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Redevelopment Agency City and County of
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RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Successor Agency to the Redevelopment
Agency of the City and County of San
Francisco
One South Van Ness Avenue, 5th Floor
San Francisco, CA 94103
Attn: Executive Director

(SPACE ABOVE THIS LINE FOR
RECORDER'S USE ONLY)

**FIFTH AMENDMENT TO
MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT**

Dated as of _____, 2014

By and Between

**THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY
OF THE CITY AND COUNTY OF SAN FRANCISCO**

and

FOCIL-MB, LLC

FIFTH AMENDMENT TO
MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT

THIS FIFTH AMENDMENT TO MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT (this "**Amendment**") dated for reference as of _____, 2014, is by and between the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, established and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (the "**Successor Agency**") and FOCIL-MB, LLC, a Delaware limited liability company (the "**Owner**" or "**FOCIL**"). As used in this Amendment, "City" means the City and County of San Francisco, a charter city and county. All initially capitalized terms in this Amendment shall have the meanings set forth in the South OPA (as defined below), unless otherwise specifically provided in this Amendment.

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

- A. In accordance with the Community Redevelopment Law of California (Cal. Health & Safety Code Section 33000 et seq.), the City, acting through its Board of Supervisors and Mayor, approved a Redevelopment Plan for the Mission Bay South Redevelopment Project by Ordinance No. 335-98, adopted on November 2, 1998 (the "**Original Redevelopment Plan**"). The Original Redevelopment Plan was recorded in the Official Records of San Francisco County (the "**Official Records**") on November 18, 1998 as Instrument No. 98-G470337 and a certificate of correction was recorded in the Official Records on January 20, 1999 as Instrument No. 99-G501704. The Original Redevelopment Plan was amended by Board of Supervisors Ordinance No. 143-13, adopted on July 11, 2013. The Original Redevelopment Plan, as so corrected and amended and as it may be further amended from time to time, is referred to in this Amendment as the "**Redevelopment Plan**". In partnership with the City under the Mission Bay South Interagency Cooperation Agreement, dated as of November 16, 1998 (the "**Interagency Cooperation Agreement**"), the Successor Agency is in the process of implementing the Redevelopment Plan, which is producing substantial public and economic benefits to the City. The Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by the South embankment of China Basin Channel and Seventh Street, Interstate 280, Mariposa Street, Terry Francois Boulevard, and Third Street, as more particularly described in the Redevelopment Plan (the "**South Plan Area**").
- B. To implement the Redevelopment Plan, The Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") and Catellus Development Corporation, a Delaware corporation ("**CDC**"), entered into that certain Mission Bay South Owner Participation Agreement dated as of November 16, 1998 (the "**Original**

OPA”) and recorded December 3, 1998 as Document No. 98-G477258-00 in the Official Records, which was amended by a (i) First Amendment to Mission Bay South Owner Participation Agreement (the “**First OPA Amendment**”) dated as of February 17, 2004 and recorded March 3, 2004 as Document No. 2004H669955 in the Official Records, between Former Agency and Catellus Land and Development Corporation, a Delaware corporation (“**CLDC**”), successor in all of CDC’s rights and obligations under the Original OPA, (ii) Second Amendment to Mission Bay South Owner Participation Agreement (the “**Second OPA Amendment**”) dated as of November 1, 2005 and recorded November 30, 2005 as Document No. 2005I080843 in the Official Records, between Former Agency, CLDC, and the Owner, successor in interest to all of CLDC’s rights and obligations under the Original OPA, as amended by the First OPA Amendment, (iii) Third Amendment to Mission Bay South Owner Participation Agreement (the “**Third OPA Amendment**”) dated as of May 21, 2013 and recorded December 9, 2013 as Document No. 2013J802261 in the Official Records, between Successor Agency and the Owner, and (iii) Fourth Amendment to Mission Bay South Owner Participation Agreement (the “**Fourth OPA Amendment**”) dated as of June 4, 2013 and recorded December 9, 2013 as Document No. 2013J802262 in the Official Records, between Successor Agency and the Owner. The Original OPA, as amended by the First OPA Amendment, the Second OPA Amendment, the Third OPA Amendment and the Fourth OPA Amendment shall be referred to in this Amendment as the “**South OPA**”.

- C. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. IX 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“**AB 26**”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“**AB 1484**”) and California State Assembly Bill No. 471 (2014) (“**AB 471**”) (together, AB 26, AB 1484 and AB 471, together with any later amendments, are referred to as the “**Redevelopment Dissolution Law**”).
- D. Under the Redevelopment Dissolution Law, a successor agency has the continuing obligation, subject to certain review by an oversight board and the State of California’s Department of Finance (“**DOF**”), to implement “enforceable obligations” which were in place before the suspension of such redevelopment agency’s activities on June 28, 2011, the date that AB 26 was approved. The Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy” (Cal. Health & Safety Code § 34171(d)(1)(e)), as well as certain other obligations, including but not limited to requirements of state law and agreements made in reliance on pre-existing enforceable obligations. The South OPA meets the definition of “enforceable obligations” under the Redevelopment Dissolution Law.

