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Request of the Successor Agency to the  
Redevelopment Agency City and County of  
San Francisco

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, 5<sup>th</sup> Floor  
San Francisco, CA 94103  
Attn: Executive Director

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

**RELEASE AGREEMENT AND COVENANT REGARDING ASSUMPTION OF THE  
MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT**

(MISSION BAY SOUTH - LAND USE BLOCKS 33 AND 34)

This RELEASE AGREEMENT AND COVENANT REGARDING ASSUMPTION OF THE MISSION BAY SOUTH OWNER PARTICIPATION AGREEMENT (this “**Agreement**”), dated as of \_\_\_\_\_, 2014 and effective as of the Effective Date (as defined below), is entered into by and among the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (the “**Successor Agency**”); BAY JACARANDA NO. 3334, LLC, a Delaware limited liability company (“**Current Owner**”); and THE REGENTS OF THE UNIVERSITY OF CALIFORNIA, a California corporation (“**Buyer**” or the “**Regents**”). THIS AGREEMENT is made with reference to the following facts and circumstances:

- A. In accordance with the Community Redevelopment Law of California (Health & Safety Code Section 33000 et seq.), the City and County of San Francisco, a charter city and county (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 herein 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”**) entered into that certain Mission Bay South Owner Participation Agreement dated as of November 16, 1998 (the **“Original OPA”**) and Catellus Development Corporation, a Delaware corporation (**“CDC”**). The Original OPA was amended by (i) a First Amendment to Mission Bay South Owner Participation Agreement (the **“First OPA Amendment”**) dated as of February 17, 2004, 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) a Second Amendment to Mission Bay South Owner Participation Agreement (the **“Second OPA Amendment”**) dated as of November 1, 2005, between Former Agency, CLDC, and FOCIL-MB, LLC, a Delaware limited liability company (**“FOCIL”**), successor in interest to all of CLDC’s rights and obligations under the Original OPA, as amended by the First OPA Amendment, (iii) a Third Amendment to Mission Bay South Owner Participation Agreement (the **“Third OPA Amendment”**) dated as of May 21, 2013, between Successor Agency and FOCIL, and (iv) a Fourth Amendment to Mission Bay South Owner Participation Agreement (the **“Fourth OPA Amendment”**) dated as of June 4, 2013, between Successor Agency and FOCIL. The Successor Agency and FOCIL are concurrently entering into that certain Fifth Amendment to Mission Bay South Owner Participation Agreement dated as of the date hereof (the **“Fifth OPA Amendment”**). The Original OPA, as amended by the First OPA Amendment, the Second OPA Amendment, the Third OPA Amendment, the Fourth OPA Amendment and the Fifth OPA Amendment and as may be amended further after the date hereof shall be referred to in this Amendment as the **“South OPA”** and all references to the **“Primary Developer”** shall mean from the date of the Original OPA to November 22, 2004, CDC, or its affiliates succeeding to its obligations under the South OPA (including CLDC), as appropriate, and after November 22, 2004, FOCIL and its successors with obligations under the South OPA to construct Infrastructure. Capitalized terms used but not defined herein shall have the meanings given to such term in the South OPA.
- C. Current Owner 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), all as more particularly described in Exhibit A attached hereto (collectively, the **“Transferred Property”**).

- D. Current Owner and the Regents have entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of March 7, 2014, pursuant to which Current Owner has agreed to sell to the Regents, and the Regents has agreed to acquire from Current Owner, the Transferred Property, upon the terms and conditions therein set forth.
- E. The Transferred Property 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 defined in the PILOT Agreement), such as the Regents, that acquires the Transferred 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 and 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 Transferred Property and certain other property within the South Plan Area on the implementation of the Redevelopment Plan, and specifically on the Successor Agency’s ability to increase, improve and preserve affordable housing and to reimburse the Primary Developer 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 Mission Bay South Tax Increment Allocation Pledge Agreement, dated as of November 16, 1998, between the Former Agency and the City (“**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 Primary Developer, to waive or modify provisions obligating Tax Exempt Entities to make PILOT Payments, nor does the Current Owner or its transferee have the right to transfer property to a tax-exempt entity free of the PILOT Agreement without the consent of the Successor Agency and the City under the OPA.
- F. 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 (or in the case of the Transferred Property, a portion of 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 in the South Plan Area.
- G. Concurrently with, and subject to the parties’ entering into, this Agreement, 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 Transferred Property.
- H. In connection with development of its facilities on the Transferred Property, the Regents has agreed to make certain up-front, accelerated payments to each of the

Successor Agency and Primary Developer in the aggregate amount of Thirty Two Million One Hundred Thousand Dollars (\$32,100,000) that will satisfy the obligations otherwise imposed on Current Owner and the Regents under the PILOT Agreement and, as a result, the Successor Agency and Primary Developer have agreed to terminate the PILOT Agreement as to the Regents pursuant to that certain Termination of Tax Payment Agreement dated and recorded as of the date hereof.

- I. Pursuant to that certain Assignment, Assumption and Release Agreement dated as of October 28, 2010 by and between Current Owner and ARE-San Francisco No. 22, LLC, and recorded in the Official Records on November 1, 2010 as Instrument No. 2010-J073288 (the “**AA&R Agreement**”), the Current Owner assumed all of the Transferred Rights and Obligations (as such term is defined in the AA&R Agreement) under the South OPA to the extent applicable to the Transferred Property.
- J. The South OPA provides that as a condition to any Transfer (as defined in the South OPA), the transferor must 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. Generally, in order for the Current Owner to receive a release of its obligations under the South OPA (to the extent related to the Transferred Property), the Regents would be required to assume the Transferred Rights and Obligations at the time the Transferred Property is Transferred to the Regents. One of the conditions that must be satisfied in order for the Regents to be entitled to acquire the Transferred Property is that the Successor Agency grants Current Owner a release of Current Owner’s obligations under the South OPA (to the extent related to the Transferred Property), either because (i) the Regents has assumed the Transferred Rights and Obligations in accordance with the terms of the South OPA, or (ii) the Successor Agency and the Regents have entered into an agreement whereby the Successor Agency waives the requirement that the Regents assumes such obligations.
- K. In consideration of the public benefits that will flow to the Successor Agency, the City, and the other local and regional taxing entities from the provisions of this Agreement, the Fifth OPA Amendment, and the MOU, Successor Agency is willing to (i) forego the requirement that the Regents assume all of the obligations of Current Owner under the South OPA relating to the Transferred Property in order for Current Owner to obtain a release of such obligations, (ii) consent to the proposed Transfer of the Transferred Property from Current Owner to the Regents, and (iii) agree to release Current Owner from its obligations under the South OPA (and related PILOT Agreement) with respect to the Transferred Property upon the occurrence of such Transfer, all subject to the terms and conditions set forth in this Agreement. Such public benefits include, without limitation, the agreement by the Regents (1) to make the Affordable Housing Payment described in the MOU, which exceeds the tax increment that the Successor Agency would have received from the

Transferred Property if the Transferred Property were owned and developed by a taxable entity, (2) to pay the Special Taxes under the CFDs that the Transferred Property is part of, (3) to abide by certain requirements under the Redevelopment Plan in developing the Transferred Property, (4) to make a payment to the Primary Developer to offset tax increment that would have been available for Infrastructure reimbursement for the South Plan Area from the Transferred Property if the Transferred Property were owned and developed by a taxable entity, as set forth in that certain unrecorded Infrastructure Agreement for Mission Bay Blocks 33/34 between the Regents and FOCIL (the “**Infrastructure Agreement**”), and (5) to work cooperatively with the Successor Agency and the City regarding land use and planning issues on the Transferred 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.

- L. The Regents will not be assuming the Transferred Rights and Obligations relating to the Transferred Property as of the date hereof. Instead, pursuant to the MOU, the Fifth OPA Amendment and this Agreement, the Successor Agency has agreed to suspend the effects of the Redevelopment Plan, South OPA and other Plan Documents as to the Transferred Property for so long as and to the extent that the Regents uses the Transferred Property for purposes that support, benefit or further the charitable, scientific, research, clinical, educational and public service purposes of the University of California at San Francisco, consistent with the educational mission of the Regents under the State Constitution (collectively, “**UCSF Purposes**”).
- M. In addition to memorializing the Successor Agency’s consent to the Transfer of the Transferred Property and its release of Current Owner with respect to its obligations under the South OPA, the parties are entering into this Agreement to provide that if the Regents or any successor, at any time or from time to time during the term of the South OPA, either engages in any use, or Transfers all or any portion of the Transferred Property to any entity for any use, that is not in furtherance of UCSF Purposes (other than customary retail uses incidental to UCSF Purposes, including, but not limited to, use as a pharmacy, for sale of sundries, or for casual dining establishments), then the Redevelopment Plan, South OPA and other Plan Documents shall “spring back” into effect with respect to the Transferred Property and bind the owner of the Transferred Property during such period that the Transferred Property is used for a purpose that is not a UCSF Purpose.

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Successor Agency, Current Owner and the Regents agree as follows:

1. Successor Agency’s Consent to Transfer and Release. 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 the

Transferred Property (an “**Assumption Agreement**”), the Successor Agency, subject to the terms and conditions of this Paragraph 1, hereby approves and consents to the Transfer of the Transferred Property by Current Owner to the Regents without the delivery of an Assumption Agreement by the Regents.

