA that is caused by strikes or other labor disputes, acts of God, shortage of or inability to obtain labor or materials, damage to works in progress by any casualty, except to the extent caused by the negligence of the Person claiming the benefit of the Unavoidable Delay, lawsuits brought by plaintiffs unaffiliated with the Person claiming the benefit of Unavoidable Delay, restrictions imposed or mandated by governmental or quasi-

governmental entities (other than the party claiming the unavoidable delay or delays by City Agencies) in issuing requisite approvals or consents, enemy action, civil commotion, fire, flood, earthquake or any other unforeseeable event beyond the reasonable control of a Person.

2. Term Of Agreement

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

3. The Owner's Development Of South Plan Area

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

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

(a) The Owner may develop in the Major Phases up to one thousand nine hundred (1,900) market-rate Residential Units within the South Plan Area, plus parking and loading. In connection with the Owner's development of Residential Units, the Owner shall deliver Agency Affordable Housing Parcels to the Agency in accordance with the Housing Program.

(b) The Owner may develop up to approximately two hundred and thirty thousand (230,000) square feet of Leasable area of city serving retail, local serving retail and entertainment retail uses, a five hundred (500) guest room hotel (and associated uses) and five million (5,000,000) Leasable square feet of commercial industrial uses plus parking and loading uses associated with all development within the Major Phases. If applicable in connection with commercial development, the Owner shall deliver Advance Delivery Affordable Housing Parcels to the Agency in accordance with the Housing Program.

(c) Infrastructure for the South Plan Area shall be constructed pursuant to the Infrastructure Plan attached hereto as Attachment D and financed as provided for in the Financing Plan attached hereto as Attachment E.

3.3. Commencement of the Owner's Development. The Owner shall Commence Construction of the Owner Improvements within a Major Phase not later than the

tenth (10th) anniversary of the Effective Date of this South OPA. In addition to any other extension permitted hereunder, the ten (10) year period within which the Owner shall Commence Construction shall be extended for a period equal to the period of any default by the Agency of any of its obligations herein. Failure by the Owner to so commence shall not be a default under this South OPA, but shall give rise to the Agency's right to terminate pursuant to Article 12 hereof.

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

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

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

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

(d) As a condition to such obligations arising in a Major Phase in which rail franchises or facilities exist, relocation of such rail facilities and termination of the applicable rail franchises shall have been authorized by all regulatory entities, including City or any City Agency having jurisdiction over same.

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

(f) Provided that Owner shall have timely applied for and diligently pursued all such approvals, as to any Major Phase or Project to which such obligations relate, the Agency, City and all City Agencies, as applicable, shall have finally granted all approvals,

entitlements, permits or agreements including, without limitation, those required in connection with the Mission Bay Subdivision Code and Mission Bay Subdivision Regulations required to Commence or Complete Construction of the Improvements, as applicable, for each Project in each Major Phase and have charged no Development Fees or Exactions, nor imposed obligations procedures or requirements which are inconsistent with or in addition to those set forth in this South OPA, the Mission Bay South Redevelopment Plan, Plan Documents or the Interagency Cooperation Agreement. As used in this subsection 3.4(f), "finally granted" shall mean any and all applicable appeal periods for the filing of any administrative appeal challenging the issuance or effectiveness of any approvals, entitlements, permits or agreements shall have expired and no such appeal shall have been filed, or if such an administrative appeal is filed, the approvals, entitlements, permits or agreements shall have been upheld by a final decision in each such appeal without any adverse effect on the approval, entitlement, permit or agreement.

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

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

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

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

3.4.2 Subsequent Satisfaction Of Conditions/Relief from Obligations. The Agency shall use its best efforts to cause any unsatisfied condition to be satisfied within a

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

3.4.3 Effect of Failure of Condition.

(a) Notwithstanding any other provision in this South 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 South OPA) or (ii) utilizing the parcels which would have otherwise 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 South 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 pertaining, 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.

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

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

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

(c) The Owner shall have certified in writing to the Agency (i) as to the date it anticipates it will Commence Construction, and (ii) that it is ready, willing and able to Commence Construction of the Project and complete the construction of same in accordance with the terms and conditions of this South OPA and the approved Construction Documents.

(d) The Owner shall not be in Material Breach of its obligations hereunder with respect to the Major Phase of which the Project is a part.

3.6. Issuance of Certificates of Completion.

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

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

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

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

3.7. Failure to Issue A Certificate of Completion.

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

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

3.8. Plan Amendment/Consent Required. Except as may be required by a Conflicting Law, the Agency shall not amend the Mission Bay South Redevelopment Plan or the Plan Documents with respect to the South Plan Area unless consistent with Subsections 3.8(a), 3.8(b) and 3.8(c).

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

(b) Prior to issuance of a Certificate of Completion for the last Project within a Major Phase, Agency may not amend the Mission Bay South Redevelopment Plan or Plan Documents as to a Project or the Major Phase of which the Project is a part, without Owner's consent, which may be given or withheld in its sole and absolute discretion if such amendment would (i) alter the permitted uses of land, (ii) decrease the maximum height of buildings, (iii) reduce the density or intensity of development permitted or increase density on Agency Property, (iv) other than negligibly increase the cost of developing a Project or any Infrastructure within the Major Phase, (v) delay development, (vi) limit or restrict the availability of Infrastructure, including existing infrastructure, to the Project or the Major Phase, (vii) impose

limits or controls on the timing, phasing, or sequencing of the development, or (viii) modify the provisions relating to Development Fees or Exactions.