- E. In Ordinance 215-12, the San Francisco Board of Supervisors acknowledged the separate legal status of the Successor Agency (also commonly known as the Office of Community Investment and Infrastructure, or "**OCII**") as the successor agency to the Redevelopment Agency; created the Successor Agency Commission; and delegated to the Successor Agency Commission, among other powers, the authority to act in place of the Redevelopment Agency to implement, modify, enforce and complete surviving redevelopment projects, including, without limitation, three major integrated, multiphase revitalization projects, which are the Mission Bay North and Mission Bay South Projects, the Hunters Point Shipyard/Candlestick Point Project, and the Transbay Project (collectively, the "**Major Approved Development Projects**"), and which are subject to enforceable obligations requiring the implementation and completion of those projects.
- F. As required by AB 26, the Mayor appointed, and the Board of Supervisors confirmed, four members to the Oversight Board of the City and County of San Francisco ("**Oversight Board**") (Cal. Health and Safety Code Section 34179(a)(10)).
- G. With respect to the Major Approved Development Projects, Ordinance 215-12 designated the Successor Agency Commission authority to approve all contracts and actions related to the assets transferred to or retained by the Successor Agency, including, without limitation, the authority to exercise land use, development and design approval authority for the Major Approved Development Projects. The authority of the Successor Agency Commission, with respect to the Major Approved Development Projects includes the authority to approve amendments to enforceable obligations as allowed under Redevelopment Dissolution Law, subject to any required approval by the Oversight Board, consistent with applicable enforceable obligations.
- H. Ordinance 215-12 acknowledged that the Successor Agency has retained enforceable obligations for the development of affordable housing, including Retained Housing Obligations as defined therein, required to fulfill the Major Approved Development Projects.
- I. Ordinance 215-12 provides that the Successor Agency Commission shall not modify the Major Approved Development Projects or the Retained Housing Obligations in any manner that would decrease the commitment of property tax revenue for affordable housing or materially change the obligations to provide affordable housing without obtaining the approval of the Board of Supervisors and any required approval of the Oversight Board.
- J. Bay Jacaranda No. 3334, LLC, a Delaware limited liability company ("**Bay Jacaranda 3334**") is the current owner of that certain real property located in the South Plan Area commonly referred to as Mission Bay South Development

Blocks 33 and 34 (consisting of Lot 001, Block 8725 (a portion) and Lot 004, Block 8725) (collectively, the “**Block 33/34 Expansion Property**”).

- K. The Regents of the University of California (the “**Regents**”) desires to purchase the Block 33/34 Expansion Property, and Bay Jacaranda 3334 desires to sell the Block 33/34 Expansion Property to the Regents. The acquisition of the Block 33/34 Expansion Property by the Regents will help the University of California, San Francisco (“**UCSF**”) accommodate its future growth plans in San Francisco and, specifically, in the South Plan Area.
- L. Under the South OPA and related Mission Bay South Tax Increment Allocation Pledge Agreement, dated as of November 16, 1998, between the Former Agency and the City (the “**Pledge Agreement**”), property tax increment generated by development in the South Plan Area is contractually dedicated, among other things, to develop affordable housing units to achieve the affordable housing program contemplated by the Redevelopment Plan.
- M. The South OPA requires the Owner to construct the public infrastructure directly related to each of the major phases of development under the Redevelopment Plan in accordance with the incremental build-out of each project. Under the South OPA and the Pledge Agreement, the Successor Agency is obligated to fund, repay or reimburse the Owner, subject to certain conditions, for the direct and indirect costs of constructing the infrastructure through (i) special taxes or bonds secured by special taxes levied on the property under a Community Facilities District (“**CFD**”), (ii) payment of net available property tax increment generated within the South Plan Area or tax allocation bonds issued and secured by such increment, or (iii) a combination of the foregoing, to the extent such tax revenues are available to the Successor Agency. The Former Agency established a CFD for infrastructure in the South Plan Area. As contemplated under the South OPA, the Former Agency established a separate CFD to pay the costs of maintaining the public open space in the South Plan Area and in Mission Bay North.
- N. The Block 33/34 Expansion Property (as well as other parcels located in the South Plan Area) is subject to a Tax Payment Agreement [Mission Bay South – Land Use Blocks 33 and 34] dated August 20, 2010 and recorded in the Official Records on September 22, 2010 as Instrument Number 2010J053675 (the “**PILOT Agreement**”). The PILOT Agreement requires any Tax Exempt Entity (as such term is defined in the PILOT Agreement) that acquires the subject property to (i) pay special taxes assessed by any CFD and (ii) make certain payments in lieu of taxes (“**PILOT Payments**”) to the Successor Agency for each tax fiscal year after such acquisition. The PILOT Agreement was intended to effectuate the provisions of Section 14.7 of the South OPA, to minimize the adverse financial impact on completion of the projects under the Redevelopment Plan that could result from any future claim of an exemption from property taxes for the subject property on the implementation of the Redevelopment Plan, and