1.1 Consent to Transfer; Release. The Successor Agency hereby consents to the Transfer of the Transferred Property by Current Owner to the Regents and agrees to release Current Owner from its obligations under the South OPA applicable to the Transferred Property, as more particularly set forth in Paragraphs 1.3 and 2 below.

1.2 Tax Allocation Debt Promissory Note. The Successor Agency acknowledges and agrees that certain Mission Bay South Tax Allocation Debt Promissory Note dated October 27, 2010 executed by Current Owner in favor of Successor Agency (as successor to the Redevelopment Agency of the City and County of San Francisco) (the “**Bay 3334 Note**”) is hereby terminated and of no further force and effect. Concurrently with the execution and delivery of this Agreement, Successor Agency shall deliver the original Bay 3334 Note to Current Owner marked “Void”. Except as otherwise expressly provided in this Agreement and/or the MOU, the Regents shall not be required to deliver a Tax Allocation Debt Promissory Note to the Successor Agency.

1.3 Agency Release. The Successor Agency hereby unconditionally and irrevocably fully releases and discharges Current Owner from the obligations of Owner under the South OPA applicable to the Transferred Property. Without limiting the generality of the foregoing, the Successor Agency acknowledges and agrees that Current Owner shall not be liable for any default by the Regents in the performance of the Regents’ obligations to the Successor Agency with respect to the Transferred Property under any agreements between the Regents and the Successor Agency (including, without limitation, the MOU). With respect to the release set forth in this Paragraph 1.3, the Successor Agency hereby acknowledges that such release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such release. Further, as to unknown and unsuspected claims as of the Effective Date, the Successor Agency hereby acknowledges that such release is made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and the Successor Agency hereby agrees that the protection afforded by said Code Section and any similar law of the State of California or any other jurisdiction is specifically waived:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Successor Agency \_\_\_\_\_

1.4 Agency’s Acknowledgment. Without in any way modifying, limiting, or expanding the provisions of Section 14.2 of the South OPA, the Successor Agency hereby confirms that, pursuant to such Section 14.2, (i) the Regents shall not be liable for any default by Current Owner or any other prior Transferee in the performance of their respective obligations

under the South OPA, and (ii) without limiting the foregoing, a default under the South OPA by Current Owner or any other prior Transferee shall not entitle the Agency to modify or terminate the South OPA, or otherwise affect any rights under the South OPA, with respect to the Transferred Property.

2. PILOT Agreement Release. In addition, and without limiting the generality of the release contained in Paragraph 1.3 above, the Successor Agency, specifically releases Current Owner from the obligations imposed under Section 14.7 of the South OPA and the PILOT Agreement and further acknowledges and agrees that Current Owner shall not have any liability (i) arising from the failure of Current Owner to enter into, or to require the Regents to enter into, a new PILOT Agreement for the Transferred Property, or (ii) to otherwise cause the Regents to comply with the covenants and obligations set forth in Section 14.7 of the South OPA and the PILOT Agreement, it being acknowledged and agreed by the parties that the Successor Agency, FOCIL and the Regents have entered into the MOU and other documents requiring the payment of the amounts set forth in Recital H hereof instead of the requirements imposed under Section 14.7 of the South OPA and the PILOT Agreement. With respect to the release set forth in this Paragraph 2, the Successor Agency hereby acknowledges that such release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such release. Further, as to unknown and unsuspected claims as of the date this release becomes effective, the Successor Agency hereby acknowledges that such release is made with the full knowledge, understanding and agreement that California Civil Code §1542 provides as follows, and the Successor Agency hereby agrees that the protection afforded by said Code Section and any similar law of the State of California or any other jurisdiction is specifically waived:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

Successor Agency \_\_\_\_\_

3. Temporary Suspension of Plan Documents and Covenant Regarding Future Assumption.

3.1 Suspension of Plan Documents. The Successor Agency hereby expressly acknowledges and agrees that upon Transfer of the Transferred Property to the Regents, consistent with the terms of this Agreement and the MOU, and for so long thereafter as and to the extent that the Transferred Property is used in furtherance of UCSF Purposes, the effect of the Redevelopment Plan, the South OPA and other Plan Documents will be suspended and will not apply to the Transferred Property.

3.2 Future Assumption; Covenant to Provide Notice, Assumption Agreement, Tax Allocation Promissory Note and PILOT Agreement.

(a) Should the Regents or any successor at any time or from time to time during the term of the South OPA, either (i) engage in any use that is not in furtherance

of UCSF Purposes (other than customary retail uses incidental to the Regents' other permitted uses, including, but not limited to, use as a pharmacy, for sale of sundries, or for casual dining establishments), or (ii) Transfer all or any portion of the Transferred Property to any entity for any use that is not in furtherance of UCSF Purposes (other than customary retail uses incidental to the Regents' other permitted uses, including, but not limited to, use as a pharmacy, for sale of sundries, or for casual dining establishments) (the events described in 3.2(a)(i) and (ii) are referred to herein as a “**Triggering Use**” or “**Triggering Transfer**”), then the Redevelopment Plan, South OPA and other Plan Documents shall “spring back” with respect to the Transferred Property and once again automatically apply to, and be binding upon and benefit, the Transferred Property (or the relevant portion thereof), and as of the date of the Triggering Use or Triggering Transfer the Regents or its successor owner of the Transferred Property (or relevant portion thereof), as applicable, shall be deemed to have assumed and agreed to be bound by and perform, as a direct obligation of such party to Successor Agency, each and all of the Transferred Obligations under the AA&R Agreement (as applicable to the relevant portion of the Transferred Property). The Regents, or its successor, shall provide at least ten (10) business days' prior written notice to the Successor Agency and the Primary Developer prior to the effectiveness of any Triggering Use or Triggering Transfer. The Regents and the Successor Agency shall be subject to the provisions Sections 14.1, 14.2 and 14.7 of the South OPA in connection with any Triggering Transfer. Upon the written request by the Successor Agency or Primary Developer and as a condition precedent to the effectiveness of any Triggering Transfer described in this Paragraph 3.2 or the commencement of any Triggering Use, the Regents or its successor shall:

(i) deliver to Successor Agency a fully executed, unconditional written assumption agreement from the Regents or the Transferee, as applicable, in recordable form, affirming its rights and obligations under the Redevelopment Plan, South OPA and other Plan Documents as they apply to the Transferred Property (or relevant portion thereof), all in form and substance substantially identical to the Assumption Agreement attached hereto as Exhibit B (the “**New A&A Agreement**”);

(ii) deliver to Successor Agency a Tax Allocation Debt Promissory Note from the Regents or the Transferee, as applicable, consistent with the Financing Plan, in form and substance substantially identical to the Assumption Agreement attached hereto as Exhibit C (the “**New Tax Allocation Debt Promissory Note**”); and

(iii) execute and deliver a PILOT Agreement (as defined in Section 14.7 of the South OPA) from the Regents or the Transferee, as applicable.

The absence of a written New A&A Agreement, New Tax Allocation Debt Promissory Note, or new PILOT Agreement shall not relieve the Regents or any such Transferee of the Transferred Property (or relevant portion thereof) from complying with the terms and provisions set forth in the South OPA or the obligations that would have been evidenced by such agreements.



(b) Except as provided in the final sentence of this Paragraph 3.2(b), the provisions of this Paragraph 3.2 shall not be deemed to prohibit or otherwise restrict, and the term “Triggering Transfer” or “Triggering Use” shall not be deemed to include (i) 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, (ii) the grant or creation of any Mortgage (as defined in the South OPA), (iii) the sale or transfer of the Transferred Property or any interest therein pursuant to a 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 in lieu thereof of foreclosure or exercise of such power of sale, (iv) any Transfer to Agency, City, Port or City Agencies or any other governmental agency contemplated by the South OPA, (v) any Transfer of common areas to a non-profit homeowners’ association or similar entity or association formed to manage, own, operate and/or maintain such common areas, or (vi) Transfers to individuals who are entitled to a homeowners’ exemption with respect to the applicable portion of the Transferred Property. Notwithstanding the foregoing, leases, subleases, licenses or permits for any use that is not in furtherance of UCSF Purposes (other than customary retail uses incidental to the Regents’ other permitted uses, including, but not limited to, use as a pharmacy, for sale of sundries, or for casual dining establishments) shall be a Triggering Use or a Triggering Transfer as used in this Paragraph 3.2.

(c) The provisions of this Paragraph 3.2 shall terminate upon the earlier of (i) the written agreement of the Successor Agency and the owner of fee title to the Transferred Property and the consent of City and FOCIL to such termination; or (ii) upon the expiration of the term of the South OPA and all Community Facility Districts that the Transferred Property is a part of, whichever is later.

3.3 No Impact on Releases. Nothing in this Article 3, including, without limitation, the occurrence of a Triggering Use or Triggering Transfer shall void, nullify or otherwise have an effect on the releases granted to Current Owner under Paragraphs 1.3 and 2 hereof.

4. Representations and Warranties of Current Owner. Current Owner hereby makes the following representations and warranties to the Successor Agency and the Regents as of the Effective Date:

4.1 South OPA. To the extent applicable to the Transferred Property, the South OPA is in full force and effect.

4.2 No Defaults. To the actual knowledge of Current Owner, no default on the part of Current Owner, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of Current Owner, exists under the South OPA with respect to the Transferred Property.