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

(d) As used in this Section 3.8, "Owner's consent" means the prior written consent of Catellus Development Corporation, except to the extent that the right to provide such consent (i) has been Transferred pursuant to Sections 14.1(a)(1) or 14.1(a)(3), or (ii) has otherwise been Transferred pursuant to Article 14 and such Transferee is the owner of all or substantially all of the undeveloped property in the South Plan Area. If Catellus Development Corporation (or its Transferee under this subsection) has Transferred its obligations to an association pursuant to Section 14.5, "Owner's consent" shall mean the consent of the Owners of fifty-one percent (51%) of the real property in the South Plan Area which Owners were Transferees of Catellus Development Corporation following the Effective Date (or their subsequent Transferees), excluding any property which is publicly owned or any Affordable Housing Parcel. A Transferee as to less than substantially all of the Owner's undeveloped property in the South Plan Area shall have no right to consent to an amendment under this Section 3.8 except and only to the extent an amendment arises under Subsections 3.8(b) or 3.8(c) which would directly, adversely and materially affect the rights of the Transferee therein described with respect to the Transferred Property, and, for such purposes, a Transferee shall only include the owner of the Transferred Property and, in the case of a condominium or similar Project, the owner of the Transferred Property shall be deemed to be the homeowner's association, but in no event shall the consent of the owner of any publicly owned property or any Agency Affordable Housing Parcel or any owner of an individual Residential Unit be required.

3.9. Issuance of Building Permits/Coordination.

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

(b) The Owner is advised that the Central Permit Bureau forwards all building permits to the Agency and the Bureau of Streets and Mapping forwards all maps for the Agency's approval of compliance with Redevelopment Requirements and this South OPA. The Agency's review of such permits and maps does not include any review of compliance thereof

with the requirements and standards other than as referred to in the Design Review and Document Approval Procedure hereof, and the Agency shall have no obligations or responsibilities for such compliance. A signature by an authorized representative of the Agency on the permit, map or other applicable document shall be conclusive evidence that there is no conflict with the Redevelopment Requirements and this South OPA arising out of such permit, map or other applicable document.

4. Agency and City Development Of South Plan Area and Owner Contributions.

4.1. Agency Affordable Housing Parcels. The Agency may construct or cause to be constructed up to approximately one thousand one hundred Residential Units on the Agency Affordable Housing Parcels, including up to thirty thousand (30,000) Leasable square feet of local serving retail uses on such parcels, subject to and in accordance with the Housing Program and the Redevelopment Requirements.

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

(a) The Agency shall not be in bad faith Material Breach of its obligations hereunder or under the Mission Bay South Redevelopment Plan and Plan Documents (including without limitation the Interagency Cooperation Agreement).

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

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

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

4.3. South Plan Area Maintenance District. In accordance with the provisions of and subject to the Financing Plan, the Agency shall establish a CFD for the purpose of providing for the ongoing maintenance of Open Space Parcels within the South Plan Area, exclusive of open space within the UCSF Campus.

4.4. Police/Fire Facility.

(a) When and as provided below Owner, if it has elected to take title pursuant to the Land Transfer Agreements, will convey to the City by grant deed in a form and substance reasonably satisfactory to City and Owner approximately one and twenty-seven one-hundredths (1.27) acres of real property on Block 8 as shown in the Land Use Plan to augment the existing City-owned fire station site of approximately 0.26 acres, for a combined police and fire facility to be constructed by City as provided in the Infrastructure Plan. Such real property shall be conveyed to the City the earlier of (i) the time at which Certificates of Occupancy have been issued for one thousand (1,000) Residential Units constructed by Owner, Agency and their Transferees in the South Plan Area, or (ii) when the City certifies to Owner that it is ready, willing and able to promptly Commence and Complete construction of the police/fire facility and has adequate funds to do so. At the time of such conveyance: (i) Owner will have met pre-conveyance obligations, if any, under the Environmental Investigation and Response Program; and (ii) no exception to title shall appear except those permitted by the Amended and Restated City Land Transfer Agreement regarding the Community Facilities Parcel (as therein defined) and Exhibit E to the Housing Program. Owner will have no obligation to remove any foundation piles or subsurface structures, or to fill, grade or otherwise level the police/fire facility site or to perform any Improvements to the City's existing 0.26 acre site.

(b) If (i) City shall have delivered the written certification to Owner as provided in clause 4.4(a)(ii) above and (ii) Certificates of Occupancy shall have been issued for one thousand (1,000) Residential Units constructed by Owner, Agency or their Transferees in the South Plan Area, then, in the manner provided in the Financing Plan, City may obtain from funds available in the CFD the sum of one million four hundred twenty thousand dollars (\$1,420,000) for reimbursement of costs of Construction of the police facility, and two million four hundred eighty thousand dollars (\$2,480,000) for reimbursement of costs of Construction of the fire facility) ("Police/Fire Construction Contribution"). The Police/Fire Construction Contribution shall be increased in proportion to the increase in the ENR Index from the period commencing on the Effective Date of this South OPA and ending on the date of payment of the Police/Fire Construction Contribution.

