

1 [Successor Agency to the Former Redevelopment Agency - Fifth Amendment to Mission Bay
2 North Owner Participation Agreement]

3 **Resolution of the Board of Supervisors, acting in its capacity as the Successor Agency**
4 **to the former Redevelopment Agency of the City and County of San Francisco, to**
5 **conditionally approve a Fifth Amendment to the Mission Bay North Owner Participation**
6 **Agreement and to permit a feasible rental project with market rate and affordable**
7 **moderate-income units available to households earning no more than 90 percent of the**
8 **area median income on Block N4P3, bound by Berry Street to the south and the I-280**
9 **off-ramp to the north, in the Mission Bay North Redevelopment Project Area; and**
10 **making environmental findings under the California Environmental Quality Act.**

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12 WHEREAS, The Board of Supervisors approved and adopted, by Ordinance No. 327-
13 98 (Oct. 26, 1998), the Mission Bay North Redevelopment Plan (the “North Plan”) for the
14 Mission Bay North Redevelopment Project Area (the “North Plan Area”); and,

15 WHEREAS, the former Redevelopment Agency of the City and County of San
16 Francisco (“Agency” or “Redevelopment Agency”) approved, by Resolution No. 188-98, the
17 Mission Bay North Owner Participation Agreement (the “North OPA”) and related documents
18 between Catellus Development Corporation, a Delaware corporation, and the Agency.

19 FOCIL-MB, LLC, a Delaware limited liability company (“FOCIL” or “Owner” or “Master
20 Developer”), entered into an Assignment, Assumption and Release Agreement, dated
21 November 22, 2004, under which FOCIL assumed the rights and obligations of the prior
22 owner under the North OPA; and,

23 WHEREAS, The Redevelopment Agency Commission by Resolution No. 190-98 and
24 the San Francisco Planning Commission by Resolution No. 14696 and in accordance with the
25 California Environmental Quality Act (Public Resources Code Sections 21000 et seq.,

1 “CEQA”) certified the Final Subsequent Environmental Impact Report for the Mission Bay
2 North and South Redevelopment Plans (the “FSEIR”) as a program EIR under CEQA and
3 State CEQA Guidelines (Title 14 of California Code of Regulations Sections 15000 et seq),
4 Sections 15168 (Program EIR) and 15180 (Redevelopment Plan EIR). On October 19, 1998,
5 the Board of Supervisors, by Motion No. 98-132 affirmed certification of the FSEIR and by
6 Resolution No. 854-98, adopted CEQA findings, including a statement of overriding
7 considerations and a Mission Bay mitigation monitoring and reporting program ("Mission Bay
8 MMRP") in support of various approval actions taken by the Board to implement the Mission
9 Bay North and Mission Bay South Redevelopment Plans. Resolution No. 854-98 is on file
10 with the Clerk of the Board in File No. _____ and incorporated in this Resolution
11 by this reference; and,

12 WHEREAS, Subsequent to the certification of the FSEIR, the Agency and Planning
13 Department have issued nine addenda to the FSEIR to address proposed changes to the
14 Mission Bay project. None of these addenda identify any substantial new information or new
15 significant impacts or a substantial increase in the severity of previously identified significant
16 effects that alter the conclusions reached in the FSEIR; and,

17 WHEREAS, The North OPA has been amended four times and when referenced
18 below, the North OPA shall be deemed to incorporate such amendments; and,

19 WHEREAS, State law dissolved redevelopment agencies on February 1, 2012 and
20 established successor agencies to fulfill the remaining obligations of the former agencies, Cal.
21 Health & Safety Code §§ 34170 et seq. (“Redevelopment Dissolution Law”); and,

22 WHEREAS, In accordance with Redevelopment Dissolution Law, the Board of
23 Supervisors, as the governing body of the Successor Agency, established, by Ordinance 215-
24 12, the Successor Agency Commission for the Successor Agency to the Redevelopment
25 Agency of the City and County of San Francisco (the “Successor Agency,” also commonly

1 known as the Office of Community Investment and Infrastructure, or "OCII"), and delegated to
2 the Successor Agency Commission, among other powers, the authority to act in place of the
3 Redevelopment Agency to implement, modify, enforce and complete surviving redevelopment
4 projects, including, without limitation, three major integrated, multiphase revitalization projects,
5 which are the Mission Bay North and Mission Bay South Projects, the Hunters Point
6 Shipyard/Candlestick Point Project, and the Transbay Redevelopment Project (collectively,
7 the "Major Approved Development Projects"), and which are subject to enforceable
8 obligations requiring the implementation and completion of those projects. The Mission Bay
9 North Project encompasses the North Plan Area; and,

