

Free Recording Requested Pursuant to Government
Code Section 27383 at the Request of the Successor Agency to
the Redevelopment Agency of the City and County of San
Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the
City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Transbay Redevelopment Project Area

Assessor's Block 3718, Lot 12 and Portions of Lots 025 and 027 Space Above This Line Reserved for Recorder's Use
Commonly known as Transbay Block 5

**OWNER PARTICIPATION/
DISPOSITION AND DEVELOPMENT AGREEMENT**

by and between

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

and

MA West LLC, a Delaware limited liability company

FOR THE SALE AND DEVELOPMENT OF TRANSBAY BLOCK 5
(ASSESSOR'S BLOCK 3718, LOT 012 AND PORTIONS OF LOTS 025 and 027)

Dated as of June 16, 2015

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**OWNER PARTICIPATION/
DISPOSITION AND DEVELOPMENT AGREEMENT**

THIS OWNER PARTICIPATION/DISPOSITION AND DEVELOPMENT AGREEMENT (“**Agreement**” or “**OP/DDA**”) is entered into as of June 16, 2015, by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body organized and existing under the laws of the State of California, commonly known as the Office of Community Investment and Infrastructure (“**Successor Agency**” or “**OCII**”), and MA West LLC (“**MA West**” or “**Developer**”), a Delaware limited liability company and joint venture between affiliates of Golub Real Estate Corp. (“**Golub**”), an Illinois corporation, and The John Buck Company (“**John Buck**”), a Delaware limited liability company (collectively, “**Parties**”). The Parties agree as follows:

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco (“**Former Agency**”) undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“**Project Area**”).

B. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”), approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006 (“**Redevelopment Plan**”). The Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (“**Official Records**”).

C. The Redevelopment Plan establishes the land use controls that the Successor Agency applies in the Project Area. The Redevelopment Plan divides the Project Area into two subareas: Zone One in which the Redevelopment Plan and the Development Controls and Design Guidelines for the Transbay Redevelopment Project (2005) define land uses, and Zone Two in which the San Francisco Planning Code applies. The Successor Agency solely administers and enforces land use entitlements for property and projects in Zone One and has delegated its authority over projects that do not require Agency action in Zone Two to the San Francisco Planning Department pursuant to that certain Delegation Agreement between the San Francisco Redevelopment Agency and the Planning Department for the Transbay Redevelopment Project Area (May 3, 2005).

D. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (“**Project Area Declaration of Restrictions**”).

E. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (“**Pledge Agreement**”) between the Former Agency, the Transbay Joint Powers Authority (“**TJPA**”), and the City and County of San Francisco (“**City**”), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (“**State**”) has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center. The current or formerly State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M and T.

F. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“**Caltrans**”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (“**Cooperative Agreement**”). Also in 2003, the California Legislature enacted Assembly Bill No. 812 (Statutes 2003, chapter 99), codified at Cal. Public Resources Code § 5027.1 (“**AB 812**”), which required that thirty-five percent (35%) of new housing developed in the Project Area shall be affordable to low- and moderate-income households. In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which requires the Successor Agency to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations. (The AB 812 housing obligation, as incorporated into the Implementation Agreement is referred to as the “Transbay Affordable Housing Obligation.”) Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (as amended, “**Option Agreement**”), which sets forth the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels to private developers; in 2015, the TJPA, the City and the Successor Agency entered into a first amendment to the Option Agreement.

G. On January 1, 2010, the TJPA entered into a Transportation Infrastructure Finance and Innovation Act Loan Agreement (as amended, “**TIFIA Loan**”) with the United States Department of Transportation (“**USDOT**”), which pledges certain property tax increment revenue attributable to certain State-owned parcels (“**Net Tax Increment**”) as security for the payment of a loan under the federal TIFIA program for the Transbay Transit Center project; in 2014, the TJPA and the TIFIA Loan lender entered into two amendments to the TIFIA Loan. On January 22, 2015, the TJPA entered into an interim financing with Goldman Sachs Bank USA and Wells Fargo Bank, National Association on parity with the TIFIA Loan and secured, in part, by the Net Tax Increment.

H. On February 1, 2012, the Former Agency was dissolved pursuant to the provisions of California State Assembly Bill No. 1X 26 (Chapter 5, Statutes of 2011-12, First Extraordinary Session) (“**AB 26**”), codified in relevant part in California’s Health and Safety Code Sections 34161 – 34168 and upheld by the California Supreme Court in California Redevelopment Assoc. v. Matosantos, No. S194861 (Dec. 29, 2011). On June 27, 2012, AB 26 was subsequently amended in part by California State Assembly Bill No. 1484 (Chapter 26, Statutes of 2011-12) (“**AB 1484**”). (Together, AB 26 and AB 1484, as amended from time to time, are referred to as “**Redevelopment Dissolution Law**.”)

