

RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:

Transbay Joint Powers Authority  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Executive Director

Recording Fee \$0 (Govt Code § 27383)  
Document Transfer Tax \$0 (Rev & Tax Code § 11922)

524-530 Howard Street, San Francisco, California  
(Assessor’s Block 3721, Lots 13 and 14); 425 Mission  
Street, San Francisco, California (Assessor’s Block  
3720, Lots 10 and 11; Block 3721, Lots 6 and 124;  
and Block 3719, Lot 3)

(spac above line for Recorder’s use only)

**530 HOWARD PEDESTRIAN BRIDGE EASEMENT AGREEMENT**

THIS 530 HOWARD PEDESTRIAN BRIDGE EASEMENT AGREEMENT (this “**Agreement**”) is made and entered into as of [redacted], 2024 by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“**TJPA**”), and 524 HOWARD STREET, LLC, a Delaware limited liability company (“**Developer**”). The TJPA and Developer, as Parcel Owners (as that term is defined below), and their respective successors and assigns, are each individually referred to herein sometimes as a “**Party**” and are collectively referred to herein sometimes as the “**Parties.**”

**RECITALS**

This Agreement is entered into by the TJPA and Developer on the basis of the following recitals:

A. The TJPA is responsible for implementing the Transbay Transit Center Program, which includes, among other things, (i) on the site of the former Transbay Terminal, the construction of a new Transit Center building (“**Transit Center**”), including a park on the roof of the Transit Center (“**Rooftop Park**”), (ii) a rail tunnel and rail systems to extend Caltrain service from Fourth and King Streets to the Transit Center and to accommodate California High Speed Rail trains in the future, (iii) a new underground Fourth and Townsend Street Caltrain Station, (iv) modifications to the existing surface station at Fourth and King Streets, (v) a temporary bus terminal, (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities. A diagram depicting the Transit Center is attached as Exhibit A. The Transit Center is situated on real property owned by the TJPA and generally located at 425 Mission Street, San Francisco, California (Assessor’s Block 3720, Lots 10 and 11; Block 3721, Lots 6 and 124; and Block 3719, Lot 3) (“**Transit Center Property**”).

B. Developer is the owner of that certain real property at 524-530 Howard Street located across Natoma Street from the Transit Center Property fronting on Natoma and Howard Streets in San Francisco, California (Assessor’s Block 3721, Lots 13 and 14) (“**530 Howard**

**Property**”). The Transit Center Property and 530 Howard Property are each individually referred to in this Agreement as a **“Parcel”** and are collectively referred to in this Agreement as the **“Parcels.”**

C. Developer intends to develop and construct on the 530 Howard Property (i) a high-rise building (**“Tower”**), and (ii) a pedestrian bridge spanning Natoma Street and connecting the Tower to the Rooftop Park (**“Pedestrian Bridge”**) (the Tower, Pedestrian Bridge, and other improvements constructed on the 530 Howard Property, collectively, **“Project”**). A site plan for the Project, including the Pedestrian Bridge, is attached as Exhibit B.

D. The TJPA and Developer now desire to enter into this Agreement to establish certain easements over the 530 Howard Property and the Transit Center Property in connection with the Pedestrian Bridge, and to set forth the rights and responsibilities of Developer and the TJPA for the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, alteration, safety, and security of the Pedestrian Bridge.

E. Concurrently with this Agreement, the Parties shall enter a Confidential Security Agreement governing coordination of security among the Parties and other properties connecting to the Rooftop Park (**“Security Agreement”**).

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

**1. Definitions.**

In addition to the capitalized terms that are defined elsewhere in this Agreement, as used in this Agreement the following terms shall have the following meanings:

(a) **“Affiliate”** with respect to a specified Person means any Person that directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with, the Person specified.

(b) **“Condominium Owner”** shall mean the owner of a condominium unit in the Project.

(c) **“Mortgage”** shall mean any mortgage, deed of trust, or other instrument primarily given to secure a loan or other obligation and constituting a lien recorded against all or any portion of the 530 Howard Property, or against any ground lease or master lease that relates to all or any portion of the 530 Howard Property.

(d) **“Mortgagee”** shall mean any mortgagee or beneficiary under a Mortgage with respect to all or any portion of the 530 Howard Property, and any successor-in-interest to any of the foregoing.

(e) **“Owner”** or **“Parcel Owner”** shall mean the fee title owner or owners from time to time of the Transit Center Property and the 530 Howard Property, any ground lessee of the 530 Howard Property owning any improvements on the 530 Howard Property, and the holder of the Pedestrian Bridge Easements. Notwithstanding the foregoing, if the 530 Howard Property is

subdivided into condominiums or vertical sub-parcels, the 530 Howard Property is subject to a declaration (“**Declaration**”) which establishes an owners association representing all the owners of real property within the 530 Howard Property (“**Association**”), and fee title to any portion of the 530 Howard Property that is benefitted or burdened by this Agreement is transferred to the Association, then (i) in no event shall an “Owner” include any individual Condominium Owners or Sub-Parcel Owners, (ii) Developer shall ensure that the Declaration recognizes and is subject to this Agreement, (iii) individual Condominium Owners and Sub-Parcel Owners shall have no rights or obligations under this Agreement and no interest in the Pedestrian Bridge Easement, and (iv) the Association will be deemed an “Owner.”

(f) “**Pedestrian**” means a Person walking and does not mean (except to the extent that the parties may otherwise agree in the Rules and Regulations defined in Section 6(a)) Persons riding any wheeled vehicle of any kind (including skateboards, bicycles, tricycles, and motorcycles), save and except only for powered or manually operated wheelchairs necessarily used for mobility by Persons with physical disabilities.

(g) “**Permittees**” shall mean all Persons from time to time entitled to the use or occupancy of all or any portion of the easement areas established under this Agreement by the Parties.

(h) “**Person**” or “**Persons**” shall mean and include individuals, partnerships, limited liability companies, firms, associations, joint ventures, corporations, or any other form of business entity.

(i) “**Public**” shall mean members of the public but shall exclude any individual who is not a Pedestrian or acting as a Pedestrian, any individual or group of individuals making threats, any individual or group of individuals committing disorderly conduct or carrying any weapon, any individual or group of individuals engaging in any criminal activity, or any individual or group of individuals that impedes access of members of the Public to the Transit Center or the Tower.

(j) “**Regulatory Approvals**” shall mean all authorizations, approvals, entitlements, conditions, requirements, plan amendments (and related review of the Project in compliance with the California Environmental Quality Act (California Public Resources Code §§ 21000 et seq.)) of any governmental agency with jurisdiction over the use or development of a Parcel or the Project.

(l) “**Sub-Parcel Owners**” shall mean the owner of a parcel that results from a subdivision of the 530 Howard Property.

## 2. **Air Space Street Vacation and Conveyance Over Natoma Street for Pedestrian Bridge.**

Developer and the TJPA acknowledge and understand that as part of constructing the Pedestrian Bridge and connecting the Tower to the Transit Center, the Pedestrian Bridge must pass over Natoma Street, which is a public street owned by the City. In connection with Developer obtaining all other regulatory approvals to construct the Pedestrian Bridge, the TJPA and

Developer agree to jointly request that the City vacate air space above Natoma Street sufficient for the approximate size and location of the Pedestrian Bridge (“**Vacated Air Space**”) and convey the fee or an exclusive easement for the Vacated Air Space to the TJPA without charge or offset (“**Air Space Conveyance**”). The TJPA shall cooperate in good faith with Developer in the pursuit of the vacation of the Vacated Air Space; provided that the TJPA shall have no obligation to acquire the Vacated Air Space from the City. Developer waives and releases any claim against the TJPA for equitable relief or damages if the TJPA is unable to acquire the Vacated Air Space. Under the Agreement for Reimbursement of TJPA’s Costs to Draft and Negotiate 530 Howard Pedestrian Bridge Easement Agreements and Obtain Air Space Conveyance dated on or around the date hereof (“**Reimbursement Agreement**”), attached as Exhibit E to the 530 Howard Pedestrian Bridge Temporary Construction Easement Agreement (“**Construction Agreement**”) dated on or around the date hereof, Developer has agreed to reimburse the TJPA, the TJPA’s counsel, and TJPA staff for (i) all out-of-pocket processing costs and expenses incurred, including, but not limited to, attorneys’ fees, any application or processing fees charged by the City or its departments relating to the TJPA’s cooperation with Developer to attempt to obtain the vacation of the Vacated Air Space and the completion of the Air Space Conveyance and (ii) any consideration required by the City for the Air Space conveyance ((i) and (ii) the “**TJPA Air Space Conveyance Costs**”). If the City conveys the Vacated Air Space to the TJPA, the TJPA shall convey an exclusive, permanent, appurtenant easement for the Vacated Air Space to Developer (or, if the TJPA receives an easement in the Air Space from the City, the TJPA shall assign the easement to Developer) for the Pedestrian Bridge as set forth in Section 3(b)(i)(B) (“**Air Space Easement**”) within ten (10) days after Developer pays the TJPA Air Space Conveyance Costs to the TJPA that have been billed in accordance with the Reimbursement Agreement.