specifically on the Successor Agency's ability to (i) increase, improve and preserve affordable housing and (ii) reimburse Owner for infrastructure costs. The required PILOT Payments do not duplicate the amount of tax increment that the Successor Agency would receive from a non-tax-exempt entity under the Pledge Agreement. The City and the Successor Agency are intended third-party beneficiaries of the PILOT Agreement. The Successor Agency does not have the right, without the written approval of the Owner, to modify or waive provisions obligating Tax Exempt Entities to make PILOT Payments. Similarly, Section 14.7 of the South OPA prohibits an owner from selling or leasing property to a tax exempt entity without entering into, or requiring a tax exempt entity to enter into, a PILOT Agreement without the written consent of both the Successor Agency and City.

- O. As a State agency, the Regents is exempt under the State Constitution from property taxes on property it uses in furtherance of its educational mission. As previously mentioned, a portion of such property tax increment (or in the case of the Block 33/34 Expansion Property, the Pilot Payments that otherwise are required under Section 14.7 of the South OPA and the PILOT Agreement) is dedicated under the South OPA and the Pledge Agreement for the development of affordable housing in Mission Bay and another portion is dedicated toward reimbursing costs of the construction of public Infrastructure (as defined in the South OPA) in the South Plan Area.

- P. An expansion of UCSF facilities in Mission Bay will generate jobs and other substantial economic and public benefits for the City. Such expansion may also accelerate private development elsewhere in Mission Bay, including biotechnology uses, and serve as an engine for other development, increasing tax increment beyond what otherwise might have been produced from those parcels and producing additional tax revenues both inside and outside Mission Bay. At the same time, because of UCSF's exemption from property taxes, payroll taxes, parking taxes, and transfer taxes, the City could lose significant General Fund revenues that otherwise would have been produced through redevelopment of the Block 33/34 Expansion Property for private uses. As is the case now, UCSF will generate tax revenues to the City through its expansion, both directly as a result of sales taxes for its retail uses (e.g., gift store, pharmacy, etc.), and indirectly from sales and parking taxes on certain uses paid by its employees and students, sales taxes paid in connection with construction materials for UCSF capital projects, and transient occupancy taxes paid by visitors attending UCSF conferences. These tax revenues and other revenues generated by UCSF's presence in San Francisco help offset the net loss of General Fund revenues due to UCSF's tax exemption. In addition, an expansion of UCSF facilities in Mission Bay would allow UCSF to consolidate its operations and allow it to relocate certain of its operations and employees from other UCSF locations in San Francisco into the Block 33/34 Expansion Property. Such relocation by UCSF could result in these other sites being returned to the City tax rolls through tax paying activities and uses which would, in

turn, generate additional General Fund revenues and revenues for other taxing agencies.

- Q. As of March 2, 2010, the Former Agency, the City and the Regents entered into that certain Expansion of UCSF Facilities in the Mission Bay South Redevelopment Project Area (Blocks 36-39 and X3) Amended and Restated Memorandum of Understanding (the “**2010 MOU**”) which, among other things, sets forth a framework for UCSF’s obligations (including financial and development-related obligations) to the Successor Agency and the City with respect to both UCSF’s development of Blocks 36-39 and X3 in the South Plan Area as well as a possible framework for such obligations with respect to additional property UCSF might acquire in the South Plan Area.
- R. Concurrently with, and subject to the parties’ entering into, this Amendment, the Successor Agency is entering into a Memorandum of Understanding for the Mission Bay South Redevelopment Project Area Blocks 33-34 (the “**MOU**”) with the Regents relating to the Regents’ acquisition and development of the Block 33/34 Expansion Property, and is entering into a Release Agreement and Covenant Regarding Assumption of the Mission Bay South Owner Participation Agreement with the Regents and Bay Jacaranda 3334, substantially in the form attached as Exhibit A to this Amendment (the “**OPA Release and Covenant**”).
- S. In connection with development of its facilities on the Block 33/34 Expansion Property, the Regents has agreed, under a separate agreement between Owner and the Regents (the “**Infrastructure Agreement**”), to pay the Owner a one-time payment that will offset the property tax increment that would have been generated by the development of the Block 33/34 Expansion Property by a taxable entity and would have been used to reimburse the Owner for costs of the construction of public Infrastructure in the South Plan Area. The Regents has also agreed with Owner, and with the City and the Successor Agency as provided in the MOU, that the Block 33/34 Expansion Property shall remain subject to the CFDs that the Former Agency established for Infrastructure and open space maintenance, and the Regents has agreed to pay its pro rata share of the principal and interest for Mello Roos Bonds issued by the CFDs. Finally, under the MOU, the Regents has agreed to make a one time, upfront payment to the Successor Agency to offset the property tax payments that would have been received by the Successor Agency for the development of affordable housing units in the South Plan Area if the Block 33/34 Expansion Property had been developed by a taxable entity.
- T. The Regents has agreed in the MOU to pay the costs incurred by the Successor Agency and the City in connection with the negotiation of this Amendment and related documents, as well as any design review of the development of the Block 33/34 Expansion Property.