I. Pursuant to Redevelopment Dissolution Law, all of the Former Agency’s assets (other than specified housing assets) and obligations were transferred to OCII. Some of the Former Agency’s housing assets, related to projects that were either completed or had no continuing enforceable obligation, were transferred to the City. The Redevelopment Plan, Development Controls (defined below), and other relevant Project Area documents remain in effect and OCII retains all affordable housing obligations in the Project Area. Under the Redevelopment Plan, the Board of Supervisors holds a public hearing and approves the sale or lease of certain properties acquired under the Option Agreement consistent with the standard of review in California Health & Safety Code Section 33433.

J. Under Redevelopment Dissolution Law, with approval from a successor agency’s oversight board and the State of California’s Department of Finance (“**DOF**”), a successor agency may continue to implement “enforceable obligations”—existing contracts, bonds, leases, etc.—which were in place prior to the suspension of redevelopment agencies’ activities on June 28, 2011, the date that AB 26 was approved. Redevelopment Dissolution Law defines “enforceable obligations” to include bonds, loans, judgments or settlements, and any “legally binding and enforceable agreement or contract that is not otherwise void as violating the debt limit or public policy,” (Cal. Health & Safety Code § 34171(d)(1)(E)) as well as certain other obligations, including but not limited to requirements of state law and agreements

made in reliance on pre-existing enforceable obligations. The Implementation Agreement, Pledge Agreement and Option Agreement meet the definition of “enforceable obligations” under Redevelopment Dissolution Law.

K. AB 1484 authorizes successor agencies to enter into new agreements if they are “in compliance with an enforceable obligation that existed prior to June 28, 2011.” Cal. Health & Safety Code § 34177.5(a). Under this limited authority, a successor agency may enter into contracts, such as this OP/DDA, if a pre-existing enforceable obligation requires that action. See Cal. Health & Safety Code § 34167(f) (providing that Redevelopment Dissolution Law does not interfere with an agency’s authority under enforceable obligations to “enforce existing covenants and obligations, or . . . perform its obligation.”). This Agreement, providing for the transfer of certain formerly State-owned parcels to third parties, with the payment of the proceeds to the TJPA, is part of the Successor Agency’s compliance with the pre-existing enforceable obligations under the Implementation Agreement and Option Agreement.

L. On April 15, 2013, DOF issued a Final and Conclusive Determination for the Pledge Agreement, the Implementation Agreement, and the Transbay Affordable Housing Obligation. A copy of DOF’s Transbay Final and Conclusive Determination is attached as Attachment 1. On September 9 2013, DOF confirmed its Final and Conclusive Determination and stated that “any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized.” Email, J. Howard, DOF Assistant Program Budget Manger, to T. Bohee, OCII Executive Director.

M. On April 2, 2014, the Successor Agency complied with its obligations under the Implementation Agreement by issuing a Request for Proposals (“**RFP**”) from development teams to design and develop a 550-foot-tall office tower (“**Block 5 Tower**”) and public open space on and adjacent to the property in the Project Area commonly known as Transbay Block 5. Block 5 is comprised of portions of Assessor’s Block 3718, Lots 025 and 027. The component of Block 5 that is the site of the Block 5 Tower, also known as “**Parcel N1**” or the “**Public Parcel**,” is shown on the Current Site Configuration attached as Attachment 3-A and is more particularly described in Attachment 4-A. Parcel N1 is an approximately 26,300-square-foot parcel on Howard and Beale Streets, adjacent to the future Transbay Transit Center. Parcel N1 will be conveyed from the TJPA to OCII pursuant to the Option Agreement, and then conveyed to Developer, in accordance with this Agreement. “**Parcel M1**” and “**Parcel N3**”, as shown on Attachment 3-A, are owned by the TJPA and will be made available to the Developer for construction and maintenance of a portion of the required open space pursuant to an agreement with the TJPA; in addition, some or all of the required open space may be relocated to other parcels, as provided in this Agreement. The RFP acknowledged that, although the Redevelopment Plan and supporting documents assumed the entire block between Natoma, Howard, Beale, and Main Streets would be assembled and sold for development, a portion of the block was privately owned and not available for development under the RFP.

N. Four proposals were received and deemed to meet the minimum threshold requirements defined in the RFP. Based on evaluation of the written proposals, as well as interviews with each team, the proposal from the Developer was scored the highest by a selection panel comprised of OCII staff, City staff, a TJPA appointee, and a member of the Transbay Citizens Advisory Committee. This proposal included a purchase price of \$172,500,000, payable at the transfer of title of Parcel N1 to the Developer. The purchase price is to be paid into the trust account (“**Trust Account**”), established by the TJPA, which complies with Section III, Subsection G of the Cooperative Agreement, the Director’s Deeds by which the State deeded certain parcels of which Parcel N1 is a part to the TJPA (“**Parcel N**”) and to the City (“**Parcel N**”), and the Quitclaim Deed by which the City deeded Parcel N’ to the TJPA.