(c) If City elects by six (6) months' prior written notice to Owner, Owner shall use reasonable efforts (but at no cost or expense to Owner) to provide to City up to two thousand (2,000) gross square feet of unimproved shell space within an existing building within the South Plan Area, selected by Owner in Owner's sole and absolute discretion, rent-free (but including all other costs typically paid by tenants under a triple net lease) for use as an interim police station until the earlier of (i) Completion of Construction of the police/fire facility described in this Section 4.4 or (ii) when the subject space is deemed by Owner necessary for implementation of development contemplated under this South OPA.

4.5. School Site. At the time and as provided in the Infrastructure Plan, Owner will convey by grant deed in a form and substance reasonably satisfactory to City and Owner or, if previously conveyed as part of the UCSF Campus, cause to be conveyed, a seven-tenths (0.7) acre school site and an adjacent one and one-half (1.5) acre school play yard within the UCSF

Campus (being part of Block 14 on the Land Use Plan), to the City (or, at City's election, to the San Francisco Unified School District ("SFUSD")). If City has elected pursuant to the Infrastructure Plan not to develop a school, then Owner shall only convey or cause to be conveyed a one and one-half (1.5) acre portion of Block 14.

5. Cooperation and Assistance

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

5.2. Authorization of Permits.

(a) Except for Construction Documents obtained by (i) Agency or its transferee in connection with the Agency Affordable Housing Unit Projects (ii) by UCSF in connection with the UCSF Campus, (iii) by City or SFUSD in connection with the school site or police and fire facility, or (iv) by any City Agency in connection with the Illinois Street Bridge or Piers 48 and 50 as provided in the Infrastructure Plan, and, except as provided under the Interagency Cooperation Agreement, Owner is responsible for obtaining any permit, approval, entitlement, agreement, subdivision map or other authorization ("Authorization") as may be necessary or desirable to effectuate and implement the development contemplated under this South OPA from any City Agency or other governmental agency having or claiming jurisdiction over all or portion of the South Plan Area; provided, however, that the Agency shall execute any such permits, applications or maps which it is required to execute as co-applicant or co-permittee and shall cooperate reasonably with Owner in its efforts to obtain any Authorization. The Owner, however, shall not agree to the imposition of any conditions or restrictions in connection with obtaining any such Authorization where Agency is required to be a co-applicant or co-permittee which would create any obligations on the part of Agency not otherwise contemplated under this South OPA without the approval of the Agency which shall not be unreasonably withheld or delayed and, in all events, shall be at no cost or expense to Agency (other than administration costs) except as otherwise provided in this South OPA.

(b) Owner, at no cost or expense to Agency, unless otherwise provided in this South OPA, shall be solely responsible in the construction of the Improvements for complying with any and all conditions or restrictions imposed by any City Agency or other governmental agency in connection with any Authorization, whether such conditions are on the site of a Major Phase or Project or required off-site Improvements as a result of the Major Phase or Project. The Owner shall not be responsible for complying with such conditions or restrictions required for Improvements within any Agency Affordable Housing Unit Projects, the UCSF Campus, the school site (described in Section 4.5), or the police/fire site (described in Section 4.4), except to the extent as may be provided in the Environmental Investigation and

Response Program. Owner shall have the right to appeal or contest any condition in any manner permitted by law imposed by any City Agency or other governmental agency, provided, however, that the Agency shall have the right to approve such appeal or contest if the Agency is a co-applicant or co-permittee. Such consent shall not be unreasonably withheld or delayed if Owner can demonstrate to the Agency's reasonable satisfaction that such appeal would not affect the Agency's responsibility or liability for any conditions which are or could otherwise be the responsibility of Agency under such City Agency or other governmental agency Authorization. In all other cases, the Agency shall have the right to withhold its consent in its sole and absolute discretion. Any fines, penalties or corrective actions imposed as a result of the failure of the Owner to comply with the terms and conditions of any such Authorization shall be paid or otherwise discharged by the Owner and Agency shall have no liability, monetary or otherwise, for such fines and penalties except as may otherwise be provided under this South OPA or other agreement between Agency and Owner.

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

5.3. Rail Termination/Relocation. The Agency shall use good faith efforts to assist Owner in causing the relocation and termination of rail facilities and franchises or related rail rights of use or occupancy within the South Plan Area as necessary to implement the development contemplated under this South OPA.

5.4. Eminent Domain.

(a) Agency and Owner acknowledge that within the South Plan Area or for the benefit thereof there exists several portions of real property which are not Agency Property or real property owned by the Owner, but which are or may be required for the construction of certain Infrastructure described in the Infrastructure Plan and referred to therein as the Required Infrastructure Lands. Subject to the following provisions of this Section 5.4, Agency shall take reasonable steps to acquire title to the Required Infrastructure Lands by purchase, exchange, gift, eminent domain proceedings or any other method available to the Agency under federal or state law; provided, however, that the institution of any eminent domain proceedings shall be at the sole and absolute discretion of Agency including the sole discretion to adopt or decline to adopt a resolution of necessity with respect to all or any portion of such real property. Upon written notice from Owner that the Required Infrastructure Lands are necessary for the construction of Infrastructure for a Major Phase, Agency and Owner shall meet and confer

in good faith to reach an agreement as to how, whether and upon what terms and conditions the Agency will seek to acquire the Required Infrastructure Lands; provided that the Agency shall not commence an eminent domain proceeding or enter into a settlement or acquisition agreement unless Agency and Owner shall have first entered into such an agreement. In all events, the Agency shall not be required to expend any sums or incur any Losses in connection therewith.