- U. The South OPA provides that as a condition to any Transfer (as defined in the South OPA), the transferor obtain the agreement of the transferee to assume all of the transferor's obligations under the South OPA with respect to the transferred parcels. In connection with certain Transfers of property within the South Plan Area, the transferor is entitled, upon satisfaction of certain conditions, to receive a release from the Successor Agency of all of the transferor's obligations under the South OPA. Successor Agency is willing to (i) forego the requirement that the Regents assume all of the obligations of Bay Jacaranda 3334 under the South OPA relating to the Block 33/34 Expansion Property in order for Bay Jacaranda 3334 to obtain a release of such obligations, (ii) consent to the proposed Transfer of the Block 33/34 Expansion Property from Bay Jacaranda 3334 to the Regents, and (iii) agree to release Bay Jacaranda 3334 from its obligations under the South OPA (and related PILOT Agreement) with respect to the Block 33/34 Expansion Property upon the occurrence of such Transfer, all subject to the terms and conditions set forth in the OPA Release and Covenant, in consideration of the public benefits that will flow to the Successor Agency and the City from the transactions contemplated in this Amendment and under the MOU. Such benefits include, but are not limited to, the following: the agreement by the Regents to make the Affordable Housing Payment described in the MOU, which exceeds the tax increment that the Successor Agency would have received from the Blocks 33/34 Expansion Property if the Block 33/34 Expansion Property were owned and developed by a taxable entity, to pay the Special Taxes under the CFDs that the Block 33/34 Expansion Property is part of, to abide by certain requirements under the Redevelopment Plan and Required Design Standards (as defined in the MOU) in developing the Block 33/34 Expansion Property, to pay the Owner the Infrastructure Payment, defined in Section 2 below, to offset tax increment that would have been available for Infrastructure reimbursement from the Block 33/34 Expansion Property if the Block 33/34 Expansion Property were owned and developed by a taxable entity, and to work cooperatively with the Successor Agency and the City regarding land use and planning issues on the Block 33/34 Expansion Property, and to assure that the mutual interests of UCSF, the Successor Agency and the City are addressed, all as more particularly set forth in the MOU.
- V. The Successor Agency and FOCIL wish to enter into this Amendment to further effectuate the program of development contemplated by the Mission Bay South Redevelopment Plan. The parties are entering into this Amendment to memorialize their understanding and commitments concerning the matters generally described above.
- W. This Amendment changes the flow of tax increment funds that would be available to the Successor Agency for the construction of affordable housing and thus constitutes a material change in the South OPA affordable housing obligations that the Board of Supervisors must approve, under Section 6(a) of Ordinance

No. 215-12. However, for the reasons stated in the MOU and in Recital U of this Amendment, this material change is a benefit to Mission Bay South and the City.

- X. Consistent with its authority under Ordinance 215-12 to approve a material change to the obligations to provide affordable housing in Mission Bay South, by Resolution No. _____ the Board of Supervisors, acting as the legislative body of the Successor Agency, has approved this Amendment and provisions of the MOU and OPA Release and Covenant that waive the requirement of Section 14.7(a) of the South OPA for a PILOT Agreement for the Block 33/34 Expansion Property while used by The Regents for UCSF Purposes, as defined in the MOU. Further, since the City's consent is required under the South OPA for any transfers that are not subject to a PILOT Agreement, the Board of Supervisors, acting as the governing body of the City, by Resolution No. _____ has consented to the provisions of the MOU and OPA Release and Covenant that waive the requirement of Section 14.7(a) of the South OPA for a PILOT Agreement for the Block 33/34 Expansion Property while used by The Regents for UCSF Purposes.

- Y. Under Redevelopment Dissolution Law, the Oversight Board has the authority to "approve any amendments to [any contracts between the dissolved redevelopment agency and any private parties] if [Oversight Board] finds that amendments...would be in the best interests of the taxing entities." Cal. Health & Safety Code Section 34181(e). The transfer of the Block 33/34 Expansion Property to the Regents, when taken together with the Regents' agreements set forth in the MOU and the Infrastructure Agreement, provides substantial benefits to the Successor Agency and the taxing entities, including a payment for affordable housing that exceeds what a private owner would otherwise be required to pay, acceleration in the completion of the affordable housing program for Mission Bay South and in the winding down of the redevelopment project, and the other public benefits described in the MOU, and is in the best interest of the taxing agencies, and accordingly this Amendment, which is required under the terms of the MOU, meets the standard of Redevelopment Dissolution Law for amending an agreement with a private party.

- Z. The Oversight Board, consistent with its authority under AB 26 to approve amendments to agreements between the dissolved redevelopment agency and private parties where it finds that amendments or early termination would be in the best interests of the taxing entities, by Resolution No. _____, determined that an amendment to the South OPA that would facilitate a Transfer of the Block 33/34 Expansion Property to the Regents is in the best interests of the taxing entities.