4.3 No Set-Offs. To the actual knowledge of Current Owner, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the Successor Agency or Current Owner under the South OPA with respect to the Transferred Property.

4.4 No Termination Right. Current Owner currently has no right to terminate the South OPA with respect to the Transferred Property pursuant to Section 12.2(a) or 12.2(c) of the South OPA.

5. Representations and Warranties of the Regents. The Regents hereby makes the following representations and warranties to the Successor Agency and Current Owner as of the Effective Date:

5.1 Consents. The Regents has obtained all consents in connection with its acquisition of the Transferred Property that may be required by any agreement to which it is a party. Other than the consents so obtained, no consent to the acquisition of the Transferred Property is required under any agreement to which the Regents is a party.

5.2 No Conflicts. The execution, delivery, and performance by the Regents of this Agreement (i) will not contravene any legal requirements applicable to the Regents, (ii) will not conflict with, breach, or contravene any other agreement binding upon the Regents, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Property.

5.3 Transferred Development Rights. The Regents represents and acknowledges that the following development rights were transferred to the Regents with the Transferred Property: the right to (i) construct 500,000 gross square feet of development, (ii) all parking spaces allocable to the Transferred Property under the Plan Documents (as such term is defined in the Redevelopment Plan), and which may not exceed 1.0 parking spaces for each 1,000 square feet of gross floor area, (iii) one tower up to 160-feet in height and with a tower floor plate of up to 20,000 square feet within the Tower Height (as such term is defined in the South Design for Development for the Mission Bay South Project Area dated March 16, 2004), and (iv) all rights with respect to the public infrastructure serving the Transferred Property to be constructed by Primary Developer, which rights are being modified by the Regents and FOCIL pursuant to the Infrastructure Agreement.

6. Representations and Warranties of Successor Agency. The Successor Agency hereby makes the following representations and warranties to Current Owner and to the Regents as of the Effective Date:

6.1 South OPA. The South OPA is in full force and effect, and the Successor Agency has not agreed to any amendment of any provision of the South OPA with respect to the Transferred Property, except as evidenced by the Fifth OPA Amendment.

6.2 No Defaults. To the actual knowledge of the Successor Agency, no default on the part of FOCIL or Current Owner, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of FOCIL or Current Owner, exists under the South OPA with respect to the Transferred Property.

6.3 No Set-Offs. To the actual knowledge of the Successor Agency, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the Successor Agency or Current Owner under the South OPA with respect to the Transferred Property.

6.4 No Termination Right. To the actual knowledge of the Successor Agency, the Successor Agency currently has no right to terminate the South OPA pursuant to Section 12.2(b) or 12.2(c) of the South OPA.

7. Covenants Running with the Land. The terms and provisions of this Agreement constitute covenants that run with the land, it being the intention of the parties that if the property burdened hereby or benefited hereby is Transferred (in whole or in part), the respective transferees, successors and assigns of the Regents shall receive the same respective benefits and burdens which the Regents has under this Agreement.

8. Effective Date. The rights, duties and obligations set forth hereunder shall not become effective or binding on the parties hereto until (i) a grant deed is recorded in the Official Records, conveying fee title to the Transferred Property from Current Owner to the Regents; and (ii) the recordation of this Agreement in the Official Records following express written authorization from the Successor Agency to the other parties hereto after the Successor Agency has confirmed that all other conditions precedent under the MOU have been satisfied in full (the “**Effective Date**”). This Agreement shall be null and void if the Effective Date has not occurred by 5:00 p.m. Pacific Time on October 1, 2014.

9. General Provisions.

9.1 Attorneys’ Fees.

(a) Prevailing Party. Should any 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 hereof, the prevailing party(ies) shall be entitled to receive from the losing party(ies) court or DRM costs or expenses incurred by the prevailing party(ies), 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(ies) in such action or proceeding. Attorneys’ fees under this Paragraph 8.1 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) Reasonable Fees. For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for Successor Agency, Current Owner, or the Regents 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 party's in-house counsel's services were rendered who practice in the City and County of San Francisco in law firms with approximately the same number of attorneys as employed by the City, or, in the case of Current Owner’s or the Regents’ in-house counsel, as employed by the outside counsel for Current Owner or the Regents, respectively.

9.2 Notices. A notice or communication under this Agreement by any party to any other party or to Primary Developer shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

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

Office of Community Investment and Infrastructure  
1 South Van Ness Avenue, Fifth Floor  
San Francisco, CA 94103  
Attn: Executive Director  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 749-2400

With a copy to:

San Francisco Office of Economic and Workforce  
Development  
City and County of San Francisco  
Room 448, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Director  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 554-6018

And to:

Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Chief Assistant  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 554-4700

(b) in the case of a notice or communication to the Regents,

University of California  
Office of the President  
1111 Franklin Street, 6th Floor  
Oakland, CA 94607-5200  
Attn: Director of Real Estate  
Reference: Mission Bay South Blocks 33-34  
Telephone: (510) 987-9632

With copies to:

The Regents of the University of California  
Office of the General Counsel  
1111 Franklin Street, 8th Floor  
Oakland, CA 94607-5200  
Attn: General Counsel

Reference: Mission Bay South Blocks 33-34  
Telephone: (510) 987-9719

and

University of California, San Francisco  
Campus Planning  
654 Minnesota Street, Second Floor  
San Francisco, CA 94143-0286  
Attention: Associate Vice Chancellor  
Telephone: (415) 476-2911

(c) in the case of a notice or communication to Primary Developer:

FOCIL-MB, LLC  
c/o Mission Bay Development Group, LLC  
410 China Basin Street  
San Francisco, California 94158  
Attention: Seth Hamalian and Legal  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 355-6612 and (415) 355-6635

With copies to:

FOCIL-MB, LLC  
c/o Farallon Capital Management, L.L.C.  
One Maritime Plaza, Suite 2100  
San Francisco, California 94111  
Attention: Joshua Dapice and Richard B. Fried  
Telephone: (415) 421-2121

(d) in case of a notice or communication to Current Owner:

Salesforce.com, Inc.  
The Landmark @ One Market, Suite 300  
San Francisco, CA 94105  
Attention: Senior Vice President – Real Estate

With A Copy To:

Salesforce.com, Inc.  
The Landmark @ One Market, Suite 300  
San Francisco, CA 94105  
Attention: Chief Legal Officer

Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, 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.

9.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns. Whenever this Agreement specifies the Successor Agency as a party or the holder of the right or obligation, if the Successor Agency or a comparable public body that has succeeded to the Successor Agency's rights and obligations no longer exists, then the City (or the State, if applicable) will be deemed to be the successor and assign of the Successor Agency for purposes of this Agreement.

9.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

9.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

9.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto with the written consent of FOCIL.

9.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

9.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

9.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

9.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

9.11 Partial Invalidation. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

9.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact

that this Agreement was prepared by Buyer's counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against Buyer because its counsel prepared this Agreement in its final form.

9.13 No Third Party Beneficiaries. This Agreement is made and entered into for the sole protection and benefit of the Parties to this Amendment and their successors and assigns. Except for Primary Developer and the City, which are all intended as third party beneficiaries of this Agreement, no other person or entity shall have or acquire any right or action based upon any provisions of this Agreement.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the Successor Agency has caused this Agreement to be duly executed on its behalf as of the Effective Date.

SUCCESSOR AGENCY TO THE  
REDEVELOPMENT AGENCY OF THE  
CITY AND COUNTY OF SAN  
FRANCISCO, a public body organized and  
existing under the laws of the State of  
California

By: \_\_\_\_\_

Name: Tiffany J. Bohee

Title: Executive Director

Authorized by Successor Agency Resolution

No. \_\_\_\_-14, adopted \_\_\_\_\_, 2014

Approved as to Form:

By: \_\_\_\_\_

Name: James Morales

Title: General Counsel



IN WITNESS WHEREOF, the Regents has caused this Agreement to be signed by a duly authorized person as of the Effective Date.

THE REGENTS OF THE UNIVERSITY  
OF CALIFORNIA,  
a California corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_

IN WITNESS WHEREOF, Current Owner has caused this Agreement to be signed by a duly authorized person as of the Effective Date.

BAY JACARANDA NO. 3334, LLC,  
a Delaware limited liability company

By: Bay Jacaranda Holdings, LLC,  
a Delaware limited liability company,  
Its Sole Member

By: salesforce.com, inc.,  
a Delaware corporation,  
Its Sole Member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

IN WITNESS WHEREOF, FOCIL has caused this Agreement to be signed by a duly authorized person as of the Effective Date solely with respect to its acknowledgement and consent to the Successor Agency's release of Current Owner in Paragraph 2 of this Agreement.

FOCIL – MB, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

County of \_\_\_\_\_

On \_\_\_\_\_ before me, \_\_\_\_\_  
Date Insert Name and Title of Officer  
personally appeared \_\_\_\_\_  
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Place Notary Seal Above

WITNESS my hand and official seal.