(b) Owner expressly acknowledges that Agency has no obligation of any kind or nature to exercise its powers of eminent domain to acquire the Required Infrastructure Lands. If in the exercise of its sole and absolute discretion Agency elects to exercise its authority to acquire the Required Infrastructure Lands by eminent domain, and if Owner shall have concurred following said election by Agency, Owner shall pay to Agency in advance or Agency shall obtain from the from CFD or other sources, all funds necessary to cover all of the Agency Costs incurred or compensation paid in seeking to acquire such property, including without limitation, surveys, appraisals, any deposits, Hazardous Substances and soils investigations, engineering and consultant fees, attorneys and expert witness fees, court costs and litigation related disbursements, condemnation judgments and settlements.

(c) As used in Subsections 5.4(a) and 5.4(b), "Owner" shall have the same meaning as "Owner's Representative" set forth in the Financing Plan.

6. Agency Administration Costs.

The Agency shall from time to time establish a fee for service mechanism for Agency Costs incurred by it pursuant to this South OPA in connection with its review, approval and implementation of a Project or a Major Phase. The Agency will use its best efforts to recapture all such Agency Costs through the fee-for-service mechanism imposed on a Project and/or Major Phase basis, as applicable. Agency and Owner acknowledge that the purpose of this Article 6 is to minimize, to the maximum extent feasible, the Agency Costs to be included in calculating the Net Available Increment each year pursuant to the Financing Plan and to charge to individual Projects or Major Phases, as applicable, the Agency Costs associated therewith. In all events, if the Agency determines in the exercise of its reasonable judgment that the sums collected on a Project or Major Phase basis will not be sufficient to pay the Agency Costs in any year and that the Agency seeks to deduct such excess Agency Costs in determining the Net Available Increment, then the Agency shall first notify Owner and, Owner, in the exercise of its sole and absolute discretion, may elect to pay directly to Agency the amount or any portion thereof of the Agency Costs which the Agency proposes to including in calculating the Net Available Increment. Accompanying any such notice, the Agency shall provide reasonably detailed supporting documentation, including time records and expense details in order for Owner to verify that such Agency Costs are reasonable administrative costs within the meaning of this Article 6. Agency shall provide Owner with copies of its annual Statement of Indebtedness and audited financial statements as soon as practicable following their approval by Agency. Agency shall provide Owner with a summary of Agency Costs for each quarter, with the same standard of supporting documentation as described in any notice required in this Article 6. Provided consistent with the requirements and standards of this South OPA, such summary shall be binding in the absence of manifest error. The Agency will maintain records, in reasonable detail,

with respect to any Agency Costs deducted from tax increment revenues in arriving at Net Available Increment, and, upon written request of the Owner, will make such records available for inspection by the Owner.

Notwithstanding anything otherwise contained in the Financing Plan, no costs incurred by Agency in connection with Agency Sponsored Affordable Housing shall be reimbursed or paid from the Net Available Increment until all Agency obligations under the Financing Plan have been satisfied.

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

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

8. Restrictions On The Site And The Development.

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

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

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

(c) Every conveyance of the South Plan Area or any part thereof covered by this South OPA shall, in addition to any other covenants, contain covenants on the part of the grantee, for the grantee and the grantee's heirs, successors and assigns of the South Plan Area or portion thereof and shall bind the grantee, and the grantee's heirs, its successors and

assigns, and all persons claiming under or through them to the restrictions set forth in this Article 8.

9. Permit To Enter For Infrastructure.

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

10. Relocation Assistance.

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

11. Resolution of Certain Disputes.

Notwithstanding the provisions of Subsection 12.1(a) and 12.1(b), after notice to the other party of the basis of a party's belief that there exists a dispute as to (i) Agency disapproval

or conditional approval of Constructions Documents, (ii) costs of remediation under the Housing Program Section 2.5, or (iii) failure of delivery of Advance Delivery Affordable Housing Parcels or payment of the in-lieu fee pursuant to Section 2.6 of the Housing Program, the parties will have a thirty (30) day period to attempt to resolve the dispute through informal discussions. If the dispute is not resolved to the satisfaction of both parties at the end of the thirty (30) day informal dispute resolution period, the parties agree that Owner may at its discretion initiate a declaratory relief action in the Superior Court for the City and County of San Francisco under California Code of Civil Procedure Sections 1060 and 1062.3 for resolution of the dispute. The parties agree that the circumstances of this matter make it imperative that the dispute be resolved at the earliest possible date. Toward that end, the parties agree the Agency's response time to the complaint shall be shortened to fifteen (15) days, that the parties shall exchange all documents upon which they rely to support their respective positions regarding the disputed matter within thirty (30) days after the complaint has been served, that all motions other than summary judgment motions will be heard on ten (10) days notice, that summary judgment motions will be heard on thirty (30) days notice and that the parties waive their rights to discovery, provided, however, that no motion for summary judgment may be filed by a party which has not completed such document exchange.