**NOTWITHSTANDING THE FOREGOING, THE AIR SPACE EASEMENT GRANTED TO DEVELOPER IN THIS SECTION 2 SHALL NOT BECOME EFFECTIVE UNLESS THE DEVELOPER HAS PAID THE ENHANCED VALUE TO THE TJPA REQUIRED BY SECTION 1 OF THE CONSTRUCTION AGREEMENT.**

### **3. Grant of Easements.**

(a) Permanent Easement From Developer to TJPA. Subject to the provisions of Section 4, as of the Effective Date, Developer, as Owner of the 530 Howard Property, grants to the TJPA, as Owner of the Transit Center Property, the TJPA’s Permittees, and the Public an irrevocable, perpetual, appurtenant, non-exclusive easement in, to, over and across the Pedestrian Bridge for pedestrian access by the TJPA, the TJPA’s Permittees, and the Public: (i) between the Rooftop Park and the access elevators connected to the Pedestrian Bridge depicted on Exhibit B; and (ii) to retail amenities located on the Pedestrian Bridge, if any (“**TJPA Easement**”). Access by the Public to the Rooftop Park from the Pedestrian Bridge shall, subject to the terms of Exhibit C to the Security Agreement, be for the same periods that access to the Rooftop Park by the Public is permitted from the Transit Center or any other access point, unless (x) the TJPA or Developer determines, in their respective sole discretion, that access shall be reduced on a temporary basis due to a particular safety or security threat specific to the Pedestrian Bridge (including severe weather that renders the bridge hazardous to Pedestrians); (y) Developer reasonably determines that a temporary closure is necessary or appropriate for maintenance, repair, or other similar activities on the Pedestrian Bridge or in the Tower, provided that if such closure is for longer than twenty-four (24) hours, such closure shall be subject to the approval of the TJPA, which approval

shall not be unreasonably withheld, conditioned, or delayed, and the TJPA's approval shall be given or withheld within twenty-four (24) hours following notice of intent to close the Pedestrian Bridge from Developer, or else the closure shall be deemed approved; or (z) the TJPA determines, in its sole discretion, that access to the Pedestrian Bridge from the Rooftop Park must be temporarily closed (A) when occupancy of the Rooftop Park reaches the limits imposed by Building or Fire Codes, (B) to control crowds in the case of a special event in the Rooftop Park, or (C) to respond to an immediate security threat that requires closure of access to the Rooftop Park. The Parties shall cooperate in closing Public access to the Pedestrian Bridge whenever the Rooftop Park is closed. Each Party shall give written notice to the other Party as soon as reasonably practical following any material restriction of access to the Pedestrian Bridge contemplated under clauses (x), (y), and (z) of this Section 2(a). The rights of access over the Pedestrian Bridge granted to the Public through the TJPA Easement shall remain in effect whenever the Rooftop Park is open for public use, subject to the closure periods described above. For the avoidance of doubt, the TJPA Easement shall not grant to the Public a right of entry to (1) the Tower's lobby, or (2) any other ground floor areas of the Tower not specifically designated for Public access by the City's Board of Supervisors or Planning Commission, for access to the Pedestrian Bridge or Rooftop Park.

(b) Permanent Easements from TJPA to Developer.

(i) Permanent Pedestrian Bridge Easements. Subject to the provisions of Section 4, effective as of the completion of the Pedestrian Bridge, the TJPA, as Owner of the Transit Center Property, grants to Developer, as Owner of the 530 Howard Property, (A) an appurtenant, permanent, irrevocable, non-exclusive easement for encroachment of the Pedestrian Bridge onto the Transit Center Property as constructed in accordance with the construction drawings approved by the TJPA, and (B) if the City conveys the Vacated Air Space to the TJPA and Developer pays the TJPA Air Space Conveyance Costs to the TJPA, the Air Space Easement, for the construction and operation of the Pedestrian Bridge within the Vacated Air Space, and for access to the Vacated Air Space (and the Pedestrian Bridge therein) to the same extent granted to Developer under Section 3(b)(ii) and reserving to the TJPA the rights granted under Section 3(a), which easements shall be located as shown on Exhibit B.

(ii) Permanent Access Easement. Subject to the provisions of Section 4, effective as of the completion of the Pedestrian Bridge, the TJPA, as Owner of the Transit Center Property, grants to Developer, as Owner of the 530 Howard Property, (A) an appurtenant, permanent, irrevocable, non-exclusive, easement for access by Developer, Developer's Permittees, and the Public in, to, over, and across the Rooftop Park to the Pedestrian Bridge ("**Permanent Access Easement**"), and (B) an appurtenant, permanent, irrevocable, non-exclusive, easement for access by Developer and Developer's Permittees in, to, over, and across the Transit Center Property only as necessary for Developer to operate, maintain, and provide security for the Pedestrian Bridge. Such access to the Transit Center Property and the Rooftop Park, and from the Rooftop Park to the Pedestrian Bridge, shall, subject to the terms of Exhibit C to the Security Agreement, be for the same periods access to the Rooftop Park by the Public is permitted from the Pedestrian Bridge as provided in Section 3(a).

**NOTWITHSTANDING THE FOREGOING, THE EASEMENTS GRANTED TO DEVELOPER IN THIS SECTION 3(b) SHALL NOT BECOME EFFECTIVE UNLESS**

**THE DEVELOPER HAS PAID THE ENHANCED VALUE TO THE TJPA REQUIRED BY SECTION 1 OF THE CONSTRUCTION AGREEMENT.**

**4. Obligation to Construct Pedestrian Bridge**

Developer covenants that it shall include the Pedestrian Bridge in any future application for Regulatory Approvals for the Project, make good faith efforts to obtain Regulatory Approvals for the Project that includes the Pedestrian Bridge, and, if Developer commences construction of the Project, construct the Pedestrian Bridge required by such Regulatory Approvals. In the event of damage to or destruction of the Pedestrian Bridge (but where the Project remains on the 530 Howard Property and if damaged, is being repaired), Developer shall reconstruct the Pedestrian Bridge consistent with the design of the preexisting Pedestrian Bridge at no cost to the TJPA, with the exception of any damage to or destruction of the Pedestrian Bridge caused by the negligence or willful misconduct of TJPA, the cost of which shall be the responsibility of the TJPA to the extent the TJPA's negligence or willful misconduct causes such damage or destruction. Notwithstanding the foregoing, the TJPA acknowledges and agrees that the rights and obligations under this Section 4 to construct or reconstruct the Pedestrian Bridge shall not be in force, and Developer shall not be obligated to construct the Pedestrian Bridge, unless and until (i) Developer has received all Regulatory Approvals relating to the construction of the Pedestrian Bridge, (ii) the Air Space Conveyance (as described in Section 2 hereof) has occurred, and (iii) Developer has commenced construction of the Project. The TJPA further acknowledges and agrees that if, after good faith efforts, the TJPA and Developer are unable to obtain the Air Space Conveyance, Developer may proceed with construction of the Project, provided that Developer and the TJPA shall continue to pursue such conveyance concurrently with and subsequent to construction of the Project, and Developer will cooperate in good faith with the TJPA in the pursuit of such Air Space Conveyance.

**5. Coordination of Work.**

Without limiting any of the provisions of Sections 2, 3, and 4 hereof or the Construction Agreement, Developer and the TJPA shall use good faith and commercially reasonable efforts to coordinate with each other in connection with the design, installation, construction, inspection, maintenance, replacement, repair, and alteration of the Pedestrian Bridge and the Project, such that the work can be completed in a timely manner and in accordance with the development timelines established by the Party responsible for the work. Subject to Developer's obligation under Section 2.5 of the Construction Agreement to reimburse the TJPA for the TJPA Costs as defined in the Construction Agreement to modify the Transit Center to accommodate the Pedestrian Bridge, the TJPA shall operate, use, and maintain the Transit Center at its sole cost and in a manner which will safely permit and structurally support those portions of the Pedestrian Bridge that connect to the Transit Center, taking into account the Project's Risk and Vulnerability Assessment, potential seismic events, and loads anticipated to result from the normal and customary use of the Pedestrian Bridge. Developer shall design, obtain Regulatory Approvals for, construct, operate, use and maintain the Project at its sole cost and in a manner which will safely permit and structurally support those portions of the Pedestrian Bridge that connect to the Tower, taking into account the Project's Risk and Vulnerability Assessment, potential seismic events, and loads anticipated to result from the normal and customary use of the Pedestrian Bridge, and not interfere with the construction or operation of the Transit Center, with the exception of non-material interference

with the construction and operation of the Transit Center that is reasonably necessary during construction of the Pedestrian Bridge.

## 6. Operation and Maintenance.

(a) Rules and Regulations Regarding Operations. The Parties shall reasonably cooperate in adopting rules and regulations consistent with the terms of this Agreement for the ongoing operation and use of the Pedestrian Bridge (“**Rules and Regulations**”). The Rules and Regulations shall include the TJPA’s right to prohibit any operation or program on the Pedestrian Bridge that interferes, in a significant way, with the safety and security of, access to, and the operation of the Transit Center and the Rooftop Park and shall include a list of unacceptable activities on the Pedestrian Bridge. Developer shall have the right to prohibit the listed unacceptable activities and to exclude from the Pedestrian Bridge Persons engaging in such activities or otherwise not permitted to use the Pedestrian Bridge in accordance with this Agreement, the Security Agreement, or the Rules and Regulations. Nothing in this Agreement shall limit Developer’s right to establish reasonable rules regarding access in and to the Tower, and security measures to protect the Tower and its occupants consistent with industry custom and practices in San Francisco. Developer and the TJPA shall comply with the Rules and Regulations in their operation and use of the Pedestrian Bridge, including with respect to the easements described in Section 3. Any change to the Rules and Regulations shall require each Party’s written approval, which approval shall not to be unreasonably withheld, conditioned, or delayed. In the event of any inconsistency between the Rules and Regulations and the provisions of this Agreement, the provisions of this Agreement shall govern and control.