- AA. Under Redevelopment Dissolution Law, the DOF must receive notice and information about all Oversight Board actions, which do not take effect until DOF has either not requested review within five business days of the notice or requested review and approved the action within 40 days of its review request. On _____, 2014, the Successor Agency provided a copy of Oversight Board Resolution No. _____ to

DOF, which did not object to the amendment to the South OPA within the statutory time period for its review, or which approved the amendment to the South OPA within the statutory time period of the Successor Agency's review request.

AGREEMENT

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are acknowledged, the Successor Agency and FOCIL agree as follows:

1. Suspension of Requirement for Assumption Agreement; Suspension of Application of South OPA to Block 33/34 Expansion Property.

1.1 The provisions of this Section 1 are subject to the satisfaction of the Approval Conditions (as defined in Section 7.2) and effective as of the Effective Date specified in Section 7.1 below.

1.2 FOCIL and the Successor Agency acknowledge and agree that notwithstanding Section 14.1(e) of the South OPA requiring the delivery to the Successor Agency of an agreement of the transferee to assume all of the transferor's obligations under the South OPA with respect to Transferred Property (an "**Assumption Agreement**"), subject to the terms and conditions set forth in the OPA Release and Covenant and the MOU the Successor Agency will consent to the Transfer of the Block 33/34 Expansion Property by Bay Jacaranda 3334 to the Regents without delivery of an Assumption Agreement by the Regents.

1.3 FOCIL and the Successor Agency hereby expressly acknowledge and agree that upon Transfer of the Block 33/34 Expansion Property to the Regents, and for so long thereafter as provided in the OPA Release and Covenant, the South OPA will be suspended and will not apply to the Block 33/34 Expansion Property, other than the Excluded Rights and Excluded Obligations, as defined in that certain Assignment, Assumption and Release Agreement among the Agency, FOCIL, and ARE, effective as of November 15, 2005, and recorded in the Official Records on November 15, 2005, at Reel JO 17, Image 0566, Series No. 2005-1072094-00 (the "**Master Developer Assignment**"), pursuant to which (i) FOCIL assigned to ARE certain rights under the South OPA relating to the Block 33/34 Property and certain obligations under the South OPA relating to the Block 33/34 Property, and (ii) FOCIL retained certain rights under the South OPA relating to the Block 33/34 Property (as set forth and defined in Paragraph 2.1 of the Master Developer Assignment, the "**Excluded Rights**") and certain obligations under the South OPA relating to the Block 33/34 Property (as set forth and defined in Paragraph 2.1 of the Master Developer Assignment, the "**Excluded Obligations**"), upon the terms and conditions set forth in such Master Developer Assignment.

2. No Reimbursement for Infrastructure Costs Covered by Infrastructure Payment or Infrastructure Agreement. FOCIL represents and agrees that the Infrastructure Agreement (A) requires the Regents to make a one-time payment of \$21,900,000 (the "**Infrastructure**

Payment”) to off-set the property tax increment that would have been generated by the development of the Block 33/34 Expansion Property by a taxable entity to be used for that construction of the Infrastructure Improvements in the South Plan Area, including any potential mitigation measures required by the FSEIR triggered by cumulative development, as anticipated in the Infrastructure Plan, and (B) requires the Regents to reimburse FOCIL for the cost of any increases in Infrastructure costs (“**Additional Infrastructure Costs**”) that result from changes to the Infrastructure Improvements or the phasing or schedule of Infrastructure Improvements made (i) to accommodate changes in the scope or density of the Regents’ development on the Block 33/34 Expansion Property, or (ii) if the specific use or uses being developed by the Regents, including the Regents’ Infrastructure, require modifications of the type, nature, location, amount or cost of Infrastructure under the Infrastructure Plan, as such Infrastructure Plan may be modified to accommodate the Regents’ contemplated use or uses, or (iii) at the Regents’ request. FOCIL acknowledges and agrees that the Infrastructure Payment shall be applied toward the cost of Infrastructure in the South Plan Area required under the Infrastructure Plan and that it does not have any right to receive any reimbursement from the Successor Agency from tax increment or any other source for the Additional Infrastructure Costs.

3. FOCIL Not Liable for Default by the Regents. The Successor Agency hereby expressly acknowledges and agrees that upon Transfer of the Block 33/34 Expansion Property to the Regents, neither FOCIL nor any of FOCIL’s parent, affiliated and subsidiary companies, nor any of FOCIL’s or such companies’ officers, directors, shareholders, agents, employees and attorneys, and their respective successors and assigns (collectively, “**FOCIL Affiliates**”) shall be liable for any default by the Regents in the performance of the Regents’ obligations to the Successor Agency or the City with respect to the Block 33/34 Expansion Property under any agreements between the Regents and the City and/or the Successor Agency (including, without limitation, the OPA Release and Covenant and the MOU), and no default by the Regents with respect to any such obligations shall entitle the Successor Agency to modify or terminate the South OPA, or otherwise affect any rights or obligations of any person or entity under the South OPA, with respect to any portion of the South Plan Area other than the Block 33/34 Expansion Property.