12. Remedies

12.1. General.

(a) Except as otherwise provided in this South OPA, in the event of any default in or breach of this South OPA, by either the Owner or the Agency, the non-defaulting party may deliver a notice of default to the other regarding such default or breach. The notice of default shall state with reasonable specificity the nature of the alleged default, the provisions under which the default is claimed to arise, and the manner in which the failure of performance may be satisfactorily cured. Upon receipt of such notice of default, either the Owner or the Agency, as applicable, shall commence within a reasonable time not to exceed sixty (60) days to cure or remedy such default or breach, and shall thereafter pursue such cure or remedy diligently to completion.

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

If (i) action is not diligently taken or pursued, or the default or breach shall not be cured or remedied within a reasonable time or (ii) either the Owner or the Agency shall refuse to meet and discuss as described above, then the aggrieved party may institute such proceedings (except as otherwise limited by or provided in this South OPA) as may be necessary or desirable in its

opinion to cure and remedy such default or breach, including without limitation, proceedings to compel specific performance by the party in default or breach of its obligations. Nothing in this Section 12.1(b) shall require a party to postpone instituting any injunctive proceeding if it believes in good faith that such postponement will cause irreparable harm to such party. In the event of a default by Owner described in the Program in Diversity/Economic Development Program, the Agency's remedies shall be limited as therein provided. The parties expressly acknowledge that termination as a remedy for default under this South OPA is only permitted to the extent provided in Section 12.2.

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

(d) Owner and Agency have determined that monetary damages generally are inappropriate and it would be extremely difficult and impractical to fix or determine the actual damages arising to either as a result of a breach or default hereunder and that equitable remedies and remedies at law not including damages are particularly appropriate remedies for enforcement of this Agreement. Except as otherwise provided herein to the contrary (and then only to the extent of actual damage and not consequential or special damages), neither Agency nor Owner would have entered into this Agreement if either were to be liable in damages under or with respect to this Agreement. Consequently, the parties have agreed that no party shall be liable in damages to the other, to any other Owner or Transferee, or any other Person, and each covenants not to sue for or claim any damages under this South OPA and expressly waives its right to do so; provided, however that damages shall be available as to defaults which arise out of the failure to pay any monetary fee or reimbursement required to be paid under this South OPA, including failure to pay sums due pursuant to Section 5.4 of this South OPA, sums due pursuant to the Acquisition Agreement, or any obligation to pay any Additional Payments then in effect under the Financing Plan or due under any indemnity.

12.2. Termination.

Whether or not Agency or Owner is in default hereunder, this Agreement, at the option of the party provided and for the cause stated below, may be terminated by notice thereof to the other party, which notice shall state the cause therefor, the portion of the South Plan Area to which it pertains, and the effective date of termination, which date shall be no less than thirty (30) days following the date of the notice, except as otherwise provided in Subsection 12.2(c).

Upon termination, neither party shall have any further rights against or liability to the other under this South OPA, except to the extent of any obligation or right which has arisen prior to the date of the termination which is not affected by a Conflicting Law.

(a) Termination by Owner.

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

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

(3) City shall have not obtained an NPDES Permit which will authorize the Infrastructure contemplated by the Infrastructure Plan and the development contemplated under this South OPA or shall have obtained an NPDES Permit which will substantially adversely affect the timing or cost of development contemplated by this South OPA. Termination pursuant to Subsection 12.2(a)(3) shall be subject to the process and notice provisions of Subsection 12.2(c)(1).

(b) Agency's Right to Terminate.

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

(2) Having Commenced Construction, the Owner Abandons same for a period of ten (10) consecutive years. The ten (10) year period shall be extended for a period equal to the period of any default by Agency hereunder and also extended by the period of any delay by Agency or any City Agency in issuing any permits, approvals, entitlements or authorizations predicate to Owner Commencing Construction in addition to any other extensions permitted under this South OPA.

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

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

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

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

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

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

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

13. Financing: Rights Of Mortgagees

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

13.2. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this South OPA, including, but not limited to, those which are or are intended to be covenants running with the land, a Mortgagee, including any Mortgagee who obtains title to the South Plan Area or any part thereof as a result of foreclosure proceedings, or conveyance or other action in lieu thereof, or other remedial action, including (a) any other Person who thereafter obtains title to the South Plan Area or such part from or through such Mortgagee or (b) any other purchaser at foreclosure sale, shall in no way be obligated by the provisions of this South OPA to

construct or complete the Improvements or to guarantee such construction or completion. Nothing in this Section or any other Section or provision of this South OPA shall be deemed or construed to permit or authorize any Mortgagee or any other Person to devote the South Plan Area or any part thereof to any uses, or to construct any improvements thereon, other than uses or Improvements consistent with the Mission Bay Redevelopment Plan and this South OPA.