(b) Maintenance Obligations of Developer. Upon completion of the Pedestrian Bridge, Developer shall, at its sole cost, operate and maintain the Pedestrian Bridge, in good order and repair consistent with public outdoor space connected to Class “A” office projects in San Francisco and consistent with the security requirements under the Security Agreement. The TJPA shall have no responsibility for operation, maintenance, repairs, or security for the Pedestrian Bridge.

## 7. Indemnification.

Except for (a) a Construction Activity Indemnity Matter (as defined in Section 5.1 of the Construction Agreement, and with respect to which the provisions of Section 5 of the Construction Agreement will apply and govern) and (b) third party claims for injury or property damage caused by acts of third persons in connection with an alleged breach of security, including criminal acts, Developer shall indemnify, protect, defend, and hold harmless the TJPA, the member agencies of the TJPA (Alameda-Contra Costa Transit District, California High-Speed Rail Authority, City and County of San Francisco, Peninsula Corridor Joint Powers Board – Caltrain, and the State of California, Department of Transportation (“**Member Agencies**”)), and Salesforce.com, and all legal entities controlling, controlled by, or under common control with, directly or indirectly, the TJPA, its Member Agencies, and Salesforce.com and all boards, commissions, members, departments, agencies, other subdivisions, officers, directors, agents, permitted assigns, employees, consultants, contractors and representatives, and their respective heirs, legal representatives, and successors, and each of them (collectively and individually, “**TJPA Indemnitees**”) from and against any and all claims, demands, losses, liabilities, damages, costs,

and expenses (including reasonable attorneys' fees and costs, and fees of consultants and experts, laboratory costs, and related costs; any attorneys' fees and costs, and fees of consultants and experts assessed by a court) (collectively, "**Claims and Losses**") to the extent arising out of the death of any Person or any accident, injury, loss, or damage whatsoever, including consequential damages, to any Person or to the property of any Person in connection with, arising out of, in response to, caused by, occurs on, or in any manner relating to the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, or alteration of the Pedestrian Bridge; provided, however, that Developer shall have no obligation to indemnify a TJPA Indemnitee for Losses arising from (a) the active negligence or willful misconduct of the TJPA Indemnitee, or (b) any breach of this Agreement or any other agreements by the TJPA Indemnitee. Where the active negligence or willful misconduct of the TJPA Indemnitee, or the breach of this Agreement or any other agreements by the TJPA Indemnitee, is a cause of, but is not the sole cause of, Losses, Developer shall indemnify the TJPA Indemnitee according to the respective parties' share of fault. Developer agrees to defend the TJPA Indemnitees against any claims brought against them for Losses that are within the scope of the indemnity provisions of this Agreement, even if such claims may be groundless, fraudulent, or false, excepting only claims alleging that the active negligence or willful misconduct of the TJPA Indemnitee, or the breach of this Agreement or any other agreements by the TJPA Indemnitee, is the sole cause of the Losses. Developer's duty to pay for the defense of a TJPA Indemnitee shall arise immediately upon service of process on the TJPA Indemnitee. Developer's duty to pay for the defense of a TJPA Indemnitee shall not be contingent on the ultimate determination of the TJPA Indemnitee's liability for the claim, except that where the active negligence or willful misconduct of a TJPA Indemnitee, or the breach of this Agreement or any other agreements by a TJPA Indemnitee, is found by a court to be a cause of, but not the sole cause of, the Losses, the TJPA or TJPA Indemnitee shall reimburse Developer for a portion of the cost of the defense in proportion to the TJPA Indemnitee's share of fault.

## 8. Insurance.

8.1 Developer shall at its sole cost name the TJPA, its Member Agencies, and Salesforce.com (each a "**TJPA Party**" and collectively "**TJPA Parties**") as additional insureds under a policy of Commercial General Liability Insurance covering Developer's use of the completed Project and including, but not limited to, the operation, maintenance, repair, alteration, and demolition of the Project (including, without limitation, the Pedestrian Bridge) in the Pedestrian Bridge Easement Area ("**Developer Tower Operations Policy**"). The Developer Tower Operations Policy shall:

(a) be effective upon substantial completion of the Work (as defined in the Construction Agreement) ("**Developer Insurance Effective Date**") and shall be renewed annually (prior to expiration) for the duration of the life of the Tower. For elimination of doubt, there shall be no gap in coverage between the termination of the Developer Construction Policy (as defined in the Construction Agreement) and the effective date of the Developer Tower Operations Policy. Not less than ten (10) days before the Developer Insurance Effective Date, Developer shall deliver to the TJPA a certificate or certificates of insurance in a form reasonably satisfactory to the TJPA, evidencing the coverage required hereunder, and shall deliver such proof of insurance ten (10) days before each anniversary of the Developer Insurance Effective Date;

(b) have a limit of at least Thirty Million Dollars (\$30,000,000) for each occurrence and aggregate occurrences per year (the “Base Policy”), which may be accomplished by primary and excess layers, subject to an escalation of Three Million Dollars (\$3,000,000) on each five (5) year anniversary of the Developer Insurance Effective Date; provided, however, that if Developer obtains a Base Policy with a limit exceeding Thirty Million Dollars (\$30,000,000), then such policy shall only be subject to escalation to the extent necessary to achieve the coverage limit that would have been required if the Base Policy of Thirty Million Dollars (\$30,000,000) had been escalated as described in the previous clause (e.g., If Developer obtains a Thirty Six Million Dollar (\$36,000,000) Base Policy, the first escalation of such policy would occur on the fifteenth (15<sup>th</sup>) anniversary of the Developer Insurance Effective Date);

(c) be a separate policy from Developer’s insurance policies covering properties other than the 530 Howard Property or shall have a per location endorsement consistent with the limits described in this Section 8;

(d) cover bodily injury and property damage, including Claims and Losses arising from or based on allegations of: (i) criminal acts committed by any Person; (ii) inadequate, or a failure of, security, subject to exclusions then customarily contained in Commercial General Liability Insurance policies; and (iii) maintenance, operation of, condition of, or use of the Pedestrian Bridge, or the design, materials, construction, or installation of improvements to the Pedestrian Bridge after the completion of the Construction Activity as defined in the Construction Agreement;

(e) be issued by an insurance company duly authorized to do business in the State of California and with a current rating of A-:VIII or better by Best’s Key Rating Guide;

(f) require Developer, as the primary insured, to pay or cause others to pay any deductible or retention;

(g) require a defense and indemnity of the TJPA Parties;

(h) be primary insurance with respect to the TJPA Parties, and any insurance or self-insurance of the TJPA Parties shall be excess of the Policy and shall not contribute with it;

(i) contain or be endorsed to contain a waiver of all rights of subrogation against the TJPA Parties (unless rights of subrogation would otherwise be waived by reason of the TJPA Parties being named as additional insureds); and

(j) be endorsed to state that the insurer shall not cancel coverage unless the insurer has given the first named insured thirty (30) days’ prior written notice, or ten (10) days prior written notice for Developer’s non-payment of a premium when due.

Developer shall provide written notice to the TJPA within five (5) business days following notice from Developer’s insurer of any cancellation or modification of the terms of the Developer Tower Operations Policy and shall replace such Developer Tower Operations Policy with a Developer Tower Operations Policy that complies with all of the requirements of this Section 8 within five (5) business days after giving the notice to the TJPA. Developer shall provide written notice to the TJPA within three (3) business days following Developer’s failure to pay all or part

of the premium for the Developer Tower Operations Policy when due. Developer's failure to pay all or part of the premium for the Developer Tower Operations Policy when due shall be an immediate default under this Agreement without any requirement for notice or cure. If Developer fails to pay a premium for the Developer Tower Operations Policy when due, the TJPA may, at its election, pay the premium and all interest and penalties, if any, and shall have all legal and equitable remedies against Developer for reimbursement of the amount paid, whether or not Developer gives written notice to the TJPA of the failure to pay the premium.

If Developer fails to carry a policy of Commercial General Liability Insurance meeting the requirements of this Section 8 during any period during which Developer is required to carry such insurance under this Section 8, Developer shall perform the duties which would have been performed by the carrier had Developer carried such a policy as required by this Section 8, but only to the extent of the duties which such carrier would have had to perform.

The Developer Tower Operations Policy may, at Developer's option, apply to the entirety of the 530 Howard Property, so long as the Developer Tower Operations Policy has a per location endorsement that satisfies all requirements of this Section 8, including coverage of the operation, maintenance, repair, alteration, and demolition of the Pedestrian Bridge, and the design, materials, construction, and installation of improvements to the Pedestrian Bridge after the substantial completion of the Work.