4. Intentionally Omitted.

5. No Adverse Change on Entitlements for Balance of Plan Area. Notwithstanding the Successor Agency’s consent to the Transfer of the Block 33/34 Expansion Property to the Regents, the Successor Agency acknowledges and agrees that none of FOCIL, Catellus Development Corporation, a Delaware corporation (“**Catellus**”), or its respective affiliates or any other owner or tenant of the South Plan Area or the Mission Bay North Plan Area that is an assignee, transferee, successor or otherwise derives its interest through either Catellus, FOCIL or their respective affiliates will lose any of the entitled development potential for the balance of their respective land (excluding the Block 33/34 Expansion Property) or any of their respective rights and privileges with respect to such land under any of their respective agreements with the Successor Agency, as the result of Successor Agency’s consent to the Transfer, or as the result of any use or development of the Block

33/34 Expansion Property by the Regents consistent with the MOU, other than the loss by Bay Jacaranda 3334 and Seller Affiliates of the development rights that Bay Jacaranda 3334 is transferring in connection with the Transfer of the Block 33/34 Expansion Property. Without limiting the foregoing, specifically with respect to the South Plan Area, the Successor Agency's approval of the Transfer of the Block 33/34 Expansion Property to the Regents shall not result in any of the following with respect to the balance of the land that is subject to the South OPA (excluding the UC Expansion Parcels, the UCSF campus site, the Block 33/34 Expansion Property, any other property acquired by The Regents, and Blocks X2, X3 and X4), and assuming that The Regents complies with the 1,020,000 Floor Rentable Area limitation of development on the UC Expansion Parcels and the 500,000 Floor Rentable Area limitation of development on the Block 33/34 Expansion Property:

1. any reduction of the number of market-rate Dwelling Units permitted to be developed in the South Plan Area below 1,935 if there is a 500-room hotel on Block 1, or 2,285 market-rate Dwelling Units if there is a 250-room hotel on Block 1, as allowed by the Third OPA Amendment, plus additional units allowed under Section 3.4.3 of the South OPA, if any (such figures exclude the 47 Dwelling Units allowed on X2);
2. any reduction below 190,000 Leasable square feet in the number of square feet of retail uses permitted to be developed in the South Plan Area if Block 1 is developed with a 500-room hotel and any reduction below 165,000 Leasable square feet in the number of square feet of retail uses permitted to be developed in the South Plan Area if Block 1 is developed with a 250-room hotel, as allowed by the Third OPA Amendment, (these figures exclude 40,000 Leasable square feet of retail uses allocated under the Redevelopment Plan and the Option to Lease to the UC Expansion Parcels, and the Leasable square feet of retail uses allocated to Blocks X3, X4, and the affordable housing sites under the Redevelopment Plan);
3. any reduction below 3,980,000 Leasable square feet in the number of square feet of Commercial Industrial uses permitted to be developed in the South Plan Area (such figure excludes X3, X4 and the 1,020,000 Leasable square feet of Commercial Industrial uses allocated under the Redevelopment Plan and the Option to Lease for the UC Expansion Parcels), less the 500,000 gross square feet of Floor Rentable Area of development allocated to Blocks 33 and 34;
4. any reduction below 500 in the number of hotel rooms permitted to be developed in the South Plan Area if no Dwelling Units are constructed on Block 1, or any reduction below 250 in the number of hotel rooms if Dwelling Units are constructed on Block 1, as allowed by the Third OPA Amendment;

5. any reduction in the maximum number of parking spaces permitted on any such property in the South Plan Area below that presently permitted under the Mission Bay South Design for Development (including, but not limited to, any reduction below two parking spaces for each 1,000 square feet of gross floor area for up to 1,734,000 square feet of gross floor area of life sciences, biotechnology, biomedical, or similar research facility uses within the South Plan Area);
6. any change in the number of the Agency Affordable Housing Units that may be developed as of the date of the Fifth Amendment in the South Plan Area under the South OPA; or
7. any reduction below 96,000 square feet of institutional facility on Block 7 East that will include approximately 80 extended stay rooms and associated common area and program space and parking to support families of patients receiving treatment primarily at University of California at San Francisco Medical Center; or (b) similar nonprofit use, if approved by the Successor Agency Commission, as allowed by the Fourth OPA Amendment.