13.3. Copy of Notice of Default and Notice of Failure to Cure to Mortgagee.

Whenever the Agency shall deliver any notice or demand to the Owner with respect to any breach or default by the Owner in its obligations or covenants under this South OPA, the Agency shall at the same time forward a copy of such notice or demand to each Mortgagee having a Mortgage on the real property which is the subject of the breach or default who has previously made a written request to the Agency therefor, at the last address of such Mortgagee specified by such Mortgagee in such notice. In addition, if such breach or default remains uncured for the period permitted with respect thereto under this South OPA, the Agency shall deliver a notice of such failure to cure such breach or default to each such Mortgagee at such applicable address. A delay or failure by the Agency to provide such notice required by this Section shall extend for the number of days until notice is given, the time allowed to the Mortgagee for cure.

13.4. Mortgagee's Option to Cure Defaults. After receiving any notice of failure to cure referred to in Section 13.3 hereof, each Mortgagee shall have the right, at its option, to commence within the same period as the Owner to remedy or cause to be remedied any event of default, plus an additional period of: (a) thirty (30) days to cure a monetary event of default; and (b) sixty (60) days to cure a non-monetary event of default which is susceptible of cure by the Mortgagee without obtaining title to the applicable property. If an event of default is not cured within the applicable cure period, the Agency nonetheless shall refrain from exercising any of its remedies with respect to the event of default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies the Agency that it intends to proceed with due diligence to foreclose the Mortgage or otherwise obtain title to the subject property; and (ii) the Mortgagee commences foreclosure proceedings within sixty (60) days after giving such notice, and thereafter diligently pursues such foreclosure to completion; and (iii) after obtaining title, the Mortgagee diligently proceeds to cure those events of default: (A) which are required to be cured by the Mortgagee and are susceptible of cure by the Mortgagee, and (B) of which the Mortgagee has been given notice by the Agency pursuant to Section 13.3. Any such Mortgagee who shall properly complete the Improvements relating to the South Plan Area or applicable part thereof shall be entitled, upon written request made to the Agency, to a Certificate of Completion.

13.5. Mortgagee's Obligations with Respect to the Property. Notwithstanding anything to the contrary in this South OPA, no Mortgagee shall have any obligations or other liabilities under this South OPA unless and until it acquires title by any method to all or some portion of the South Plan Area (referred to hereafter as "Foreclosed Property"). A Mortgagee that acquires title by foreclosure to any Foreclosed Property shall take title subject to all of the terms and conditions of this South OPA, to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations which are due as a condition to enjoying the benefits of this South OPA. Upon the occurrence and continuation of an uncured

default by a Mortgagee or Transferee in the performance of any of the obligations to be performed by such Mortgagee or Transferee pursuant to this South OPA, the Agency shall be afforded all its remedies for such uncured default as provided in this South OPA.

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

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

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

14. Transfers And Assignment.

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

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

- (1) The Transferee is an Affiliate; or
- (2) The Transferee has experience developing or operating major commercial or industrial or residential projects reasonably related to those contemplated under this South OPA or, if applicable, to the Major Phase or Project contemplated on the

Transferred Property and has either (x) a Net Worth equal to at least Twenty-Five Million Dollars (\$25,000,000) or (y) the Owner is a general partner in such Transferee; or

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

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

(5) A Certificate of Completion has been issued for all of the South Plan Area or the portion thereof to be Transferred; or

(b) Upon any such Transfer to an Affiliate with a Net Worth equal to at least Twenty-Five Million Dollars (\$25,000,000) or a Transfer as described in Subsection 14.1(a)(2) through Section 14.1(a)(5) and provided Agency shall have received the Assumption Agreement as provided in Subsection 14.1(e), the Agency shall provide Owner with a written release from any obligations under this South OPA applicable to the Transferred Property in a form and substance reasonably satisfactory to the Owner (but excluding from such release (i) any default in an obligation to pay money where such default occurred prior to the date of the Transfer or (ii) if prior to issuance of a Certificate of Completion for all the South Plan Area or the portion thereof to be Transferred, obligations which may remain pursuant to Subsection 14.1(a)(4)) within thirty (30) days of such Transfer in a form and substance reasonably satisfactory to the Owner.

(c) In addition to the Transfers permitted by Subsection 14.1(a), the Owner may Transfer all or a portion of its interest in the South Plan Area or its interest in this South OPA or any of the rights and obligations of the Owner hereunder, if the Agency approves the proposed Transferee, which approval shall not be unreasonably withheld or delayed, provided Agency may condition such approval in a manner consistent with Section 14.1(a)(4) as to Transfers arising under Section 14.1(a)(4). Written notice of the Agency approval shall be delivered to the Owner within thirty (30) days of the Agency's receipt of written notice of such proposed Transfer. If such written notice of the Agency approval is not received within said thirty (30) days, the proposed Transferee shall be deemed disapproved. Upon Agency's approval of the Transferee and Transferee's written assumption pursuant to an Assumption Agreement of

the Owner's obligations applicable to the Transferred Property hereunder, the Owner shall be released from all obligations under this South OPA (but excluding from such release any default in an obligation to pay money where such default occurred prior to the date of the Transfer), and the Agency shall provide the Owner a written instrument to such effect in a form and substance reasonably satisfactory to the Owner.