The foregoing notwithstanding, if Developer's general contractor's policy of commercial general liability insurance for the Project names the TJPA Parties as additional insureds, meets all of the other criteria set forth in this Section 8, and Developer provides evidence to the reasonable satisfaction of the TJPA that the obligations of Developer, the general contractor, and the carrier are sufficient to give timely notice to the TJPA of the general contractor's failure to pay the premium for such insurance when due, or changes to or cancellation of the policy, then upon approval of the TJPA (which approval shall not be unreasonably withheld, conditioned, or delayed), Developer may rely on its general contractor policy to satisfy Developer's obligations under this Section 8 during the period during which the general contractor policy is in effect and until the date on which such general contractor policy becomes no longer effective with respect to the Project.

**8.2** For the duration of the Pedestrian Bridge Easement, the TJPA shall maintain its current property insurance policy, or a substantially similar policy, for so long as such insurance is commercially available.

## **9. Security.**

(a) Security Agreement. Concurrently with execution of this Agreement, Developer and the TJPA have entered into the Security Agreement pertaining to security for the Project and the Transit Center, including the Pedestrian Bridge. The Parties shall maintain the confidentiality of the Security Agreement and shall disclose the Agreement only to Persons to whom disclosure is permitted under the terms of the Security Agreement. The Security Agreement may be amended from time to time by written agreement of Developer and the TJPA consistent with the easements provided under this Agreement. The Security Agreement shall include, without limitation, the rights and obligations of the Parties set forth in Sections 9(b) and 9(c). The rights

and obligations of the Security Agreement shall run with the land under Section 17. Moreover, in conjunction with any sale or transfer of title to any part of the 530 Howard Property or the Project, Developer shall assign its rights and obligations under the Security Agreement to the transferee and require that the transferee assign its rights and obligations under the Security Agreement to any and all subsequent transferees of title.

(b) Obligations of Developer. Developer and the TJPA acknowledge that under the provisions of Section 8 of the Security Agreement, the obligations of Developer with respect to the operation and security of the Pedestrian Bridge (except for any such obligations that require that Developer incorporate security measures into the design and construction of the Pedestrian Bridge, all of which shall be and become effective on the Effective Date of the Security Agreement), shall commence immediately upon the opening of the Pedestrian Bridge for use by Condominium Owners, Developer's tenants and invitees, or the Public. Developer shall at its sole cost provide safety and security for the Pedestrian Bridge, to the extent provided in (and subject to) the Security Agreement. In the event of a conflict between the provisions of this Agreement and the Security Agreement, the provisions of the Security Agreement shall govern and control.

(c) No Liability for Breaches of Security. The foregoing and anything to the contrary contained in this Agreement or the Security Agreement notwithstanding (but without limiting Developer's obligations to provide insurance under Section 8), the TJPA and Developer shall have no liability to the other Party, or any obligation to indemnify the other Party, for any third party claims for injury caused by acts of third persons in connection with alleged breach of or failure to provide security, including criminal acts, nor shall this Agreement establish any duty owed in tort to, or standard of care in tort as to, either Party or any third party. Nothing in this Section 9 shall be construed as a waiver of either Party's rights and remedies under Section 12 for breaches of or defaults under this Agreement or rights to enforce the provisions of the Security Agreement through specific performance.

## 10. Modifications to Pedestrian Bridge or Transit Center.

If Developer requests modifications of the Transit Center to accommodate the initial construction of the Pedestrian Bridge ("**Initial Pedestrian Bridge**"), including modifications of the Transit Center and the underlying framework that envelopes the Transit Center, modifications or extensions of the Rooftop Park, or modifications or extensions of Rooftop Park finishes, if approved by the TJPA, which approval will not be unreasonably delayed, conditioned, or denied, Developer shall pay all TJPA estimated costs of such modifications in advance of the start of construction as a TJPA Cost (as defined in the Construction Agreement) in accordance with the escrow agreement attached to the Construction Agreement as Exhibit H ("**Escrow Agreement**"). Following the completion of construction of the Initial Pedestrian Bridge, Developer shall pay all reasonable TJPA costs of such modifications in excess of the estimated costs. If the actual costs of such modifications are lower than the TJPA's estimated costs, Developer shall be reimbursed any such difference in accordance with the terms of the Escrow Agreement. If Developer requests modifications of the Transit Center to accommodate modifications, redesign, or reconstruction of the Pedestrian Bridge after completion of construction of the Initial Pedestrian Bridge ("**Reconstructed Pedestrian Bridge**"), approval of the Reconstructed Pedestrian Bridge shall be at the TJPA's sole discretion. If the TJPA approves the Reconstructed Pedestrian Bridge, Developer shall pay all TJPA estimated costs of the Reconstructed Pedestrian Bridge in advance

of the start of the reconstruction under the Escrow Agreement. Following the completion of the Reconstructed Pedestrian Bridge, Developer shall pay all reasonable TJPA costs of the reconstruction in excess of the estimated costs. If the actual costs of reconstruction are lower than the TJPA's estimated costs, Developer shall be reimbursed any such difference in accordance with the terms of the Escrow Agreement. Any modifications to the Pedestrian Bridge under this Section 10 shall be subject to the same rights and obligations of the Parties under this Agreement as the Initial Pedestrian Bridge.

#### **11. Rights of Mortgagees.**

(a) Notice of Lien. Developer shall give the TJPA written notice within ten (10) days after a Mortgage is recorded in the Official Records of the City and County of San Francisco.

(b) Validity of Lien. No breach or violation or threatened breach or violation of any covenant, condition, restriction, or easement contained in this Agreement shall defeat or render invalid or unenforceable the lien of any Mortgagee made in good faith and for value affecting any portion of the 530 Howard Property, but such covenants, conditions, restrictions, and easements shall be binding upon and be effective against any Owner of all or any portion of the 530 Howard Property whose title thereto is acquired by foreclosure, trustee's sale, deed-in-lieu of foreclosure, or otherwise during the period of ownership of such Parcel by such Owner.

(c) Term and Limitation of Liability. No Mortgagee shall be obligated or liable for the obligations and liabilities of the Owner of the 530 Howard Property under this Agreement unless and until such Mortgagee acquires fee title to all or a portion of the 530 Howard Property (whereupon such Mortgagee shall be and become entitled to all of the benefits and protections of the Owner of the 530 Howard Property under this Agreement), and then such Mortgagee shall be liable for the obligations and liabilities of the Owner only (i) upon Mortgagee's acquisition of fee title to the 530 Howard Property, and (ii) for the duration of such ownership; provided that any purchaser of the 530 Howard Property at foreclosure or from Mortgagee after foreclosure shall be obligated to perform each and every obligation of the Owner hereunder. The foregoing notwithstanding, if the Owner is in default of this Agreement at the time of a Mortgagee's acquisition of the 530 Howard Property, the Mortgagee shall not be bound by any such default by such Owner, provided that such Mortgagee shall be obligated to (x) remedy any curable defaults of such Owner within thirty (30) days following the acquisition by any such Mortgagee of title to the 530 Howard Property (or three (3) days following such acquisition of title in the event of an immediate and serious danger to person or property), and (y) reimburse the TJPA under Section 8 to the extent of any insurance premiums, interest, and penalties for or under the Developer Tower Operations Policy or the Owner's general contractor's insurance policy paid by the TJPA by reason of the Owner's failure to pay such insurance premiums, interest, and penalties if and when due, such reimbursement to be made by such Mortgagee to the TJPA within thirty (30) days following the receipt by such Mortgagee of reasonably detailed evidence of the amount paid by the TJPA. With respect to subpart (x) of the preceding sentence, if such default cannot reasonably be cured within the required period and Mortgagee has commenced the cure within the required cure period and is diligently prosecuting such cure, the cure period shall be such period as is commercially reasonable required to prosecute such cure to completion. If a Mortgagee acquires fee title to the 530 Howard Property at such time when the exterior of the Tower is completed but the Pedestrian

Bridge is not completed in accordance with the provisions of this Agreement, such Mortgagee shall complete the Pedestrian Bridge in accordance with the Construction Agreement. Notwithstanding the foregoing or Section 2.6 of the Construction Easement, if a Mortgagee acquires fee title to the 530 Howard Property at such time when the construction of the Pedestrian Bridge has not commenced, such Mortgagee shall have no obligation to commence or complete construction of the Pedestrian Bridge. If a Mortgagee has given the TJPA written notice of the Mortgagee's interest in the 530 Howard Property, provided the Mortgagee's mailing address, and requested notices that are required to be given under this Agreement, then that Mortgagee shall not be bound by any amendment, modification, or revision of this Agreement entered into after the Mortgagee has given notice to the TJPA without the prior written consent of the Mortgagee, which consent shall not be unreasonably withheld or delayed; provided it will be reasonable for a Mortgagee to refuse to consent to any amendment that could compromise its security interest. Any and all Mortgagees with respect to all or any portion of the 530 Howard Property shall, without limitation, have the benefits of Sections 3 and 12. If a Mortgagee was not provided notice of the Owner's default in accordance with Section 11(d) prior to the date the Mortgagee acquires fee title to the 530 Howard Property, Mortgagee's cure periods under this Section 11(c) shall commence on the date that the TJPA provides written notice of such default to Mortgagee.