Signature \_\_\_\_\_  
Signature of Notary Public

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

**PARCEL ONE:**

LOT 1, BLOCK 8725, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF MISSION BAY" RECORDED JULY 19, 1999, IN BOOK Z OF MAPS, PAGES 97-119, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, AS CORRECTED BY THAT CERTAIN "CERTIFICATE OF CORRECTION" RECORDED SEPTEMBER 16, 2002, IN REEL I223, IMAGE 596, AS INSTRUMENT NUMBER 2002-H244619-00, IN THE OFFICE OF SUCH RECORDER.

EXCEPTING THEREFROM, THE FOLLOWING:

AS EXCEPTED AND RESERVED FOREVER BY THE STATE OF CALIFORNIA IN THAT CERTAIN PATENT DATED JUNE 14, 1999, TO THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, IN TRUST, RECORDED JULY 19, 1999, IN REEL H429, IMAGE 507, SERIES NO. 99-G622155-00, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, FROM THAT PORTION OF THE ABOVE DESCRIBED REAL PROPERTY LYING WITHIN THE BOUNDARIES OF MINERAL RIGHTS PARCEL 11 DESCRIBED IN SUCH PATENT, THE FOLLOWING:

ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED IN THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11, INCLUDING, BUT NOT LIMITED TO, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE, AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE, AND DISPOSE OF THOSE MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE STATE OF CALIFORNIA OR TO ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE THEREOF OR TO INTERFERE WITH THE USE THEREOF BY THE CITY AND COUNTY OF SAN FRANCISCO, ITS SUCCESSORS AND ASSIGNEES; PROVIDED, HOWEVER, THAT THE STATE OF CALIFORNIA, ITS SUCCESSORS AND ASSIGNS, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, ITS SUCCESSORS AND ASSIGNEES, SHALL NOT CONDUCT ANY MINING ACTIVITIES OF ANY NATURE WHATSOEVER ABOVE A PLANE LOCATED FIVE HUNDRED FEET (500') BELOW THE SURFACE OF THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11.

FURTHER EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THAT CERTAIN GRANT DEED DATED OCTOBER 25, 2002, EXECUTED BY CATELLUS

DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, TO THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, RECORDED DECEMBER 11, 2002, IN REEL I281, IMAGE 340, DOCUMENT NO. 2002-H309022-00 IN THE OFFICE OF SUCH RECORDER.

ASSESSOR'S PARCEL NUMBER: LOT 001, BLOCK 8725 (A PORTION)

PARCEL TWO:

THAT CERTAIN REAL PROPERTY DESCRIBED IN THAT CERTAIN QUITCLAIM DEED DATED NOVEMBER 5, 2002, EXECUTED BY THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, TO CATELLUS DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, RECORDED DECEMBER 11, 2002 IN REEL I281, IMAGE 341, DOCUMENT NO. 2002-H309023-00, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE LOT AND BLOCK HEREAFTER MENTIONED ARE IN ACCORDANCE WITH THAT CERTAIN MAP ENTITLED "MAP OF MISSION BAY", RECORDED JULY 19, 1999 IN BOOK Z OF MAPS, AT PAGES 97-119, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

COMMENCING AT THE MOST NORTHWESTERLY CORNER OF PARCEL 29, AS SAID PARCEL IS DESCRIBED IN THE QUITCLAIM DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED JULY 19, 1999 IN REEL H429, PAGE 512 (DOCUMENT NUMBER 99-G622160), OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID POINT OF COMMENCEMENT ALSO BEING THE MOST NORTHWESTERLY CORNER OF BLOCK 8725, LOT 2 AS SHOWN ON SAID MAP (Z MAPS 97);

THENCE, EASTERLY ALONG THE NORTHERLY BOUNDARY LINE OF SAID PARCEL 29, SAID LINE ALSO BEING THE NORTHERLY LINE OF SAID LOT 2, NORTH 86 DEG. 49' 04" EAST 15.00 FEET TO THE POINT OF BEGINNING.

THENCE, ALONG THE EXTERIOR BOUNDARY OF SAID PARCEL 29, SAID LINES ALSO BEING THE EXTERIOR BOUNDARY OF SAID LOT 2, THE FOLLOWING TWO (2) COURSES:

1) NORTH 86 DEG. 49' 04" EAST, 42.21 FEET, TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL 29 AND SAID LOT 2, SAID CORNER ALSO BEING A POINT OF CUSP ON THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 44.21 FEET, TO WHICH POINT A RADIAL LINE BEARS NORTH 03 DEG. 10' 56" WEST.

2) WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 72 DEG. 42' 00", AN ARC DISTANCE OF 56.10 FEET, TO A POINT THAT BEARS SOUTH 03 DEG. 10' 56" EAST, FROM SAID POINT OF BEGINNING.

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINE OF PARCEL 29 AND SAID LOT 2, ALONG A LINE PARALLEL WITH AND DISTANT 15.00 FEET EASTERLY, MEASURED AT A RIGHT ANGLE, FROM THE WESTERLY BOUNDARY LINE OF SAID PARCEL 29 AND SAID LOT 2, NORTH 03 DEG. 10' 56" WEST, 31.06 FEET, TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER: LOT 004, BLOCK 8725

**EXHIBIT B**

**FORM ASSUMPTION AGREEMENT**

**RECORDING REQUESTED BY:  
AND WHEN RECORDED MAIL TO:**

---

**ASSUMPTION AGREEMENT**

(MISSION BAY SOUTH - LAND USE BLOCK(S) \_\_\_\_)

This ASSUMPTION AGREEMENT (this "Agreement"), effective as of \_\_\_\_\_, 20\_\_ (the "Effective Date"), is entered into by and among the [\_\_\_\_\_] (together with any successor public agency designated by or pursuant to law, the "Agency"), The Regents of the University of California, a California corporation (the "Regents"), and [\_\_\_\_\_] ("Transferee"). *[Note: if Assumption Agreement is required as a result of a Triggering Use of the Blocks 33/34 Property by the Regents instead of a Triggering Transfer of the property by the Regents under Section 3.2 of the Release and Covenant to which this exhibit is attached, then this form shall be revised to become a two party agreement between the Agency and the Regents and the Regents shall become the "Transferee" hereunder and be bound by all of the provisions applicable to the Transferee set forth herein]*

**RECITALS:**

*[To be updated as necessary to account for transaction specifics and other developments in the South Plan Area that may take place between the date of the Release and Covenant to which this exhibit is attached and the date of this document]*

A. In accordance with the Community Redevelopment Law of the State 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 by the Board of Supervisors on November 2, 1998. The Redevelopment Plan was recorded in the Office of the Recorder of the City and County of San Francisco, State of California (the "Official Records") on November 18, 1998, at Reel H264, Image 420, Series No. 98-G470337-00, and a Certificate of Correction thereto was recorded in the Official Records on January 20, 1999, at Reel H304, Image 513, Series No. 99-G501704-00. The Redevelopment Plan, as corrected and as it may be amended from time to time, is referred to herein as the "Mission Bay South Redevelopment Plan."

B. The Mission Bay South Redevelopment Plan provides for the redevelopment, rehabilitation and revitalization of the area generally bounded by the south embankment of the China Basin Channel and Seventh Street, Interstate 280, Mariposa Street, Terry Francois



Boulevard, and Third Street, as more particularly described in the Mission Bay South Redevelopment Plan (the “South Plan Area”).

C. In order to facilitate the implementation of the Mission Bay South Redevelopment Plan, the Agency and Catellus Development Corporation (“CDC”) entered into that certain Mission Bay South Owner Participation Agreement dated as of November 16, 1998 (the “Original South OPA”), regarding the development of the property within the South Plan Area owned by CDC. The Original South OPA, as amended, is more particularly described in Item 5 of the Development Entitlements listed in Exhibit C attached hereto and made a part hereof (the “Development Entitlements”), which list is illustrative of the material documents and instruments governing development of property within the South Plan Area, but is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of property within the South Plan Area. The Original South OPA, as so amended and as it may be further amended from time to time, is herein referred to as the “South OPA” and, unless otherwise defined in this Agreement, all initially capitalized defined terms used in this Agreement shall have the respective meanings given them in the South OPA.

D. The South OPA provides that, subject to the terms and conditions contained in Section 14 thereof, the Owner of any property in the South Plan Area (and any Transferee) shall have the right (1) to Transfer all or any portion of the South Plan Area during the Term of the South OPA; (2) to assign all or a portion of its rights and obligations under the South OPA to a Transferee; and (3) upon the Agency’s receipt of an Assumption Agreement duly executed in accordance with the terms of the South OPA, to be released from those obligations of the Owner under the South OPA that are applicable to the portion of the South Plan Area so Transferred but that are not intended to be retained by the Owner after the Transfer.

E. CDC’s rights and obligations under the South OPA were transferred (i) to Catellus Operating Limited Partnership, as the successor by merger to CDC, then (ii) to Catellus Land and Development Corporation, through an assignment and assumption agreement, and (iii) ultimately to FOCIL-MB, LLC (“FOCIL”), through an assignment and assumption agreement.

F. On November 15, 2005, FOCIL, pursuant to Section 14.1(a)(2)(x) of the South OPA, conveyed to ARE-San Francisco No. 22, LLC, a Delaware limited liability company (“ARE”) certain real property located within the South Plan Area (the “Blocks 33/34 Property”). The Blocks 33/34 Property is more particularly described in Exhibit A attached hereto and made a part hereof. Pursuant to a 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”), (i) FOCIL assigned to ARE certain rights under the South OPA relating to the Blocks 33/34 Property and certain obligations under the South OPA relating to the Blocks 33/34 Property, and (ii) FOCIL retained certain rights under the South OPA relating to the Blocks 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 Blocks 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.