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

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

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

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

14.3. Restrictions on Speculation Deemed Unnecessary. Since most of the privately held land in the South Plan Area is owned by the Owner, and the Owner has agreed herein to use such land for the purposes designated in the Mission Bay South Redevelopment Plan, the Agency deems it unnecessary and inappropriate to either include specific covenants, conditions or restrictions herein prohibiting speculation or excess profitability in connection with

the land in the South Plan Area or require the Owner's covenant to comply with the same. Accordingly, the obligations and commitments herein regarding the disposition of the land in the South Plan Area satisfy the requirements of the applicable provisions, if any, of Community Redevelopment Law Section 33437.

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

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

15. General Owner Indemnity

15.1. General Indemnification. Except as provided in Section 15.4, the Owner agrees to and shall indemnify, defend and hold the Agency and its respective commissioners, members, officers, employees, agents, successors and assigns, harmless from and against all claims, demands, losses, liabilities, damage, liens, obligations, interest, injuries, penalties, fines, lawsuits or other proceedings, judgments and awards and costs and expenses (including reasonable attorneys' fees and costs and consultant fees and costs and court costs) of whatever kind or nature, known or unknown, contingent or otherwise, including the reasonable costs to the Agency of carrying out the terms of any judgment, settlement, consent, decree, stipulated judgment or other partial or complete termination of an action or procedure that requires the Agency to take any action (collectively "Losses") arising from or as a result of (a) the noncompliance of the Owner Improvements with any Federal, state or local laws or regulations (except as to those obligations accepted by Agency under Section 5.2), including those relating to handicap access (excluding therefrom any Agency Property or portion thereof on which Owner has not constructed Improvements), or (b) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur in the portion of the South Plan Area which is the subject of this South OPA (excluding therefrom any Agency Property or portion thereof on which Owner has not constructed Improvements, the UCSF Campus, SFUSD school site and the police/fire facility) and which shall be directly or indirectly caused by the negligent act or omission of the Owner or its agents, servants, employees

or contractors, except to the extent such Losses are directly or indirectly caused by the negligent act or omission or willful act of the Agency or its respective commissioners, members, officers, employees, agents, successors and assigns including the negligence or other actionable misconduct of Agency, acting (or failing to act) in its governmental capacity, in the exercise of its police powers.

In addition to the foregoing, Owner shall defend, hold harmless and indemnify the Agency and its respective commissioners, members, officers, agents and employees of and from all Losses arising directly or indirectly out of or connected with contracts or agreements entered into by Owner in connection with its performance under this South OPA, except to the extent caused by the willful misconduct or the negligence of the Agency or arising from obligations to Agency, City or any City Agency arising under the Program in Diversity/Economic Development Program or arising from compliance with Section 19.33 of this South OPA.

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

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

15.4. Limitations of Liability. It is understood and agreed that no commissioners, members, officers, agents, or employees of Agency (or of its successors or assigns) shall be personally liable to the Owner nor shall any officers, directors, shareholders, agents or employees of Owner (or of its successors or assigns) be personally liable to Agency in the event of any default or breach of this South OPA by the Agency or Owner or for any amount

which may become due to the Owner or Agency or any obligations under the terms of this South OPA. Further, notwithstanding anything to the contrary set forth in this Article 15, the foregoing indemnities of Owner shall exclude any Losses relating to Hazardous Substances. The Owner's contractual obligations and indemnities regarding Hazardous Substances shall be governed by the Environmental Investigation and Response Plan, the Land Transfer Agreements or Permits to Enter, as applicable.

16. Agency Indemnity.

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

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

17. No Representations Beyond Agreement.

17.1. Condition of Agency Affordable Housing Parcels, Open Space Parcels and Other Land Transferred to the Agency. Except as set forth in this South OPA, the Owner disclaims the making of any representations or warranties, express or implied, regarding the Agency Affordable Housing Parcels, the Open Space Parcels or any other land transferred to the Agency or any City Agency or matters affecting such parcels, including, without limitation, physical condition, title, soil condition, topography, subsurface conditions (e.g., the presence of pile foundations), environmental matters, their developmental potential and the use, fitness, value or adequacy of the same for any particular purpose. The Agency, moreover, acknowledges that it has entered into this South OPA with the intention of making and relying upon its own investigation of the physical, environmental, economic and legal condition of the such transferred parcels, except as expressly set forth in this South OPA. The Agency is not relying upon any representations and warranties made by the Owner, the Owner's agents, brokers, or anyone else acting or claiming to act on the Owner's behalf concerning the such transferred parcels. SUBJECT TO THE PROVISIONS OF THIS SOUTH OPA, THE OWNER SHALL TRANSFER SUCH PARCELS TO THE AGENCY IN THEIR "AS IS" CONDITION, WITH ALL FAULTS, ON THE DATES REQUIRED, AND THE AGENCY ASSUMES THE RISK THAT ADVERSE PHYSICAL, ENVIRONMENTAL, ECONOMIC OR LEGAL CONDITIONS MAY NOT HAVE BEEN REVEALED BY ITS INVESTIGATION.