(d) Mortgagee Cure Rights. Notwithstanding any other provision in this Agreement for notices of default, each Mortgagee of Developer where Developer is in default hereunder shall be entitled to notice of said default, in the same manner that other notices are required to be given under this Agreement, provided, however, that said Mortgagee shall have, prior to the time of default, notified the TJPA of the Mortgagee's interest in the 530 Howard Property, provided the Mortgagee's mailing address, and requested notices that are required to be given under this Agreement. If any notice shall be given of the default of Developer, the TJPA shall provide a copy of the notice to such Mortgagee (which has previously given the above stated notice of its mailing address to the TJPA) under any Mortgage affecting the 530 Howard Property or portion thereof at the same time that the TJPA gives notice of the default to Developer, that Developer is in default and such Mortgagee shall have (i) thirty (30) days after such notice to cure any such default, or (ii) three (3) days in the event of an immediate and serious danger to person or property. If the TJPA fails to provide the required notice to Mortgagee, then the Mortgagee's period to cure shall not start until the TJPA provides the required notice to Mortgagee. If such default cannot reasonably be cured within the required period, and Mortgagee has commenced the cure within the required cure period and is diligently prosecuting such cure, the cure period shall be such period as is reasonably required to prosecute such cure to completion. If the cure of a default requires possession of all or any part of the 530 Howard Property, and a Mortgagee notifies the TJPA within thirty (30) days after its receipt of the notice of default that it intends to cure the default, then the periods for cure referred to in this Section 11 shall each be extended by the period reasonably necessary for Mortgagee to obtain (i) possession of the 530 Howard Property, (ii) the unconditional permission of Developer to undertake such cure accompanied by the agreement of Developer, satisfactory in all respects to the Mortgagee, that the exercise of such cure shall not affect any of the Mortgagee's rights or remedies under its loan documents, or (iii) a court order granting a right to enter the 530 Howard Property and perform the cure, provided that Mortgagee is pursuing with reasonable diligence such possession, permission, or order and the cure of the default. If Mortgagee has provided the TJPA with a timely notice of its intent to cure, it shall have the right to pursue either (i), (ii), or (iii) at its sole discretion, and shall attempt to obtain such possession, permission, or order as quickly as is reasonably feasible in the circumstances. The

giving of any notice of default or the failure to deliver a copy of such notice of default to any Mortgagee shall in no event create any liability on the part of the TJPA to Developer or Mortgagee for so declaring or failing to declare such breach or default.

(e) Amendments. The TJPA agrees not to unreasonably withhold, condition, or delay its consent to amendments to this Section 11 required by Mortgagees to protect their rights as Mortgagees under this Section 11, provided, however, that such amendments are substantially consistent with the provisions of this Agreement, the Construction Agreement, and the Security Agreement and do not materially diminish the TJPA's rights under this Agreement, the Construction Agreement, or the Security Agreement. Any Amendment to this Agreement shall be subject to Section 28.

(f) Intended Third Party Beneficiary. Each Mortgagee with respect to all or any portion of the 530 Howard Property is an intended third-party beneficiary of the provisions of this Agreement which expressly benefit it and, as an intended third-party beneficiary, shall be entitled to enforce such provisions prior to succeeding to fee title to the 530 Howard Property or any portion thereof under Sections 11(c) and (d). Such Mortgagee, however, is not an intended third-party beneficiary of the provisions of this Agreement other than those which expressly benefit it and shall not be entitled to enforce the provisions of this Agreement other than those which expressly benefit it prior to succeeding to fee title to the 530 Howard Property or any portion thereof.

(g) TJPA Lien. In the event the TJPA obtains a non-consensual lien or other security interest in any portion of the 530 Howard Property as security for collection under a judgment against Developer or otherwise (a "**Non-Consensual Lien**"), such Non-Consensual Lien shall be subject and subordinate to the lien of any Mortgage with respect to all or any portion of the 530 Howard Property which is in effect prior to the date of the Non-Consensual Lien.

## 12. **Defaults and Remedies.**

If any Parcel Owner defaults under any term or provision of this Agreement which is not cured by the defaulting Parcel Owner (i) within thirty (30) days after receipt of written notice thereof from the non-defaulting Parcel Owner, or (ii) within three (3) days after such notice in the event of an immediate and serious danger to person or property (or, in all cases, within such additional period of time as is reasonably necessary in light of the nature of the breach or default and the acts which are necessary to cure such breach or default, provided that the defaulting Parcel Owner commences the cure within the required cure period and thereafter diligently prosecutes such cure to completion), the non-defaulting Parcel Owner shall have any and all rights and remedies available at law or in equity, including without limitation, the right to demand and have specific performance, and the right to actual damages (subject to proof). Except as otherwise provided in this Agreement and subject to the limitations herein, the rights and remedies of the Parties under this Agreement shall be cumulative. The foregoing notwithstanding, neither Parcel Owner shall be liable to the other Parcel Owner for consequential or incidental damages. For elimination of doubt, "consequential or incidental damages" do not include damages awarded for inverse condemnation, where the inverse condemnation claim has not been waived by this Agreement. The provisions of this Section 12 shall be subject to the provisions of Section 16.

### **13. Limitation of Liability.**

No foreclosure of a Mortgage or exercise of a power of sale contained in a Mortgage secured by the 530 Howard Property or portion thereof shall terminate this Agreement or affect any of the rights and obligations of the Parties under this Agreement. No individual director, officer, agent, or employee of Developer or any of its members or Affiliates will be personally liable to the TJPA in an event of default by Developer or for any amount that may become due to the TJPA or on any obligations under the terms of this Agreement. No individual director, officer, official, agent, or employee of the TJPA or its member agencies, including the City, will be personally liable to Developer in an event of default by the TJPA or for any amount that may become due to Developer or on any obligations under the terms of this Agreement.

### **14. Effect of Transfer.**

Direct or indirect interests in the 530 Howard Property or any portion thereof may be freely transferred without the necessity of any consent by the TJPA. Developer shall notify the TJPA of any transfer of fee title to the 530 Howard Property. If an Owner transfers or otherwise conveys (including, without limitation, by way of foreclosure, trustee's sale or otherwise) its entire interest in its Parcel, such Owner shall, as to the other Party, thereupon be released and discharged from any and all obligations as Owner in connection with such Parcel arising under this Agreement with respect to the period after the date of such transfer or conveyance, but shall remain liable for all obligations arising under this Agreement with respect to the period prior to such transfer or conveyance; and the transferee of such Parcel (including, without limitation, any transferee who acquires its interest by foreclosure, trustee's sale or otherwise, regardless of the terms of any promissory note, mortgage, or deed of trust agreement between the Owner and any lender or trustee of a lender) shall assume all rights and obligations with respect to such Parcel under this Agreement with respect to the period of ownership by such transferee, including any ongoing breach that continues following the date of transfer, subject to the limitations of liability and other provisions of this Agreement.

Anything else in this Agreement to the contrary notwithstanding, direct or indirect interests in the Transit Center Property, including the Pedestrian Bridge Easement or any portion thereof may be freely transferred without the necessity of any consent by Developer. The TJPA shall notify Developer of any transfer of fee title to the Transit Center Property. Acceptance of a conveyance of fee simple title to the Transit Center Property shall constitute an assumption by the transferee of all of the surviving rights and obligations of the transferor under this Agreement, as it relates to the property transferred, arising after the date of such transfer, subject to the limitations set forth in this Agreement.

### **15. Force Majeure.**

“Force Majeure” shall mean a matter outside of a Party’s reasonable control that has occurred through no fault of such Party and may include strikes; lockouts; labor disputes; acts of God; inability to obtain services, labor, or materials; government moratoria; civil commotions; riots; acts of criminals; fire or other casualty; and pandemics that cause severe shortages of labor and/or construction materials necessary for construction of improvements under this Agreement. Notwithstanding the foregoing, the following shall be excluded from Force Majeure: (i) the

requirement of any third-party agreement or approval with or by a Party or its Affiliates, contractors, agents, consultants, member agency, employees, officers, or any of the foregoing; (ii) a Party's inability to obtain financing, increases in construction costs, or any changes in market conditions; and (iii) Developer's inability to pay the Enhanced Value required by Section 1 of the Construction Agreement. If an event of Force Majeure occurs, the time or times for performance will be extended for the period of the delay, provided that (A) within thirty (30) days after the beginning of any such delay, the delayed Party shall have first notified the other Party in writing of the cause or causes of such delay and claimed an extension right for Force Majeure, and (B) the delayed Party cannot, through commercially reasonable efforts, make up for the delay.

**16. No Cancellation.**

No default by the TJPA or Developer of any provision of this Agreement shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement or the easements created hereby, but this limitation shall not affect in any manner any other rights or remedies which any Owner may have by reason of any such breach.

**17. Running with the Land.**

It is the intent of the Parties that each and all easements, covenants, conditions, and restrictions set forth in this Agreement are for the mutual benefit of each of the Parcels and every portion of each thereof. Each and all of the easements, covenants, obligations, conditions, and restrictions set forth in this Agreement, including the Construction Agreement and Security Agreement, touches and concerns and shall affect, relate to, and run with the land of each of the Parcels and every portion of each thereof, and shall apply to and bind the respective successor Owners of each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, obligations, conditions, and restrictions set forth in this Agreement are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests in the Parcels and constitute covenants running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California. Moreover, in conjunction with any sale or transfer of title to any part of the 530 Howard Property, Developer shall assign its rights and obligations under the Construction Agreement and Security Agreement to the transferee and require that the transferee assign its rights and obligations under the Construction Agreement and Security Agreement to any and all subsequent transferees of title. Notwithstanding the foregoing, if, under Section 1(f), the 530 Howard Property is subdivided into condominiums or vertical sub-parcels, the 530 Howard Property is subject to a Declaration establishing an Association, and fee title to any portion of The 530 Howard Property that is benefited or burdened by this Agreement is transferred to the Association, no individual Condominium Owners or Sub-Parcel Owners shall have rights or obligations under this Agreement, and the Association shall be an Owner with rights and obligations under this Agreement.