G. Pursuant to a certain Assignment, Assumption and Release Agreement among the Redevelopment Agency of the City and County of San Francisco, ARE and Bay Jacaranda NO. 3334, LLC, a Delaware limited liability company (“Bay 3334”), effective as of October 28, 2010, and recorded in the Official Records on November 10, 2010, at Reel K261, Image 0336, Document No. 2010-Jo73288-00, ARE assigned to Bay 3334 certain rights under the South OPA relating to the Blocks 33/34 Property and certain obligations under the South OPA relating to the Blocks 33/34 Property.

H. On \_\_\_\_\_, 2014, Bay 3334 conveyed the Blocks 33/34 Property to the Regents pursuant to a Grant Deed effective as of \_\_\_\_\_, 2014, and recorded in the Official Records on \_\_\_\_\_, 2014, as Document No. \_\_\_\_\_. In connection with said transfer, the Regents did not assume the rights or obligations under the South OPA relating to the Blocks 33/34 Property but instead entered into a Release and Covenant Regarding Future Assumption with Bay 3334 and the Agency effective as of \_\_\_\_\_, 2014, and recorded in the Official Records on \_\_\_\_\_, 2014, as Document No. \_\_\_\_\_ (the “OPA Covenant”).

I. *Insert as applicable:* [The Regents and Transferee have entered into that certain Agreement of Purchase and Sale and Joint Escrow Instructions dated as of \_\_\_\_\_, 20\_\_\_\_, pursuant to which the Regents has agreed to sell to Transferee, and Transferee has agreed to acquire from the Regents, the real property more particularly described on Exhibit B attached hereto (the “Transferred Property”), upon the terms and conditions therein set forth *or* [The Regents has ceased using the real property more particularly described on Exhibit B attached hereto (the “Transferred Property”) for UCSF Purposes (as defined in the OPA Covenant.)]

J. The terms and provisions of the OPA Covenant require the Transferee and the Regents to execute and deliver this Agreement as a condition precedent to the [[transfer] *or* [cessation of use for UCSF Purposes]] of the Transferred Property. Transferee is willing to accept and assume certain rights and obligations under the South OPA, on the terms and conditions set forth in the South OPA and this Agreement. [*If applicable:* In addition, in connection with the foregoing assumption, the Regents desires to be released by the Agency from the Regents’ obligations under the OPA Covenant and related Memorandum of Understanding dated as of July \_\_\_\_\_, 2014 by and between the Regents and the Agency applicable to the Transferred Property (the “MOU”), and the Agency is willing to release the Regents from such obligations, on the terms and conditions set forth in this Agreement.]

### **AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Agency, the Regents, and Transferee agree as follows:

1. Assumption By Transferee.

1.1 Assumed Rights and Obligations. Effective as of the Effective Date, Transferee hereby expressly assumes and agrees to be bound by and perform, as a direct obligation of Transferee to the Agency, all of the rights of the Owner under the South OPA (except for the Excluded Rights) to the extent applicable to the Transferred Property

(collectively, the “Assumed Rights”) and each and all of the obligations, terms, covenants, and agreements of the Owner under the South OPA (except for the Excluded Obligations) to the extent applicable to the Transferred Property (collectively, the “Assumed Obligations”), including, without limitation, the obligation to comply with the requirements of (i) the First Source Hiring Program, (ii) the Diversity Program, (iii) the CEQA Mitigation Measures, and (iv) the Transportation Management Plan, all as set forth in the South OPA. The Assumed Rights and the Assumed Obligations are sometimes collectively referred to herein as the “Assumed Rights and Obligations”.

1.2 Excluded Rights and Obligations. The parties hereby expressly confirm and agree that the assumption contemplated in this Agreement shall not include or affect any of the Excluded Rights or any of the Excluded Obligations, which were not assigned to or assumed by the owner of the Transferred Property under the Master Developer Assignment. The Excluded Rights and the Excluded Obligations are sometimes collectively referred to herein as the “Excluded Rights and Obligations”.

2. Acknowledgement By Transferee. In accordance with the requirements of Section 1.14 of the South OPA, Transferee hereby acknowledges that Transferee has reviewed the South OPA and agrees to be bound by the South OPA (except for the Excluded Rights and Obligations) and all conditions and restrictions applicable to the Transferred Property, including, without limitation, all conditions and restrictions contained in the Plan Documents and the Development Entitlements that are applicable to the Transferred Property (as stated in Recital C above, the Development Entitlements listed in Exhibit C attached hereto are illustrative of the material documents and instruments governing development of property within the South Plan Area, but such list is not intended to be an exhaustive list of all documents, instruments, and/or other matters that may govern development of property within the South Plan Area).

3. Transferee’s Indemnification of Agency.

3.1 General Indemnity. Except as provided in Section 15.4 of the South OPA, Transferee 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 (i) the noncompliance of any Improvements on the Transferred Property with any Federal, state or local laws or regulations, including those relating to handicap access, or (ii) the death of any person or any accident, injury, loss or damage whatsoever caused to any person or to the property of any person which shall occur in or on the Transferred Property and which shall be directly or indirectly caused by the negligent act or omission of Transferee 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 the Agency, acting (or failing to act) in its governmental capacity, in the exercise of its police powers.

3.2 Contracts and Agreements. In addition to the foregoing, Transferee 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 Transferee in connection with its performance of the Assumed Obligations, except to the extent caused by the willful misconduct or the negligence of the Agency or arising from obligations to the Agency, City, or any City Agency arising under the Diversity Program or arising from compliance with Section 19.33 of the South OPA.

3.3 Effect of Indemnities. The indemnities set forth in Paragraphs 3.1 and 3.2 above are intended to have the same force, effect, meaning, and import as the indemnities set forth in Section 15.1 of the South OPA, limited, however, to the Transferred Property and the Assumed Obligations.

4. Representations and Warranties of the Regents. The Regents hereby makes the following representations and warranties to the Agency as of the Effective Date:

4.1 Consents. The Regents has obtained all consents to the assignments and transfers of the Transferred Property to Transferee that may be required by any agreement to which the Regents is a party. Other than the consents so obtained, no consent to the Transfer of the Transferred Property to Transferee is required under any agreement to which the Regents is a party or by which the Transferred Property is bound.

4.2 No Conflicts. The execution, delivery, and performance by the Regents of this Agreement (i) will not contravene any legal requirements applicable to the Regents or the Transferred Property, (ii) will not conflict with, breach or contravene any other agreement binding upon the Regents or the Transferred Property, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Property (except as may be permitted under the terms of the South OPA).

5. Representations and Warranties of Transferee. Transferee hereby makes the following representations and warranties to the Agency as of the Effective Date:

5.1 No Agency Representations. Transferee has reviewed and is familiar with the terms and conditions of the South OPA. Transferee recognizes and acknowledges that, except as expressly provided herein, neither the Regents nor the Agency makes any representation or warranty hereby, express or implied, regarding the amount, nature, or extent of any obligation, liability, or duty under the South OPA with regard to the Transferred Property. Transferee understands and acknowledges that (i) Transferee is responsible for satisfying itself as to the existence and extent of the Assumed Obligations, and (ii) in accordance with the representations made by the Agency in Paragraph 6 below, the Agency has not agreed to any amendment of any provision of the South OPA with regard to the Transferred Property and, except as expressly provided herein or in the South OPA, the Agency has not waived any right of

the Agency or obligation of Owner under the South OPA with respect to the Transferred Property.

5.2 Consents. Transferee has obtained all consents in connection with its assumption of the Assumed Obligations and for its acquisition of the Transferred Property that may be required by any agreement to which it is a party. Other than the consents so obtained, no consent to the acquisition of the Transferred Property is required under any agreement to which Transferee is a party.

5.3 No Conflicts. The execution, delivery, and performance by Transferee of this Agreement and of the Assumed Obligations (i) will not contravene any legal requirements applicable to Transferee, (ii) will not conflict with, breach, or contravene any other agreement binding upon Transferee, and (iii) will not result in the creation or imposition of any liens on any portion of the Transferred Property (except as may be permitted under the terms of the South OPA).

5.4 Litigation. To the current actual knowledge of Transferee, there are no actions, suits, or proceedings at law or in equity or by or before any governmental authority pending or threatened against or affecting Transferee in which there is a reasonable possibility of a determination adverse to Transferee and that are reasonably likely, individually or in the aggregate, if determined adversely to Transferee, to have a material adverse effect on the ability of Transferee to perform the Assumed Obligations.

5.5 Net Worth. Transferee (a) has “Net Worth” (as defined in Section 1.53 of the South OPA) that meets the standard set forth in Section 14.1(a)(2)(x) of the South OPA, and (b) has a development team with experience in developing projects reasonably related (*i.e.*, substantially similar) to the Project contemplated on the Transferred Property.

6. Representations and Warranties of Agency. The Agency hereby makes the following representations and warranties to the Regents and to Transferee as of the Effective Date:

6.1 South OPA. The South OPA is in full force and effect, and the Agency has not agreed to any amendment of any provision of the South OPA with respect to the Transferred Property.