6. No Future Consent/Amendment of Block 33/34 Development Rights without FOCIL Consent. Article 3 of the South OPA is hereby amended to add the following Section:

3.11. No Future Consent/Amendment of Block 33/34 Development Rights without FOCIL Consent. The Successor Agency shall not (i) consent to development on the Block 33/34 Expansion Property (as defined in the Fifth Amendment to this South OPA) in excess of 500,000 gross square feet of Floor Rentable Area, or (ii) consent to or take any other action with respect to the Block 33/34 Expansion Property, including but not limited to changing any land use designation or zoning applicable to the Block 33/34 Expansion Property, granting a zoning variance or exception, or modifying the MOU or OPA Covenant, that would result in an Adverse Change, as defined below, without in each case obtaining the written consent of FOCIL. As used in this Section 3.11, "Adverse Change" means with respect to the balance of the land that is subject to the South OPA (excluding the UC Expansion Parcels, the UCSF campus site, the Block 33/34 Expansion Property, any other property acquired by The Regents, and Blocks X2, X3 and X4) a change that results in any of FOCIL, Catellus Development Corporation, a Delaware corporation ("Catellus"), or its respective affiliates, or any other owner or tenant of the South Plan Area or the Mission Bay North Plan Area that is an assignee, transferee, successor or otherwise derives its interests through either FOCIL, Catellus or their respective affiliates losing any of the entitled development potential for the balance of their respective land (excluding the UC Expansion Parcels, the UCSF campus site, the Block 33/34 Expansion Property, any other property acquired by The Regents, and Blocks X2, X3 and X4) or any of their respective rights and privileges with respect to such land under any of their respective agreements with the Agency or Successor Agency or as the result of any use

or development of the Block 33/34 Expansion Property by the Regents. Without limiting the foregoing, specifically with respect to the South Plan Area, the term "Adverse Change" includes:

1. any reduction of the number of market-rate Dwelling Units permitted to be developed in the South Plan Area below 1,935 if there is a 500-room hotel on Block 1, or 2,285 market-rate Dwelling Units if there is a 250-room hotel on Block 1, as allowed by the Third OPA Amendment, plus additional units allowed under Section 3.4.3 of the South OPA, if any (such figures exclude the 47 Dwelling Units allowed on X2);
2. any reduction below 190,000 Leasable square feet in the number of square feet of retail uses permitted to be developed in the South Plan Area if Block 1 is developed with a 500-room hotel and any reduction below 165,000 Leasable square feet in the number of square feet of retail uses permitted to be developed in the South Plan Area if Block 1 is developed with a 250-room hotel, as allowed by the Third OPA Amendment (these figures exclude 40,000 Leasable square feet of retail uses allocated under the Redevelopment Plan and the Option to Lease to the UC Expansion Parcels, and the Leasable square feet of retail uses allocated to Blocks X3, X4, and the affordable housing sites under the Redevelopment Plan);
3. any reduction below 3,980,000 Leasable square feet in the number of square feet of Commercial Industrial uses permitted to be developed in the South Plan Area (such figure excludes X3, X4 and the 1,020,000 Leasable square feet of Commercial Industrial uses allocated under the Redevelopment Plan and the Option to Lease for the UC Expansion Parcels), less the 500,000 gross square feet of Floor Rentable Area of development allocated to Blocks 33 and 34;
4. any reduction below 500 in the number of hotel rooms permitted to be developed in the South Plan Area if no Dwelling Units are constructed on Block 1, or any reduction below 250 in the number of hotel rooms if Dwelling Units are constructed on Block 1, as allowed by the Third OPA Amendment;
5. any reduction in the maximum number of parking spaces permitted on any such property in the South Plan Area below that presently permitted under the Mission Bay South Design for Development (including, but not limited to, any reduction below two parking spaces for each 1,000 square feet of gross floor area for up to 1,734,000 square feet of gross floor area of life sciences, biotechnology, biomedical, or similar research facility uses within the South Plan Area);
6. any change in the number of the Agency Affordable Housing Units that

may be developed as of the date of the Fifth Amendment in the South Plan Area under the South OPA; or

7. any reduction below 96,000 square feet of institutional facility on Block 7 East that will include approximately 80 extended stay rooms and associated common area and program space and parking to support families of patients receiving treatment primarily at University of California at San Francisco Medical Center; or (b) similar nonprofit use, if approved by the Successor Agency Commission, as allowed by the Fourth OPA Amendment.

7. Effective Date.

7.1 Effective Date; Termination Date. This Amendment shall take effect upon the date (the "Effective Date") that is the later of (i) the full execution and delivery of this Amendment by the Owner and the Successor Agency, (ii) the date the enacting Resolution is effective in accordance with Cal. Health and Safety Code Section 34179(h), and (iii) the date of final completion of all of the Approval Conditions, as set forth in Section 7.2 below. This Amendment shall be null and void (i) if the Effective Date has not occurred by 5:00 p.m. Pacific Time on October 1, 2014, or (ii) if the MOU expires or terminates as provided in Section 8 of the MOU.

7.2 Approval Conditions. For purposes of this Amendment, the Approval Conditions are the following:

(a) The Regents and Bay Jacaranda 3334 have acknowledged in writing to the Successor Agency satisfaction or waiver of all conditions to close of escrow on the Block 33/34 Expansion Property.

(b) A grant deed is recorded in the Official Records, conveying the Block 33/34 Expansion Property from Bay Jacaranda 3334 to the Regents.

(c) Receipt of the Affordable Housing Fee (as defined in the MOU) by the Successor Agency.