**18. Notices.**

(a) Addresses for Notices. A notice or communication under this Agreement by either Party to the other shall be sufficiently given or delivered if given by email (provided that a copy of the notice is sent by one of the other methods of notice permitted hereunder), or if dispatched by registered or certified mail, postage prepaid, return receipt requested or reputable overnight courier service, and is addressed as follows:

To TJPA. In the case of a notice or communication to the TJPA:

Transbay Joint Powers Authority  
Salesforce Transit Center  
425 Mission Street, Suite 250  
San Francisco, CA 94105  
Attn: Executive Director Adam Van de Water  
Telephone: (415) 597-4614  
Email: [avandewater@tjpa.org](mailto:avandewater@tjpa.org)

With a copy to:

Shute, Mihaly & Weinberger LLP  
396 Hayes Street  
San Francisco, CA 94102  
Attn: Andrew W. Schwartz  
Telephone: (415) 259-8607  
Email: [schwartz@smwlaw.com](mailto:schwartz@smwlaw.com)

To Developer. And in the case of a notice or communication sent to Developer:

524 Howard Street, LLC  
575 Sutter Street, Suite 300  
San Francisco, CA 94102  
Attn: Cindy Nguyen  
Telephone: (415) 858-6388  
Email: [cindy@ahkgroup.co](mailto:cindy@ahkgroup.co)

Bayhill Ventures  
530 Howard Street, 4<sup>th</sup> Floor  
San Francisco, CA 94105  
Attn: Paul Paradis  
Telephone: (415) 793-7060  
Email: [paul@bayhill-ventures.com](mailto:paul@bayhill-ventures.com)

With a copy to:

James Abrams

J. Abrams Law, P.C.  
538 Hayes Street  
San Francisco, CA 94102  
Telephone: (415) 999-4402  
Email: [jabrams@jabramslaw.com](mailto:jabrams@jabramslaw.com)

(b) Contents of Notice. Every notice given to a Party under the terms of this Agreement must state (or must be accompanied by a cover letter that states) substantially the following:

(i) the Section of this Agreement under which the notice is given, and the action or response required, if any;

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

(iii) if approval is being requested, shall be clearly marked “Request for Approval under the 530 Howard Pedestrian Bridge Easement Agreement”; and

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

(c) Change of Address. 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 before the effective date of the change.

(d) Effective Date of Notices. All notices under this Agreement shall be deemed given, received, made, or communicated if mailed or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt, or, if by email, the date upon which the notice was actually sent by email.

## **19. Estoppel Certificates.**

Each Party, within thirty (30) days after written request of any other Party or any Mortgagee, shall issue to such other Party or to any prospective Mortgagee or transferee of such Party’s interest in any Parcel, or (with respect to Developer) any lender secured by a pledge of a direct or indirect interest in Developer, an estoppel certificate stating: (i) whether the Party to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) in the case of an estoppel certificate requested from the TJPA, whether, to the TJPA’s knowledge, Developer has completed its obligations under Sections 2 and 4, and if any such obligation has not been completed, specifying the obligation which has not been completed; (iii) whether, to the knowledge of the Party to whom the request has been directed, this Agreement has been modified or amended in any way, and if it has been so modified or amended, stating the nature of such modification or amendment; and (iv) whether to the knowledge of the Party to whom the request has been directed, this Agreement is in full force and effect as of the date of the estoppel certificate.

## 20. Effective Date.

This Agreement shall not become effective and binding upon the Parties, and shall not be recorded, until (a) both Parties have signed this Agreement, the Construction Agreement, the Escrow Agreement, the Reimbursement Agreement, the Security Agreement, the 530 Howard Security Agreement Exhibits Confidentiality Agreement entered by the Parties on [REDACTED], 2024, to maintain the confidentiality of the Exhibits to the Security Agreement, and (b) Chicago Title Insurance Company has issued to the TJPA, or its nominee, an ALTA policy of title insurance (“**Title Policy**”), the cost of which has been paid by Developer, insuring the TJPA’s interest under this Agreement, which Title Policy shall confirm that any and all Mortgages, liens, and other encumbrances of any type affecting the 530 Howard Property other than those approved in writing by the TJPA (collectively, “**Encumbrances**”) have been subordinated to this Agreement in substantially the form as Exhibit D. Notwithstanding any provision to the contrary in this Agreement, the easements granted to Developer under Section 3 of this Agreement shall not become effective unless (i) Developer has paid all TJPA Costs (as defined in the Construction Agreement) that have been properly billed in accordance with the Escrow Agreement, (ii) Developer has paid all of the TJPA Air Space Conveyance Costs that have been properly billed in accordance with the Reimbursement Agreement, (iii) Developer has paid the Enhanced Value to the TJPA required by Section 1 of the Construction Agreement, and (iv) Developer has met the other conditions for effectiveness set forth in this Agreement. Upon satisfaction of conditions (i) and (ii), this Agreement shall become binding, and the Parties shall record this Agreement in the Official Records of the City and County of San Francisco (“Effective Date”).

## 21. Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction or under any circumstance shall as to such jurisdiction or circumstance be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provision in any other jurisdiction or under any other circumstances; provided, however that if the requirement that Developer pay the Enhanced Value to the TJPA under Section 1 of the Construction Agreement is found to be prohibited or unenforceable and Developer fails to pay the Enhanced Value to the TJPA before the City’s issuance of the first construction document for the Project, the TJPA may elect to terminate this Agreement.

## 22. Non-Waiver.

Any waiver under this Agreement must be in writing and signed by the waiving party. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.

## 23. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of California. The TJPA and Developer agree that all actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California, and Developer and the TJPA agree that any service of process in

such action or proceeding may be made by personal service upon the other wherever the other may then be located, or by certified or registered mail directed to the party at the address set forth in this Agreement.

**24. Attorneys' Fees.**

In any court action to enforce the terms of this Agreement or to determine the meaning or interpretation of any provision of this Agreement, the prevailing Party shall be entitled to an award of its reasonable attorneys' fees and costs to be paid by the non-prevailing Party. Any such attorneys' fees and costs incurred by either Party in enforcing a judgment in its favor under this Agreement shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees and costs obligation is not to be merged into any such judgment. For purposes of this Agreement, the reasonable fees of attorneys for the TJPA shall be based on the fees regularly charged by private attorneys with the equivalent number of years of experience in the subject matter area of the law for which the TJPA's attorneys' services were rendered who practice in the City of San Francisco, notwithstanding the TJPA's use of its own attorneys or the City Attorney. As used in this Agreement, "**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, exhibit preparation, courier, postage, facsimile, long-distance and communications expenses, court costs and the costs and fees arising as a result of any other legal, administrative or alternative dispute resolution proceeding, fees and costs associated with execution upon any judgment or order, and costs on appeal.

**25. Not a Public Dedication.**

Nothing contained in this Agreement shall be deemed to be a gift, dedication, or offer of dedication of, or be deemed to create an easement or other real property interest with respect to, any portion of or interest in any of the Parcels to members of the general public or for the benefit of members of the general public, and this Agreement shall be strictly limited to and for the purposes expressed herein. No implied dedication shall arise from any use of the areas subject to the easements granted in this Agreement, whether or not such use is consistent with the provisions of this Agreement. The Parties may post such notices as are required by applicable law (including under Section 1008 of the California Civil Code) to prevent any portion of the 530 Howard Property or the Transit Center Property to become subject to a prescriptive easement.

**26. No Rights to the 530 Howard Property Project.**

Without limiting any provision of the Construction Agreement or Security Agreement, nothing in this Agreement shall be deemed to grant or to imply any licenses, easements, right of access or other rights or interests of any kind in favor of the TJPA, any other Person (including but not limited to any member of the general public) in the Tower, the Project, or the 530 Howard Property, or any part thereof, other than the easements herein granted with respect to the Pedestrian Bridge.

**27. No Third-Party Beneficiaries or Duties.**

Except as provided in Section 11(f), this Agreement is for the exclusive benefit of the Parties and not for the benefit of any other Person (including but not limited to any member of the general public) and shall not be deemed to have conferred any rights, express or implied, upon any other Person. Nothing in this Agreement shall be deemed or construed to create any duty or liability to any third party or to describe any standard of care owed to any third party.