6.2 No Waivers. Except as expressly provided herein or in the South OPA, the Agency has not waived any right of the Agency or any obligation of Owner under the South OPA with respect to the Transferred Property.

6.3 No Defaults. To the actual knowledge of the Agency, no default on the part of FOCIL, ARE or Bay 3334, and no breach or failure of condition that, with notice or lapse of time or both, would constitute a default on the part of FOCIL, ARE or Bay 3334, exists under the South OPA with respect to the Transferred Property.

6.4 No Set-Offs. To the actual knowledge of the Agency, there are no set-offs or defenses against the enforcement of any right or remedy, or any duty or obligation, of the Agency under the South OPA with respect to the Transferred Property.

6.5 No Termination Right. To the actual knowledge of the Agency, the Agency currently has no right to terminate the South OPA pursuant to Section 12.2(b) or 12.2(c) of the South OPA.

7. Transfer and Release.

7.1 Qualifying Transfer. The Agency hereby acknowledges (a) that the Agency has received from Transferee a Tax Allocation Debt Promissory Note in the form set forth in Exhibit D attached hereto and made a part hereof (the “Note”), and (b) in reliance on the representations and warranties made by Transferee in Paragraph 5.5 above and in consideration of the Note, that the Transfer from the Regents to Transferee is a permitted Transfer in accordance with Section 14.1(a)(2) of the South OPA.

7.2 Agency Release. *[The following provisions shall only apply to a Triggering Transfer of property from the Regents to another party and shall be subject to the Regents being in compliance with all material terms of the Release and Covenant to which this exhibit is attached and MOU upon the Transfer of the Transferred Property:]*

The Agency hereby unconditionally and irrevocably fully releases and discharges the Regents from any and all rights, duties, or obligations under the OPA Covenant and MOU applicable to the Transferred Property. Without limiting the generality of the foregoing, the Agency acknowledges and agrees that the Regents shall not be liable for any default by Transferee with respect to the Assumed Obligations, and no default by Transferee with respect to the Assumed Obligations shall entitle the Agency to modify or terminate the South OPA, or otherwise affect any rights thereunder, with respect to any portion of the South Plan Area other than the Transferred Property. With respect to the foregoing release, the Agency hereby acknowledges that such release is made with the advice of counsel and with full knowledge and understanding of the consequences and effects of such release. Further, as to unknown and unsuspected claims as of the Effective Date, the Agency hereby acknowledges that such release is made with the full knowledge, understanding, and agreement that California Civil Code Section 1542 provides as follows, and the Agency hereby agrees that the protection afforded by said Code Section and any similar law of the State of California or any other jurisdiction is specifically waived:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

By: \_\_\_\_\_

7.3 Agency’s Acknowledgment. Without in any way modifying, limiting, or expanding the provisions of Section 14.2 of the South OPA, the Agency hereby confirms that, pursuant to such Section 14.2, (i) Transferee shall not be liable for (A) any default by the Regents under the OPA Covenant, MOU or any other document by and between the Regents and the Agency, nor (B) any default by any other Transferee in the performance of its respective obligations under the South OPA, and (ii) without limiting the foregoing, a default under the

South OPA by any other Transferee shall not entitle the Agency to modify or terminate the South OPA, or otherwise affect any rights under the South OPA, with respect to the Transferred Property.

8. General Provisions.

8.1 Attorneys' Fees.

8.1.1 Prevailing Party. Should any 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 hereof, the prevailing party(ies) shall be entitled to receive from the losing party(ies) court or DRM costs or expenses incurred by the prevailing party(ies), 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(ies) in such action or proceeding. Attorneys’ fees under this Paragraph 8.1 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.

8.1.2 Reasonable Fees. For purposes of this Agreement, reasonable fees of attorneys and any in-house counsel for the Agency, the Regents, or Transferee 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 party’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 Regent’s or Transferee’s in-house counsel, as employed by the outside counsel for the Regents or Transferee, respectively.

8.2 Notices. A notice or communication under this Agreement by any party to any other party or to Primary Developer shall be sufficiently given or delivered if dispatched by hand or by registered or certified mail, postage prepaid, addressed as follows:

8.2.1 in the case of a notice or communication to Successor Agency,

Office of Community Investment and Infrastructure  
1 South Van Ness Avenue, Fifth Floor  
San Francisco, CA 94103  
Attn: Executive Director  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 749-2400

With a copy to:

San Francisco Office of Economic and Workforce  
Development  
City and County of San Francisco  
Room 448, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Director  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 554-6018

And to:

Office of the City Attorney  
Room 234, City Hall  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Chief Assistant  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 554-4700

8.2.2 in the case of a notice or communication to FOCIL:

FOCIL-MB, LLC  
c/o Mission Bay Development Group, LLC  
410 China Basin Street  
San Francisco, California 94158  
Attention: Seth Hamalian and Legal  
Reference: Mission Bay South Blocks 33-34  
Telephone: (415) 355-6612 and (415) 355-6635

With copies to:

FOCIL-MB, LLC  
c/o Farallon Capital Management, L.L.C.  
One Maritime Plaza, Suite 2100  
San Francisco, California 94111  
Attention: Joshua Dapice and Richard B. Fried  
Telephone: (415) 421-2121

8.2.3 in the case of a notice or communication to the Regents,

\_\_\_\_\_  
\_\_\_\_\_



Attn: \_\_\_\_\_

8.2.4 in the case of a notice or communication to Transferee,

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

8.2.5 Content of Notice. Every notice given under this Agreement must state (or must be accompanied by a cover letter that states) substantially the following:

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

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

(c) if 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 disapproval or an objection which requires reasonableness, shall specify with particularity the reasons therefor.

8.2.6 Effective Date of Notice. Any mailing address may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days prior to the effective date of the change. All notices under this Agreement shall be deemed given, received, made, or communicated on the date personal receipt actually occurs or, if mailed, on the delivery date or attempted delivery date shown on the return receipt.

8.3 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective executors, administrators, successors, and assigns.

8.4 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one instrument. It shall not be necessary in making proof of this Agreement to account for more than one counterpart.

8.5 Captions. Any captions to, or headings of, the Articles, Paragraphs, or subparagraphs of this Agreement are solely for the convenience of the parties hereto, are not a

part of this Agreement, and shall not be used for the interpretation or determination of the validity of this Agreement or any provision hereof.

8.6 Amendment To Agreement. The terms of this Agreement may not be modified or amended except by an instrument in writing executed by each of the parties hereto.

8.7 Exhibits. The Exhibits attached hereto are hereby incorporated herein by this reference for all purposes.

8.8 Waiver. The waiver or failure to enforce any provision of this Agreement shall not operate as a waiver of any future breach of any such provision or any other provision hereof.

8.9 Applicable Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California.

8.10 Fees and Other Expenses. Except as otherwise provided herein, each of the parties shall pay its own fees and expenses in connection with this Agreement.

8.11 Partial Invalidity. If any portion of this Agreement as applied to any party or to any circumstances shall be adjudged by a court to be void or unenforceable, such portion shall be deemed severed from this Agreement and shall in no way affect the validity or enforceability of the remaining portions of this Agreement.

8.12 Independent Counsel. Each party hereto acknowledges that: (a) it has been represented by independent counsel in connection with this Agreement; (b) it has executed this Agreement with the advice of such counsel; and (c) this Agreement is the result of negotiations between the parties hereto and the advice and assistance of their respective counsel. The fact that this Agreement was prepared by the Regents' counsel as a matter of convenience shall have no import or significance. Any uncertainty or ambiguity in this Agreement shall not be construed against the Regents because the Regents' counsel prepared this Agreement in its final form.

[the remainder of this page has been intentionally left blank]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed on its behalf as of the Effective Date.

*[Insert appropriate signature blocks and acknowledgement forms]*

**EXHIBIT A**

**LEGAL DESCRIPTION OF BLOCK 33/34 PROPERTY**

Real property in the City of San Francisco, County of San Francisco, State of California, described as follows:

**PARCEL ONE:**

LOT 1, BLOCK 8725, AS SHOWN ON THAT CERTAIN MAP ENTITLED "MAP OF MISSION BAY" RECORDED JULY 19, 1999, IN BOOK Z OF MAPS, PAGES 97-119, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA, AS CORRECTED BY THAT CERTAIN "CERTIFICATE OF CORRECTION" RECORDED SEPTEMBER 16, 2002, IN REEL I223, IMAGE 596, AS INSTRUMENT NUMBER 2002-H244619-00, IN THE OFFICE OF SUCH RECORDER.