10 WHEREAS, With respect to the Major Approved Development Projects, Ordinance
11 215-12 granted the Successor Agency Commission authority to approve all contracts and
12 actions related to the assets transferred to or retained by the Successor Agency, including,
13 without limitation, the authority to exercise land use, development and design approval
14 authority for the Major Approved Development Projects. The authority of the Successor
15 Agency Commission, with respect to the Major Approved Development Projects includes the
16 authority to approve amendments to enforceable obligations as allowed under
17 Redevelopment Dissolution Law, subject to any required approval by the Oversight Board of
18 the City and County of San Francisco, consistent with applicable enforceable obligations; and,

19 WHEREAS, Ordinance 215-12 acknowledged that the Successor Agency has retained
20 enforceable obligations for the development of affordable housing, including Retained
21 Housing Obligations as defined therein, required to fulfill the Major Approved Development
22 Projects; and,

23 WHEREAS, Ordinance 215-12 provides that the Successor Agency Commission shall
24 not modify the Major Approved Development Projects or the Retained Housing Obligations in
25 any manner that would decrease the commitment of property tax revenue for affordable

1 housing or materially change the obligations to provide affordable housing without obtaining
2 the approval of the Board of Supervisors, in its capacity as governing body of the Successor
3 Agency, and any required approval of the Oversight Board; and,

4 WHEREAS, The North OPA requires that 20% of the total housing units in the North
5 Plan Area (or 593 of 2,964 units) shall be low- and moderate-income housing available at
6 affordable housing costs, as defined in the Community Redevelopment Law. The North
7 OPA further requires that the Master Developer (and its developer transferees) build 245 of
8 the 593 total affordable housing units divided among very low-income (98 units), low-income
9 (35 units) and moderate-income levels (112 units). The development of the remaining
10 affordable housing units were the obligation of the Agency and its non-profit housing
11 developers on sites conveyed by the Master Developer; and,

12 WHEREAS, As of January 2014 a total of 2,835 units have been constructed in the
13 North Plan Area with 672 units, or 23.7% of the total units, restricted for lower income
14 households. Of the affordable units, 407 have been developed by Agency; 265 have been
15 developed by the Master Developer or its transferees. Under the North OPA, the Master
16 Developer has exceeded its obligations for developing very low- and low-income units, but is
17 still required to build an additional 80 moderate-income units, which must be for-sale units
18 targeting households earning up to 110% of area median income (“AMI”); and,

19 WHEREAS, Block N4P3, bound by Berry Street to the south and by the off-ramp to I-
20 280 to the north, is the last remaining developable parcel in the North Plan Area and thus is
21 the site where the Master Developer must construct its remaining affordable housing units.
22 The North OPA permits 129 units on Block N4P3, of which 80 units (or 62% of the total
23 project) must be affordable to households at 110% of AMI (“N4P3 Inclusionary Requirement”);
24 and,

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1 WHEREAS, A previous attempt to finance a project on Block N4P3 with the existing
2 N4P3 Inclusionary Requirement was unsuccessful and neither the Master Developer nor its
3 developer transferees have expressed an interest to OCII staff to pursue development with
4 the N4P3 Inclusionary Requirement; and,

5 WHEREAS, A 2013 study prepared by The Concord Group, a San Francisco-based
6 real estate market research firm, shows that development of N4P3 with the N4P3 Inclusionary
7 Requirement is financially infeasible as a for-sale project without a significant public subsidy
8 that was originally estimated at \$12,000,000 to \$15,000,000 exclusive of land cost and has
9 likely increased due to increases in the cost of construction and financing (the “Concord
10 Study”). Specifically, the Concord Study found that that N4P3 is an inferior location for owner-
11 occupied, market rate units because of the highway adjacency and lack of canal creek
12 frontage and thus future sale prices of those market rate units would be insufficient to finance
13 fully the 80 units of affordable housing. The Successor Agency and the Mayor’s Office of
14 Housing and Community Development independently verified the infeasibility of developing
15 owner for-sale, moderate-income units at N4P3; and,

16 WHEREAS, In 2011, FOCIL began discussions with The Integral Group (“Integral”), a
17 national real estate investment firm focused on the revitalization of urban communities, about
18 developing a financially feasible alternative project on N4P3; and,

19 WHEREAS, On January 21, 2014, after holding a duly noticed public hearing and
20 consistent with its authority under Redevelopment Dissolution Law and Ordinance 215-12, the
21 Successor Agency Commission conditionally approved, by Resolution No. 05-2014, a fifth
22 amendment to the North OPA that would allow N4P3 to be developed with 45 moderate-
23 income rental inclusionary units affordable to households earning up to 120% AMI and 84
24 market rate rental units (“Commission Action”). The Successor Agency Resolution No. 05-
25

1 2014 is on file with the Clerk of the Board of Supervisors in File No. _____ and
2 incorporated in this Resolution by this reference; and,