## **28. Amendments.**

This Agreement may be amended, extended, supplemented, changed, or revoked only by the written agreement of all Parties (and, to the extent specified herein, any Mortgagee), which amendment, extension, supplement, change, or revocation shall be effective and binding upon the whole of the Parcels upon the recordation of same in the Official Records of the City and County of San Francisco. If the 530 Howard Property or the Transit Center Property is divided, then this Agreement may be modified as it relates to the affected portions of the Parcels by the Parties that own the affected Parcels. At the TJPA's election, any amendment to this Agreement shall not become effective and no rights or obligations shall arise under the Amendment to this Agreement unless all Encumbrances (as defined in Section 20) that are directly or indirectly inconsistent with the provisions of this Agreement or that in any way diminish the TJPA's rights under this Agreement are subordinated to the amendment. Under no circumstances shall this Agreement be subordinated to any mortgage or lien and the TJPA shall be deemed in good faith if it refuses to subordinate this Agreement to any mortgage or lien.

## **29. Entire Agreement.**

This Agreement (including the Exhibits), the Construction Agreement, the Security Agreement, the Security Agreement Exhibits Confidentiality Agreement, the Escrow Agreement, and the Reimbursement Agreement contain the entire agreement between the Parties with respect to the subject matter of this Agreement and may not be contradicted by evidence of any prior or contemporaneous oral or written agreements or understandings. Any prior correspondence, memoranda, agreements, warranties, or representations relating to such subject matter are superseded in total by this Agreement. No prior drafts of this Agreement or changes from those drafts to the executed version of this Agreement shall be introduced as evidence in any litigation or other dispute resolution proceeding by either Party or any other Person and no court or other body shall consider those drafts in interpreting this Agreement.

## **30. Interpretation of Agreement.**

(a) Exhibits. Whenever an “**Exhibit**” is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Exhibits are incorporated herein by reference. In the event of any conflict or inconsistency between the exhibits and any of the provisions of this Agreement, the provisions of this Agreement shall prevail.

(b) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the articles and sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

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

(d) References. Wherever reference is made to any provision, term, or matter “in this Agreement,” “herein” or “hereof,” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered section or paragraph of this Agreement or any specific subdivision thereof.

(e) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(f) No Presumption against Drafter. This Agreement has been negotiated at arm’s length and between Persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement.

### **31. Relationship of the Parties.**

The subject of this Agreement is a private development with neither Party acting as the agent of the other Party in any respect. None of the provisions in this Agreement shall be deemed to render the TJPA a partner in Developer’s business, or joint venturer, or member in any joint enterprise with Developer.

### **32. Compliance with Laws.**

Each Party and their respective representatives shall conduct all activities within the easements granted in this Agreement (“**Easement Areas**”) in a safe, prudent, and professional manner in accordance with commercially reasonable construction practices. Each Party and its respective representatives shall, with respect to any work conducted in the Easement Areas, promptly comply with (a) all laws, statutes, ordinances, codes, rules, regulations, requirements, or orders or municipal, state, and federal authorities now in force or that may later be in force, including, but not limited to, those relating to the generation, use, storage, handling, treatment, transportation, or disposal of Hazardous Materials (as defined below); (b) the conditions of any permit, occupancy certificate, license, or other approval issued by public officers; and (c) any lien, encumbrance, easement, covenant, condition, restriction, and servitude (if any) of record, or of which the Party has notice.

“**Hazardous Materials**” shall mean any material that, because of its quantity, concentration, or physical or chemical characteristics, is deemed by any federal, state, or local governmental authority to pose a present or potential hazard to human health or safety or to the

environment. Hazardous Material includes, without limitation, any material or substance defined as a “hazardous substance,” “pollutant,” or “contaminant” under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (“CERCLA,” also commonly known as the “Superfund” law), as amended (42 U.S.C. Section 9601 et seq.), or under Section 25281 or 25316 of the California Health & Safety Code; any “hazardous waste” listed under Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials, whether or not such materials are part of the structure of improvements or are naturally occurring substances on or about real property; petroleum, including crude oil or any fraction thereof, natural gas, or natural gas liquids; and “source,” “special nuclear” and “by-product” material as defined in the Atomic Energy Act of 1985, 42 U.S.C. Section 3011 et seq.

### 33. Waiver of Claims.

Developer, for itself, its successors and assigns, hereby waives, releases, remises, acquits, and forever discharges the TJPA Parties of and from any and all rights, claims, losses, injuries, costs, damages, causes of action, demands, rights, expenses, penalties, fines, or compensation whatsoever, direct or indirect (“**Claims**”), including diminution in the value of personal or real property, which Developer now has or which Developer may have in the future against a TJPA Party, for damage of any type to the 530 Howard Property or the Project for inverse condemnation, including claims and losses related to noise, vibration, fumes, or lighting, or the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, alteration, safety, or security of (a) the Initial Pedestrian Bridge, (b) a Reconstructed Pedestrian Bridge, and (c) the improvements constructed by the TJPA on the Transit Center Property that structurally support those portions of the Initial Pedestrian Bridge that connect to the Transit Center. Notwithstanding anything in this Section 33 to the contrary, in no event is Developer waiving or releasing any Claims that Developer may have in the future for the TJPA’s negligence or willful misconduct arising from the TJPA’s use of the TJPA Easement granted under Section 3(a), or to the extent they arise from the material replacement, alteration, modification, reconstruction, or demolition (collectively, “**Alteration**”) of any structural element of the improvements constructed by the TJPA on the Transit Center Property that structurally support those portions of the Initial Pedestrian Bridge that connect to the Transit Center, where such Alteration occurs after the construction of the Initial Pedestrian Bridge (a “**TJPA Pedestrian Bridge Modification**”), except to the extent that the TJPA Pedestrian Bridge Modification is required to repair or maintain the Pedestrian Bridge damaged by the construction of the Project or other construction on the 530 Howard Property.

This waiver and release is a general release. Developer is aware of California Civil Code Section 1542, which reads as follows:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

To give full force and effect to the above general release, Developer hereby expressly, knowingly, and voluntarily waives all the rights and benefits of Section 1542 and any other similar

law of any jurisdiction. By placing its initials below, Developer specifically acknowledges and confirms the validity of the release made above and the fact that Developer was represented by counsel who explained, at the time this Agreement was made, the consequences of the above releases.

  
Developer's initials

### **34. Notification of Limitations on Contributions**

Through its execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of the Campaign and Governmental Conduct Code of the City's Municipal Code, which prohibits any person who contracts with the City or the TJPA for the selling or leasing of any land or building to or from the City or the TJPA, whenever such transaction would require approval by a board on which a City elective officer or member of the TJPA Board sits, from making any campaign contribution to the City elective officer or a member of the TJPA Board at any time from the submission of a proposal for such contract until either (i) the termination of negotiations for such contract, or (ii) twelve (12) months has elapsed from the date the contract is approved by the City or the TJPA.

San Francisco Ethics Commission Regulation 1.126-1(h) provides that a contract is submitted as to the City or the TJPA as follows:

1. A contract is submitted to each member of the Board of Supervisors when a resolution to approve the contract is introduced at the Board of Supervisors.
2. A contract approved by the Board of Supervisors is submitted to the Mayor upon adoption of a resolution approving the contract by the Board of Supervisors.
3. A contract is submitted to any other individual holding City elective office when the individual is informed that negotiations for the contract have commenced, or the individual's office receives a copy of the contract for the individual's review or approval.

A communication informing a City elective officer that negotiations for a contract have commenced may occur in person, by telephone, or in writing, and may be initiated by the prospective contractor or a City elective officer or a TJPA Board member. Negotiations are completed when a contract is finalized and signed by the City and/or TJPA and the contractor. Negotiations are terminated when the City and/or the TJPA and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

### **35. Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but any number of which, taken together, shall constitute one and the same instrument.

**[NO FURTHER TEXT ON THIS PAGE]**

IN WITNESS WHEREOF, this Agreement has been executed by Developer and the TJPA as of the day and year first above written.

**524 HOWARD STREET, LLC**

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

**TRANSBAY JOINT POWERS AUTHORITY**

By: \_\_\_\_\_  
Name: Adam Van de Water  
Title: Executive Director

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Name: Andrew W. Schwartz  
Title: Counsel for the TJPA

**DRAFT**

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_)

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

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, 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.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of \_\_\_\_\_)

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

On \_\_\_\_\_, 2022, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, 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.

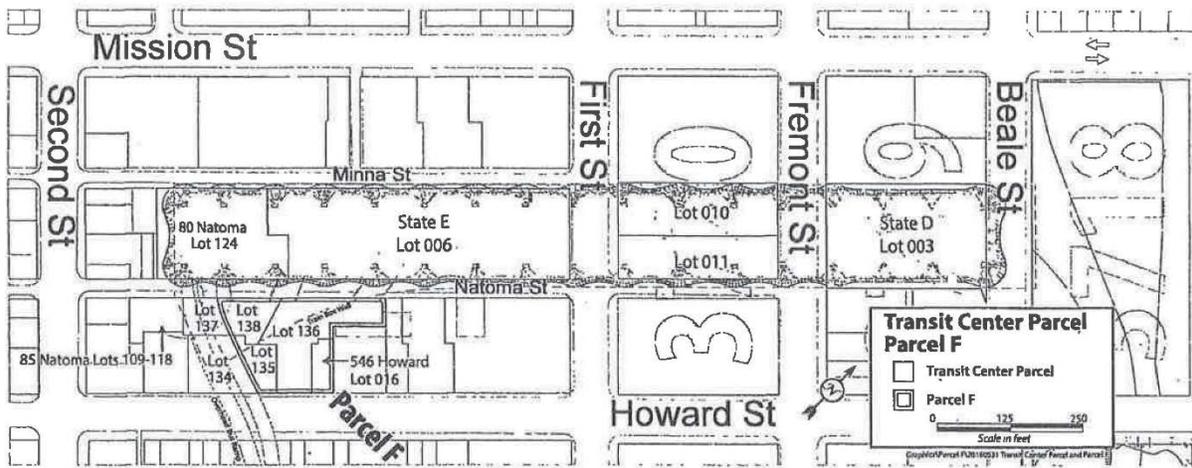
I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature \_\_\_\_\_ (Seal)

**EXHIBIT A**

**Depiction of Transit Center Property**



**DRAFT**

**EXHIBIT B**

**Site Plan for the Project**

**DRAFT**

**EXHIBIT C**

**Description of Vacated Air Space**

**DRAFT**

**EXHIBIT D****530 HOWARD SUBORDINATION AGREEMENT**

THIS 530 HOWARD SUBORDINATION AGREEMENT (“**Agreement**”) is made and entered into as of \_\_\_\_\_, 2024 by \_\_\_\_\_, a national banking association, (“**Bank**” or “**Party**”) for the benefit of the Transbay Joint Powers Authority, a California joint powers agency (“**TJPA**” or “**Party**”).