EXCEPTING THEREFROM, THE FOLLOWING:

AS EXCEPTED AND RESERVED FOREVER BY THE STATE OF CALIFORNIA IN THAT CERTAIN PATENT DATED JUNE 14, 1999, TO THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, IN TRUST, RECORDED JULY 19, 1999, IN REEL H429, IMAGE 507, SERIES NO. 99-G622155-00, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, FROM THAT PORTION OF THE ABOVE DESCRIBED REAL PROPERTY LYING WITHIN THE BOUNDARIES OF MINERAL RIGHTS PARCEL 11 DESCRIBED IN SUCH PATENT, THE FOLLOWING:

ALL MINERALS AND ALL MINERAL RIGHTS OF EVERY KIND AND CHARACTER NOW KNOWN TO EXIST OR HEREAFTER DISCOVERED IN THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11, INCLUDING, BUT NOT LIMITED TO, OIL AND GAS AND RIGHTS THERETO, TOGETHER WITH THE SOLE, EXCLUSIVE, AND PERPETUAL RIGHT TO EXPLORE FOR, REMOVE, AND DISPOSE OF THOSE MINERALS BY ANY MEANS OR METHODS SUITABLE TO THE STATE OF CALIFORNIA OR TO ITS SUCCESSORS AND ASSIGNS, BUT WITHOUT ENTERING UPON OR USING THE SURFACE OF THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11, AND IN SUCH MANNER AS NOT TO DAMAGE THE SURFACE THEREOF OR TO INTERFERE WITH THE USE THEREOF BY THE CITY AND COUNTY OF SAN FRANCISCO, ITS SUCCESSORS AND ASSIGNEES; PROVIDED, HOWEVER, THAT THE STATE OF CALIFORNIA, ITS SUCCESSORS AND ASSIGNS, WITHOUT THE PRIOR WRITTEN PERMISSION OF THE CITY AND COUNTY OF SAN FRANCISCO, ITS SUCCESSORS AND ASSIGNEES, SHALL NOT CONDUCT ANY MINING ACTIVITIES OF ANY NATURE WHATSOEVER ABOVE A PLANE LOCATED FIVE HUNDRED FEET (500') BELOW THE SURFACE OF THE ABOVE REFERRED TO MINERAL RIGHTS PARCEL 11.

FURTHER EXCEPTING THEREFROM THAT PORTION THEREOF DESCRIBED IN THAT CERTAIN GRANT DEED DATED OCTOBER 25, 2002, EXECUTED BY CATELLUS DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, TO THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, RECORDED DECEMBER 11, 2002, IN REEL I281, IMAGE 340, DOCUMENT NO. 2002-H309022-00 IN THE OFFICE OF SUCH RECORDER.

ASSESSOR'S PARCEL NUMBER: LOT 001, BLOCK 8725 (A PORTION)

PARCEL TWO:

THAT CERTAIN REAL PROPERTY DESCRIBED IN THAT CERTAIN QUITCLAIM DEED DATED NOVEMBER 5, 2002, EXECUTED BY THE CITY AND COUNTY OF SAN FRANCISCO, A CHARTER CITY AND COUNTY, TO CATELLUS DEVELOPMENT CORPORATION, A DELAWARE CORPORATION, RECORDED DECEMBER 11, 2002 IN REEL I281, IMAGE 341, DOCUMENT NO. 2002-H309023-00, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

THE LOT AND BLOCK HEREAFTER MENTIONED ARE IN ACCORDANCE WITH THAT CERTAIN MAP ENTITLED "MAP OF MISSION BAY", RECORDED JULY 19, 1999 IN BOOK Z OF MAPS, AT PAGES 97-119, IN THE OFFICE OF THE RECORDER OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

COMMENCING AT THE MOST NORTHWESTERLY CORNER OF PARCEL 29, AS SAID PARCEL IS DESCRIBED IN THE QUITCLAIM DEED TO THE CITY AND COUNTY OF SAN FRANCISCO, RECORDED JULY 19, 1999 IN REEL H429, PAGE 512 (DOCUMENT NUMBER 99-G622160), OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, SAID POINT OF COMMENCEMENT ALSO BEING THE MOST NORTHWESTERLY CORNER OF BLOCK 8725, LOT 2 AS SHOWN ON SAID MAP (Z MAPS 97);

THENCE, EASTERLY ALONG THE NORTHERLY BOUNDARY LINE OF SAID PARCEL 29, SAID LINE ALSO BEING THE NORTHERLY LINE OF SAID LOT 2, NORTH 86 DEG. 49' 04" EAST 15.00 FEET TO THE POINT OF BEGINNING.

THENCE, ALONG THE EXTERIOR BOUNDARY OF SAID PARCEL 29, SAID LINES ALSO BEING THE EXTERIOR BOUNDARY OF SAID LOT 2, THE FOLLOWING TWO (2) COURSES:

1) NORTH 86 DEG. 49' 04" EAST, 42.21 FEET, TO THE MOST NORTHEASTERLY CORNER OF SAID PARCEL 29 AND SAID LOT 2, SAID CORNER ALSO BEING A POINT OF CUSP ON THE ARC OF A TANGENT CURVE CONCAVE SOUTHEASTERLY, HAVING A RADIUS OF 44.21 FEET, TO WHICH POINT A RADIAL LINE BEARS NORTH 03 DEG. 10' 56" WEST.

2) WESTERLY, SOUTHWESTERLY AND SOUTHERLY ALONG SAID CURVE, THROUGH A CENTRAL ANGLE OF 72 DEG. 42' 00", AN ARC DISTANCE OF 56.10

FEET, TO A POINT THAT BEARS SOUTH 03 DEG. 10' 56" EAST, FROM SAID POINT OF BEGINNING.

THENCE, LEAVING SAID EXTERIOR BOUNDARY LINE OF PARCEL 29 AND SAID LOT 2, ALONG A LINE PARALLEL WITH AND DISTANT 15.00 FEET EASTERLY, MEASURED AT A RIGHT ANGLE, FROM THE WESTERLY BOUNDARY LINE OF SAID PARCEL 29 AND SAID LOT 2, NORTH 03 DEG. 10' 56" WEST, 31.06 FEET, TO THE POINT OF BEGINNING.

ASSESSOR'S PARCEL NUMBER: LOT 004, BLOCK 8725

**EXHIBIT B**

**LEGAL DESCRIPTION OF TRANSFERRED PROPERTY**

*[To be inserted]*

## EXHIBIT C

### DEVELOPMENT ENTITLEMENTS

*[To be updated by parties at time of execution]*

The following constitute the Development Entitlements:

1. The Final Mission Bay Subsequent Environmental Impact Report certified on September 17, 1998, by the Planning Commission of the City and County of San Francisco, California (the "City") by Motion No. 14696, and all further amendments or addenda thereto.
2. The Mission Bay South Design for Development adopted on September 17, 1998, by the Commission of the Redevelopment Agency of the City and County of San Francisco (the "Redevelopment Agency") by Resolution No. 191-98, as the same may be amended from time to time.
3. The Mission Bay Subdivision Ordinance adopted on October 26, 1998, by the City's Board of Supervisors by Ordinance No. 329-98, as the same may be amended from time to time.
4. The Mission Bay South Redevelopment Plan adopted on November 2, 1998, by the City's Board of Supervisors by Ordinance No. 335-98, together with (i) a certificate of correction recorded in the Official Records on January 20, 1999 as Instrument No. 99-G501704 and (ii) an amendment by Board of Supervisors Ordinance No. 143-13, adopted on July 11, 2013, all as the same may be further corrected and amended from time to time.
5. The Mission Bay South Owner Participation Agreement dated November 16, 1998, between the Redevelopment Agency and Catellus Development Corporation ("CDC"), including all Attachments thereto (authorized on September 17, 1998, by the Redevelopment Agency Commission by Resolution No. 193-98), as amended by (i) the First Amendment To Mission Bay South Owner Participation Agreement dated February 17, 2004, between the Redevelopment Agency and Catellus Land and Development Corporation, (ii) the Second Amendment To Mission Bay South Owner Participation Agreement dated November 1, 2005, among the Redevelopment Agency, Catellus Operating Limited Partnership (as successor by merger to CDC), and FOCIL-MB, LLC ("FOCIL") (iii) the Third Amendment to Mission Bay South Owner Participation Agreement dated as of May 21, 2013, between Successor Agency and FOCIL, (iv) the Fourth Amendment to Mission Bay South Owner Participation Agreement dated as of June 4, 2013, between Successor Agency and FOCIL, and (v) the Fifth Amendment to Mission Bay South Owner Participation Agreement dated as of \_\_\_\_\_, 2014, between Successor Agency and FOCIL, as any of the foregoing may be amended from time to time.
6. The Mission Bay Subdivision Regulations adopted on November 18, 1998, by the City's Department of Public Works, as the same may be amended from time to time.
7. Transportation Management Association Strategic Plan and Organizational Structure dated May 5, 1999, as the same may be amended from time to time.



8. The Risk Management Plan dated May 11, 1999, for the Mission Bay Area, San Francisco, California, as the same may be amended from time to time (approved on May 12, 1999, by the State of California Regional Water Quality Control Board for the San Francisco Bay Region (the “Regional Board”)).

9. Mission Bay South Plan Area Streetscape Master Plan dated December 15, 1999, as the same may be amended from time to time (approved by the Redevelopment Agency Commission by Resolution No. 06-2000).

10. The Covenant and Environmental Restriction on Property made for the benefit of the Regional Board by the City and by the City, acting by and through the San Francisco Port Commission, dated as of February 3, 2000, and recorded in the Official Records of San Francisco County, California (the “Official Records”) on March 21, 2000, as Series No. 2000-G748551.

11. The Covenant and Environmental Restriction on Property made for the benefit of the Regional Board by CDC dated as of February 23, 2000, and recorded in the Official Records on March 21, 2000, as Series No. 2000-G748552.