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

18. CEQA Mitigation Measures.

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

19. Miscellaneous Provisions.

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

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

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

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

with a copy to:

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

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

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

with copies to:

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

and

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

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

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

- (a) the Section of this South OPA pursuant to which the notice is given and the action or response required, if any;
- (b) if applicable, the period of time within which the recipient of the notice must respond thereto;
- (c) if applicable, that the failure to object to the notice within a stated time period will be deemed to be the equivalent of the recipient's approval or disapproval of or consent to the subject matter of the notice;

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

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

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

19.3. Time of Performance.

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

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

19.4. Unavoidable Delay.

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

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

19.5. Extensions. The Agency or Owner may extend time for the other party's performance of any term, covenant or condition of this South OPA or permit the curing of any default upon such terms and conditions as it determines appropriate, provided, however, that any such extension or permissive curing of any particular default shall not operate to release any of the other party's obligations nor constitute a waiver of the extending party's rights with respect to any other term, covenant or condition of this South OPA or any other default in, or breach of, this South OPA.

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

19.6. Attorneys' Fees.

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

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

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

19.8. Intentionally Omitted.

19.9. Successors and Assigns/No Third Party Beneficiary. Subject to the provisions of Article 14, this South OPA shall be binding upon and inure to the benefit of the successors and assigns of the Agency and the Owner. This South OPA is made and entered into only for the protection and benefit of the parties and their successors and assigns. No other Person shall have or acquire any right or action of any kind based upon the provisions of this South OPA except as expressly provided in Article X of the Program in Diversity/Economic Development Program.

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

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

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

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

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

Except as provided in Section 19.5, any modification or waiver of any provision of this South OPA or any amendment thereto must be in writing and signed by a Person having authority to do so, on behalf of both the Agency and the Owner.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19.32. Additional Real Property. If Owner shall acquire any real property within the South Plan Area within block 10, block 26 or the area within block 36 adjacent to Third Street following the Effective Date of this South OPA, said real property shall, at the election of Owner, be deemed to be real property subject to the rights, duties and obligations of this South OPA as if it were part of the Land Use Plan and Agency and Owner shall record an appropriate memorandum so providing in the Official Records of the San Francisco County Recorder.

19.33. Employee Signature Authorization. If the Agency adopts a resolution which applies the requirements of the City's Employee Signature Authorization Ordinance (Administrative Code, Chapter 23, Article VII, Sections 23.31-23.35) to Agency redevelopment project areas, Owner acknowledges that such requirements will, to the extent same pertains,

apply to the applicable uses in the South Plan Area so long as same remains in full force and effect.

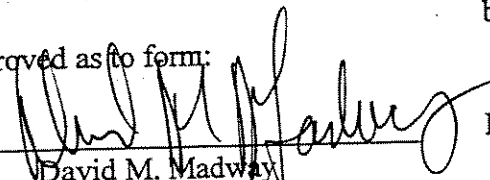
IN WITNESS WHEREOF, the Agency has caused this South OPA to be duly executed on its behalf and the Owner has signed or caused this South OPA to be signed by a duly authorized person, all as of the day first above written.

Authorized by Agency Resolution No. 193-98 adopted September 17, 1998.

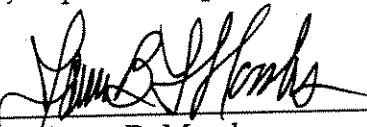
REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, corporate and politic

Approved as to form:

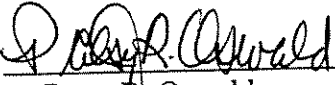
By:


David M. Madway
Agency General Counsel

By:

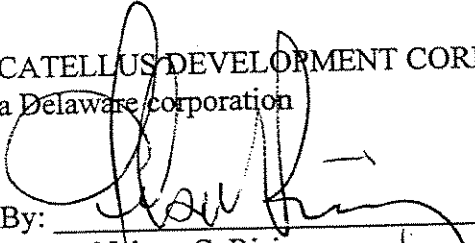

James B. Morales
Executive Director

By:

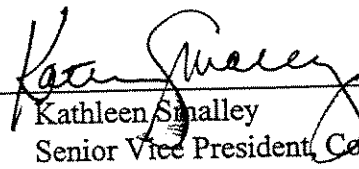

Patsy R. Oswald
~~Assistant~~ Secretary

CATELLUS DEVELOPMENT CORPORATION,
a Delaware corporation

By:


Nelson C. Rising
President and Chief Executive Officer

By:

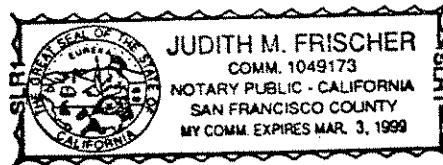

Kathleen Smalley
Senior Vice President, Corporate
Operations and General Counsel

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 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.

Judith M. Frischer
Signature (Seal)

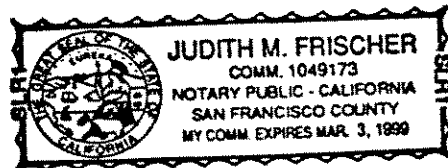


STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared 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.

Judith M. Frischer
Signature (Seal)

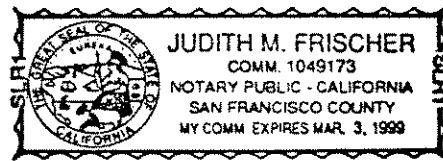


STATE OF CALIFORNIA)
) ss.
CITY and COUNTY OF SAN FRANCISCO)

On November 16, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared 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)