(d) Receipt of the Infrastructure Payment (as defined in Section 2, above) by FOCIL.

(e) The form of the MOU has been approved by FOCIL, as acknowledged in writing to the Successor Agency by FOCIL, and the MOU has been duly executed and delivered by the Regents and the Successor Agency and is in full force and effect, as acknowledged in writing to FOCIL by the Successor Agency.

(f) The form of the OPA Release and Covenant has been approved by FOCIL, as acknowledged in writing to the Successor Agency by FOCIL, and the OPA Release and Covenant has been duly executed and delivered by all of its parties and is in full

force and effect as acknowledged in writing to FOCIL and the Successor Agency by the Regents.

(g) The Infrastructure Agreement has been duly executed and delivered and is in full force and effect, as acknowledged in writing to the Successor Agency by FOCIL and the Regents.

8. General Provisions.

8.1 South OPA in Full Force and Effect. Except as otherwise amended by this Amendment and as previously revised under instruments signed by the Successor Agency and the Owner to reflect various non-material changes to the Infrastructure Plan, all terms, covenants, conditions and provisions of the South OPA shall remain unmodified, and in full force and effect.

8.2 Representations and Warranties By the Parties. The Parties represent and warrant to each other as follows:

(a) Authority and Enforceability. Each party has the power and authority to enter into this Amendment. This Amendment, when executed and delivered by each of the Parties, will be valid and binding and enforceable against each signatory Party in accordance with its terms.

(b) Advice of Counsel. Each party (i) has had the opportunity to seek the advice of counsel concerning this Amendment and the transactions contemplated hereby, (ii) has been fully advised of the meaning and effect of this Amendment and such transactions as are contemplated in this Amendment, and (iii) has executed this Amendment after independent investigation without reliance on any representation, warranty, promise or inducement not specifically set forth in this Amendment.

8.3 Successors and Assigns. This Amendment is binding upon and will inure to the benefit of the successors and assigns of the Parties, subject to the limitations on assignment set forth in the South OPA.

8.4 Entire Agreement. This Amendment (together with the South OPA) constitutes the entire agreement between the Parties with respect to the subject matter of this Amendment and supersedes all negotiations or previous agreements between the Parties with respect to all or any part of the terms and conditions mentioned in or incidental to this Amendment. No parole evidence of any prior draft of this Amendment shall be permitted to contradict or vary the terms of this Amendment.

8.5 Further Assurances. The Parties agree to execute and acknowledge such other and further documents as may be necessary or reasonably required to express the intent of the Parties or otherwise effectuate the terms of this Amendment. Subject to approvals required by law, the Successor Agency's Executive Director is authorized to execute on behalf of the Successor Agency any contracts, agreements, memoranda or similar

documents with State, regional or local entities or other Persons that are necessary or proper to achieve the purposes and objectives of this Amendment and do not materially increase the liability or obligations of the Successor Agency under this Amendment, if the Executive Director, in consultation with the Successor Agency's General Counsel, determines that the document is necessary or proper for the purposes and objectives of this Amendment and in the Successor Agency's best interests. The Executive Director's signature of any such document shall conclusively evidence such a determination by him or her.

8.6 No Third Party Beneficiaries. This Amendment is made and entered into for the sole protection and benefit of the Parties to this Amendment and their successors and assigns. No other Person shall have or acquire any right or action based upon any provisions of this Amendment.

8.7 Cooperation. In connection with this Amendment, FOCIL, on the one hand, and the Successor Agency on the other shall reasonably cooperate with one another to achieve the objectives and purposes of this Amendment.

8.8 Interpretation of Agreement.

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

(b) No Presumption Against Drafter. This Amendment has been negotiated at arm's length and amongst Parties sophisticated and knowledgeable in the matters dealt with in this Amendment. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, this Amendment shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the Party responsible for drafting any part of this Amendment (including, but not limited to California Civil Code Section 1654).

(c) Recitals. The Recitals in this Amendment are included for convenience of reference only and are not intended to create or imply covenants under this Amendment. In the event of any conflict or inconsistency between the Recitals and the terms and conditions of this Amendment, the terms and conditions of this Amendment shall control.

(d) Captions. The captions preceding the articles and Sections of this Amendment have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Amendment.

8.9 Counterparts. This Amendment may be executed in any number of counterparts, all of which together shall constitute the original agreement hereof.

[The remainder of this page is intentionally left blank.]

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

Authorized by Successor Agency Resolution

No. ____-14, adopted _____, 2014

<p>SUCCESSOR AGENCY:</p> <p>Successor Agency to the Redevelopment Agency of the City and County of San Francisco</p> <p>By: _____ Name: Tiffany J. Bohee Title: Executive Director</p> <p>Approved as to Form:</p> <p>By: _____ Name: James Morales Title: General Counsel</p>	<p>OWNER:</p> <p>FOCIL – MB, LLC, a Delaware limited liability company</p> <p>By: _____ Name: Title:</p>
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