12. Signage Master Plan Application dated June 27, 2000, as the same may be amended from time to time (approved by the Redevelopment Agency Commission by Resolution No. 101-2000).

13. Permit No. 5-00 issued on December 12, 2000, by the San Francisco Bay Conservation and Development Commission, as the same may be amended from time to time (“BCDC Permit”). A copy of the BCDC Permit, as amended through November 16, 2001 (Amendment No. Two), was recorded in the Official Records on December 10, 2001, as Series No. 2001-H066919.

14. Any approvals by the Redevelopment Agency of basic concept design plans, schematic design plans, design development documents, and/or final construction documents for the improvements constructed or to be constructed on the Transferred Property.

15. Project authorizations from the Planning Commission (pursuant to Sections 320-325 of the San Francisco Planning Code) (i.e., a Prop M allocation) approving “office developments” on the Transferred Property.

**EXHIBIT D**

**FORM OF TAX ALLOCATION DEBT PROMISSORY NOTE**

MISSION BAY SOUTH TAX ALLOCATION DEBT  
PROMISSORY NOTE

San Francisco, California

Effective Date: \_\_\_\_\_, 20\_\_

FOR VALUE RECEIVED, the undersigned, [ \_\_\_\_\_ ] (the “Promisor”), promises to pay, on demand, to the order of the [Redevelopment Agency of the City and County of San Francisco] (the “Payee”), at [One South Van Ness Avenue, 5th Floor, San Francisco, California 94103, Attention: Director of Finance] (or such other place or to such other party as the Payee may from time to time designate in writing), for the benefit of the Payee and the City and County of San Francisco (the “City”), any “Additional Payments” (as defined in the Mission Bay South Financing Plan attached as Attachment E (the “Financing Plan”) to the Mission Bay South Owner Participation Agreement dated as of November 16, 1998, between Catellus Development Corporation, a Delaware corporation, and the Payee, as the same has or may be amended pursuant to its terms (the “South OPA”)), attributable to the real property in the South Plan Area more particularly described on Exhibit A attached hereto, with no interest other than as specified below. Unless otherwise defined in this Note, all capitalized terms shall have the meanings given them in the South OPA.

The Additional Payments shall be due and payable within thirty (30) days after written demand therefor from the Payee to the Promisor. In no event shall the Payee be entitled to demand payment more than sixty (60) days before any debt service payment is then due and payable on the applicable Tax Allocation Debt.

If any payment obligation under this Note is not paid when due, the Promisor shall promptly pay all costs, including, without limitation, collection charges and “Attorneys’ Fees and Costs” (as defined below), incurred by the Payee in connection with the enforcement of its rights under this Note, whether or not suit is filed (collectively, the “Reimbursement Amount”), and the Promisor hereby waives to the fullest extent permitted by law all right to plead any statute of limitations as a defense to any action hereunder. The past due payment obligation and the Reimbursement Amount shall be accompanied by interest on such amounts at the rate of the lesser of ten percent (10%) per annum or the maximum rate permitted by law, from the date due through and including the date of payment of such amounts (calculated on the basis of a 365-day year for the actual number of days elapsed).

All payments on this Note shall be applied first to accrued interest then due, if any, and the balance shall be applied to principal.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in lawful currency of the United States of America and in immediately available funds, including certified check and wire

transfer of funds. The Promisor hereby waives presentment for payment, diligence, demand, protest and notice of protest for non-payment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Payee under this Note, or assignment by the Payee of this Note shall in any way affect the liability of the Promisor. All rights and remedies of the Payee under this Note are cumulative and may be exercised independently or consecutively at the Payee's option. The rights and remedies provided under this Note are in addition to any rights or remedies provided under the South OPA or any agreements contemplated thereby.

Promisor agrees to indemnify, defend and hold the Payee and the City and their respective officers, directors, commissioners, employees and agents (collectively, the "Indemnified Parties") harmless from and against any and all liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements of any kind or nature whatsoever (including, without limitation, Attorneys' Fees and Costs as hereinafter defined) arising in connection with any investigative, administrative or judicial proceeding, that may be imposed on, incurred by or asserted against such Indemnified Party, in any manner relating to or arising out of or in connection with the payment or enforcement of this Note (collectively, the "Indemnified Liabilities"). Notwithstanding the foregoing, Indemnified Liabilities shall not include (a) liabilities, obligations, losses, damages, penalties, actions, causes of action, judgments, suits, claims, costs, expenses and disbursements to the extent caused by or resulting from the willful misconduct or negligence of such Indemnified Party, including, without limitation, a willful breach of any obligations of the City under the Tax Allocation Agreement or the Payee under the Financing Plan or (b) consequential damages arising from any actual losses related to an indemnified claim. Promisor shall defend the Indemnified Parties against any claims that are actually or potentially within the scope of the indemnity provisions of this instrument, even if such claims may be groundless, fraudulent or false.

"Attorneys' Fees and Costs" means any and all attorneys' fees, costs, expenses and disbursements, including, but not limited to: expert witness fees and costs, travel time and associated costs; transcript preparation fees and costs; document copying expenses; exhibit preparation costs; carrier expenses and postage and communications expenses; such amount as a court or other decision maker may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in such action or proceeding; fees and costs associated with execution upon any judgment or order; and costs on appeal and any collection efforts. For purposes of this Note, the reasonable fees of attorneys and any in-house counsel for the City, the Payee and the Promisor shall be based on the fees regularly charged by private attorneys with the equivalent number of years of professional experience in the subject matter area of the law for which the City's, the Payee's or the Promisor's in-house counsel's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City or the Payee or, in the case of the Promisor, as employed by outside counsel for the Promisor.

The Indemnified Parties agree to give prompt notice to the Promisor with respect to any suit or claim initiated or threatened against the Indemnified Parties, at the address for notices to the Promisor set forth below and in the manner set forth in Section 19.2 of the South OPA, and

in no event later than the earlier of (a) ten (10) days after valid service of process as to any suit or (b) fifteen (15) days after receiving written notification of the filing of such suit or the assertion of such claim, which the Indemnified Party has reason to believe is likely to give rise to a claim for indemnity hereunder. If prompt notice is not given to the Promisor, then the Promisor's liability hereunder shall terminate as to the matter for which such notice is not given, provided that failure to notify the Promisor shall not prejudice the rights of the Indemnified Party hereunder unless the Promisor is prejudiced by such failure, and then only to the extent of such prejudice. The Promisor shall, at its option but subject to the reasonable consent and approval of the Indemnified Party, be entitled to control the defense, compromise or settlement of any such matter through counsel of the Promisor's own choice; provided, however, that in all cases the Indemnified Party shall be entitled to participate in such defense, compromise, or settlement at its own expense. If the Promisor shall fail, however, in the Indemnified Party's reasonable judgment, within a reasonable time following notice from the Indemnified Party alleging such failure, to take reasonable and appropriate action to defend, compromise or settle such suit or claim, the Indemnified Party shall have the right promptly to hire counsel at the Promisor's sole expense to carry out such defense, compromise or settlement, which expense shall be immediately due and payable to the Indemnified Party upon receipt by the Promisor of a properly detailed invoice therefor. The indemnities set forth above shall survive any termination of the Financing Plan as to matters that arise during the term hereof.

This Note is not secured by any real property or interests therein.

Any failure of the Payee to exercise any rights under this Note shall not constitute a waiver of the right to the later exercise thereof.

This Note may not be changed, amended or modified orally, and may only be amended or modified by an instrument in writing which by its express terms refers to this Note and is duly executed by the Promisor and accepted in writing by the Payee.

Notice may be given to the Payee at the address for notice to the Payee set forth below and in the manner set forth in the South OPA, and notice may be given to the Promisor at the address for notice to the Promisor set forth below and in the manner set forth in the South OPA.

This Note shall be governed by and construed in accordance with the laws of the State of California.

Time is of the essence with respect to each and every term and provision of this Note.

The terms of this Note shall bind the Promisor and inure to the benefit of the Payee and the City and their respective successors and assigns.

This Note shall terminate and be of no further force or effect, upon (a) the Transfer of any property in the South Plan Area to a Transferee for which this Note is not required under the South OPA, including the Financing Plan, provided such obligations shall be relieved only as to the property so Transferred, or (b) the latest of (i) payment in full of this Note together with any and all other amounts payable by Promisor under this Note (including any Reimbursement Amounts), (ii) payment for all Infrastructure under the terms of the Financing Plan, and (iii) payment in full of the Tax Allocation Debt; provided, however, any obligations that

Promisor has under this Note that arose and were not satisfied before such date shall survive any such termination. Nothing herein shall limit Promisor's obligation to execute and deliver a Tax Allocation Bond Guaranty for certain Additional Payments if the same is required under the South OPA, including the Financing Plan, upon a Transfer of any portion of the South Plan Area to a Non-Qualifying Transferee.

Duly authorized and executed in San Francisco, California, effective as of \_\_\_\_\_, 20\_\_.

Promisor:

[\_\_\_\_\_]

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Promisor's Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telefacsimile: \_\_\_\_\_

with a copy to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telefacsimile: \_\_\_\_\_

Payee's Notice Address:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telefacsimile: \_\_\_\_\_

with a copy to the following:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn: \_\_\_\_\_

Telefacsimile: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

*[To be inserted]*