**RECITALS**

AGREEMENT IS MADE WITH REFERENCE TO THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The TJPA is responsible for implementing the Transbay Transit Center Program, which includes, among other things, (i) on the site of the former Transbay Terminal, the construction of a new Transit Center building (“**Transit Center**”), including a park on the roof of the Transit Center (“**Rooftop Park**”), (ii) a rail tunnel and rail systems to extend Caltrain service from Fourth and King Streets to the Transit Center and to accommodate California High Speed Rail trains in the future, (iii) a new underground Fourth and Townsend Street Caltrain Station, (iv) modifications to the existing surface station at Fourth and King Streets, (v) a temporary bus terminal, (vi) a bus ramp connecting the Bay Bridge to the Transit Center, and (vii) permanent bus storage facilities. The Transit Center is situated on real property owned by the TJPA and generally located at 425 Mission Street, San Francisco, California (Assessor’s Block 3720, Lots 10 and 11; Block 3721, Lots 6 and 124; and Block 3719, Lot 3) (“**Transit Center Property**”).

B. 524 Howard Street, LLC (“**Developer**”) is the owner of that certain real property at 524-530 Howard Street located across Natoma Street from the Transit Center Property fronting on Natoma and Howard Streets in San Francisco, California (Assessor’s Block 3721, Lots 13 and 14) (“**530 Howard Property**”). The Transit Center Property and 530 Howard Property are each individually referred to in this Agreement as a “**Parcel**” and are collectively referred to in this Agreement as the “**Parcels**.”

C. Developer intends to develop and construct on the 530 Howard Property (i) a high-rise building (“**Tower**”), and (ii) a pedestrian bridge spanning Natoma Street and connecting the Tower to the Rooftop Park (“**Pedestrian Bridge**”) (the Tower, Pedestrian Bridge, and other improvements constructed on the 530 Howard Property, collectively, “**Project**”).

D. The TJPA and Developer have entered into an agreement setting forth the rights and responsibilities of Developer and the TJPA for the design, installation, construction, operation, use, inspection, maintenance, management, replacement, repair, alteration, safety, and security of the Pedestrian Bridge (“**Pedestrian Bridge Agreement**”).

E. On June 20, 2016, the Bank loaned a principal amount of \$\_\_\_\_\_ to Developer for construction of the Project (“**Promissory Note**”) which debt is secured by a Deed of Trust recorded against the 530 Howard Property on \_\_\_\_\_, Document No.

\_\_\_\_\_ of the Official Records of the County of San Francisco, California (“**Deed of Trust**”).

F. The TJPA and Developer have agreed in the Pedestrian Bridge Agreement that the Deed of Trust shall be subordinated to the Pedestrian Bridge Agreement and that the Pedestrian Bridge Agreement shall not be effective until the recording of this Agreement. The Parties intend to record the Pedestrian Bridge Agreement concurrently with the recording of this Agreement.

ACCORDINGLY, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Bank agrees as set forth below.

## AGREEMENT

### 1. Agreement to subordinate Deed of Trust

#### 1.1 Subordination

The Deed of Trust is hereby and shall at all times continue to be subject to and unconditionally subordinate in all respects to the covenants, conditions, terms, and liens of the Pedestrian Bridge Agreement and any rights, privileges, powers, and interests of the TJPA arising under the Pedestrian Bridge Agreement and to any renewals, extension, modifications, amendments, assignments, replacements, or consolidations thereof agreed to in writing by Developer.

#### 1.2 Subordination of Subrogation Rights

Bank agrees that if, by reason of their payment of real estate taxes or other monetary obligations of Developer, or by reason of its exercise of any other right or remedy under the Deed of Trust, it acquires by right of subrogation or otherwise a lien on the 530 Howard Property which (but for this subsection) would be senior to the Pedestrian Bridge Agreement, then, in that event, such lien shall be subject and subordinate to the Pedestrian Bridge Agreement.

#### 1.3 Non-Disturbance

In the event of Developer’s default of its obligations under the Promissory Note and Bank’s foreclosure or private sale under a Security Document or conveyance in lieu of foreclosure, the Bank agrees that the TJPA shall not be named as a party therein unless such joinder shall be required by law, provided, however, that such joinder shall not result in the disturbance of the rights, privileges, powers, and interests of the TJPA under the Pedestrian Bridge Agreement, and the sale of the 530 Howard Property in any such action or proceeding and the exercise by Bank of any of its other rights under the Deed of Trust shall be subject to the subordination provisions of this Agreement.

#### 1.4 Further Documents

The foregoing provision shall be self-operative and effective without the execution of any further instruments on the part of any Party.

## 2. Representations and Warranties

### 2.1 Bank's Representations and Warranties

The Bank represents and warrants to the TJPA that, to the Bank's actual knowledge, as of the Effective Date:

(a) Authority. The Bank has all requisite power and authority to execute and deliver this Agreement and carry out and perform all the terms and covenants of this Agreement. Persons signing this Agreement for the Bank have all requisite power and legal authority to do so.

(b) Valid Existence; Good Standing; Joint Venture Relationships. The Bank is a national bank duly organized and validly existing under the laws of the jurisdiction under which it was formed.

(c) No Limitation on Ability to Perform. There is no operating agreement, organization document, or any other agreement or law that in any way prohibits, limits, or otherwise affects the right or power of the Bank to enter and perform all the terms and covenants of this Agreement. No consent, authorization, or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person or entity is required for the due execution, delivery, and performance by the Bank of this Agreement or any of the terms and covenants contained in this Agreement.

(d) Valid Execution. The execution and delivery of this Agreement by the Bank has been duly and validly authorized by all necessary action. This Agreement is a legal, valid, and binding obligation of the Bank.

### 2.2 Continued Accuracy

If at any time prior to the Effective Date any event or circumstance occurs that would render inaccurate or misleading in any material respect any of the foregoing representations or warranties, the Party making the representation shall immediately notify the other Party thereof.

## 3. General Provisions

### 3.1 Severability

If any provision of this Agreement, or its application to any person or circumstance, is held invalid by any court, the invalidity or inapplicability of such provision shall not affect any other provision of this Agreement or the application of such provision to any other person or circumstance, and the remaining portions of this Agreement shall continue in full force and effect, unless enforcement of this Agreement as so modified by and in response to such invalidation would be unreasonable or grossly inequitable under all of the circumstances or would frustrate the fundamental purposes of this Agreement.

### 3.2 Governing Law

This Agreement shall be governed by and construed in accordance with the laws of the State of California. All actions or proceedings arising directly or indirectly under this Agreement shall be litigated in courts located within the County of San Francisco, State of California, United States and the Parties expressly consent to the jurisdiction of any such local, state, or federal court, and consent that any service of process in such action or proceeding may be made by personal service on the Parties wherever they may be located, or by certified or registered mail directed to the Party at the address set forth in this Agreement.

### 3.3 Interpretation of Agreement

(a) Captions. Whenever a section, article, or paragraph is referenced, it refers to this Agreement unless otherwise specifically identified. The captions preceding the Sections of this Agreement have been inserted for convenience of reference only. Such captions shall not define or limit the scope or intent of any provision of this Agreement.

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

(c) References. Wherever reference is made to any provision, term, or matter “in this Agreement,” “herein” or “hereof” or words of similar import, the reference shall be deemed to refer to any and all provisions of this Agreement reasonably related thereto in the context of such reference, unless such reference refers solely to a specific numbered or lettered, Section or paragraph of this Agreement or any specific subdivision thereof.

(d) Recitals. In the event of any conflict or inconsistency between the recitals and any of the remaining provisions of this Agreement, the remaining provisions of this Agreement shall prevail.

(e) No Presumption against Drafter. This Agreement has been negotiated at arm’s length and between persons sophisticated and knowledgeable in the matters dealt with herein. In addition, each Party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the Party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purposes of the Parties and this Agreement.

### 3.4 Counterparts

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

### 3.5 Effective Date

This Agreement shall be effective on the date on which this Agreement is recorded in the official records of the County of San Francisco, California (the “Effective Date”).

By: [name of bank]

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

DRAFT