3 WHEREAS, the Commission Action would decrease the number of moderate-income
4 units from 80 to 45 and change the tenure from owner-occupied to rental units and thus
5 constitutes a material change in the North OPA affordable housing obligations that the Board
6 of Supervisors must approve, under Section 6 (a) of Ordinance No. 215-12; and,

7 WHEREAS, subsequent to the Commission Action, FOCIL and Integral proposed a
8 revised fifth amendment to the North OPA (“North OPA Amendment”) that deepens the
9 affordability level to 90% AMI (which still targets moderate-income households) and provides
10 26 affordable rental units and 103 market rate rental units (“N4P3 Project”); and,

11 WHEREAS, Once the N4P3 Project is developed, the total number of affordable
12 housing units constructed under the North OPA will exceed the 20% affordable housing
13 requirement (698 affordable units or 23.5% of the of the total 2,964 residential units in the
14 North Plan Area will be affordable). The Master Developer will have built 46 units more than
15 required under the existing North OPA, or an increase of 18.8% over the Master Developer’s
16 original requirement; and,

17 WHEREAS, Under Redevelopment Dissolution Law, the Oversight Board of the City
18 and County of San Francisco must review and approve any amendment to an enforceable
19 obligation, such as the North OPA Amendment, but only if it finds that the amendment would
20 be in the best interests of the taxing entities; and,

21 WHEREAS, Under Redevelopment Dissolution Law, the California Department of
22 Finance (“DOF”) must receive notice and information about all Oversight Board actions, which
23 do not take effect until DOF has either not requested additional review within five business
24 days of the notice or requested additional review and approved the action within 40 days of its
25 request for additional review (“DOF Approval”); and,

1 WHEREAS, Approval of the North OPA Amendment is an undertaking pursuant to and
2 in furtherance of the North Plan in conformance with CEQA Guidelines Section 15180; and,
3 WHEREAS, The Board of Supervisors held a public hearing on _____,
4 on the adoption of the proposed North OPA Amendment in the Board Chambers, 401 Van
5 Ness Avenue, 4th Floor, San Francisco, California. The hearing has been closed. At such
6 hearing the Board considered the report and recommendations of the Successor Agency and
7 the FSEIR, including the various addenda thereto in accordance with CEQA, and the CEQA
8 Findings, including without limitation the statement of overriding considerations and Mission
9 Bay MMRP that it previously adopted in Resolution No. 854-98, and all evidence and
10 testimony for and against the proposed North OPA Amendment; now, therefore, be it
11 RESOLVED, That the Board has reviewed and considered the CEQA Findings,
12 including the statement of overriding considerations and the Mission Bay MMRP that it
13 previously adopted in Resolution No. 854-98, and hereby adopts these CEQA Findings in
14 support of the approval of the North OPA Amendment. The Board additionally finds that: (A)
15 implementation of the North OPA Amendment does not require major revisions in the FSEIR
16 due to the involvement of new significant environmental effects or a substantial increase in the
17 severity of previously identified significant effects; (B) no substantial changes have occurred
18 with respect to the circumstances under which the project analyzed in the FSEIR will be
19 undertaken that would require major revisions to the FSEIR due to the involvement of new
20 significant environmental effects, or a substantial increase in the severity of effects identified
21 in the FSEIR; and (C) no new information of substantial importance to the project analyzed in
22 the FSEIR has become available which would indicate that (i) the North OPA Amendment will
23 have significant effects not discussed in the FSEIR; (ii) significant environmental effects will
24 be substantially more severe; (iii) mitigation measures or alternatives found not feasible which
25 would reduce one or more significant effects have become feasible; or (iv) mitigation

1 measures or alternatives which are considerably different from those in the FSEIR will
2 substantially reduce one or more significant effects on the environment; and, be it

3 FURTHER RESOLVED, That the Board of Supervisors conditionally approves the
4 North OPA Amendment on file with the Board in File No. _____ subject to
5 approval of the North OPA Amendment by the Oversight Board and DOF; and, be it

6 FURTHER RESOLVED, That the Board of Supervisors authorizes, subject to Oversight
7 Board and DOF approval, the Executive Director of the Successor Agency or her designee to
8 execute the North OPA Amendment in substantially the form of the North OPA Amendment
9 on file with the Clerk of the Board of Supervisors in File No. _____; and, be it

10 FURTHER RESOLVED, That all actions taken by City officials and the
11 Successor Agency Commission in preparing and submitting the North OPA Amendment to the
12 Board of Supervisors for review and consideration are hereby ratified and confirmed, and the
13 Board of Supervisors hereby authorizes all subsequent action to be taken by Successor
14 Agency officials, the Oversight Board and the Successor Agency Commission consistent with
15 this Resolution.

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