O. On September 12, 2014, the Commission on Community Investment and Infrastructure (“**Commission**”) unanimously approved by Resolution No. 79-2014 an Exclusive Negotiation Agreement (“**ENA**”) between the Developer and the Successor Agency, which became effective on September 12,

2014 and which terminated (with the exception of surviving provisions) upon the mutual execution of this Agreement.

P. Subsequent to approval of the ENA by the Commission, the Developer entered into a purchase agreement to acquire fee title to an approximately 2,635-square-foot site on the corner of Howard and Beale Streets comprised of Lot 12 of Assessor's Block 3718 ("**Private Parcel**"). The Public Parcel and the Private Parcel are together referred to as the "**Site**."

Q. The owners of private property may participate in the redevelopment of property in the Project Area under the Rules Governing Participation by Property Owners, adopted by Redevelopment Agency Resolution No. 17-2005 (Jan. 25, 2005) (the "**Owner Participation Rules**"). The Owner Participation Rules require that the owners of private property agree to conform with the Redevelopment Plan and provide that certain individual parcels should be aggregated to create efficient and marketable parcels to accomplish the purposes of, and conform to, the Redevelopment Plan.

R. In furtherance of the Redevelopment Plan, the Successor Agency has prepared and Developer has agreed to execute a Declaration of Site Restriction covering the Site to be recorded in the City's Official Records at Close of Escrow (the "**Declaration of Restrictions**"), a copy of which is attached as Attachment 14.

S. The development program for the Site, as described below, requires an amendment to the Redevelopment Plan ("**Plan Amendment**") to provide bulk controls that are appropriate for a commercial office building and consistent with the San Francisco Planning Code, as well as an amendment to the Development Controls and Design Guidelines for the Transbay Redevelopment Project ("**Development Controls**") to reflect the Plan Amendment. In accordance with those provisions of the Community Redevelopment Law, as amended by Redevelopment Dissolution Law, that authorize an amendment to a redevelopment plan, Cal. Health & Safety Code §§ 33450 *et seq.*, the Commission approved the Plan Amendment, by Resolution No. 19-2015 (April 7, 2015), and the Development Controls by Resolution No. XX-2015. The Board of Supervisors is also required to hold a public hearing and approve the Plan Amendment. The Plan Amendment becomes effective 90 days after the date of approval by the Board of Supervisors of the ordinance adopting the Redevelopment Plan.

T. In addition, the Block 5 Tower proposed for the Site requires the Planning Commission to hold a public hearing and approve an office space allocation under Proposition M, codified in Section 321 of the San Francisco Planning Code.

U. The development program for the Site, which conforms to the goals and requirements of the Redevelopment Plan, as amended, the Development Controls, as amended, and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan ("**Streetscape Plan**"), includes: (a) an approximately 766,745 gross-square-foot office building, including mechanical and parking; (b) ground-floor retail space of approximately 8,642 square feet; (c) streetscape improvements, including a portion of the extension of Natoma Street from Beale Street to Main Street, and Beale and Howard Street improvements; (d) one level of underground parking with up to 127 stalls in mechanical parking lifts and stackers; (e) 15,189 square feet of required public open space, which consist of the Interim Open Space Improvements and Permanent Open Space Improvements as provided in this Agreement (collectively, the "**Open Space Requirement**"); and (f) 5,368 square feet of supplemental open space as provided in this Agreement. Items (a) through (d) are collectively referred to as the "**Tower Improvements**". Items (a) through (f) are collectively referred to as the "**Project**" or the "**Improvements**". In addition, the development program includes the relocation and preservation of the art deco pavilion presently located on the Private Parcel. As a condition of closing, this Agreement requires Developer to enter into an agreement with the TJPA in substantially the form of Attachment 19 ("**TJPA Agreement**"), which will grant

Developer the rights needed to comply with the portion of the Open Space Requirement to be satisfied on property owned by the TJPA and Developer's obligation to construct and maintain the extension of Natoma Street.

V. The Parties wish to enter into this Agreement to complete the sale of the Public Parcel to the Developer and authorize construction of the Project on the Site and of the Open Space Requirement.

ARTICLE 1 - CONTRACT TERMS

1.01 Successor Agency

The Successor Agency, commonly known as the Office of Community Investment and Infrastructure, is a public body organized and existing under the laws of the State of California, and includes any successor public agency designated by or pursuant to law. Pursuant to the Implementation Agreement and the Option Agreement, the Successor Agency has the duty to acquire, prepare and sell Parcel N1.

1.02 Developer

The Developer is MA West LLC, a Delaware limited liability company. MA West LLC is a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company.

1.03 Intentionally Omitted

1.04 Site

(a) The Site is comprised of the Public Parcel and the Private Parcel.

(i) The Public Parcel is the real property located in the Project Area at the corner of Howard and Beale Streets as shown on the Current Site Configuration (Attachment 3-A) and described in the Site Legal Description (Attachment 4-A) and contains approximately 26,300 square feet. It is comprised of portions of Lot 025 of Assessor's Block 3718. The Public Parcel is also referred to as Parcel N1. Prior to the Closing Date (as defined in Section 2.03(b) below), the Developer, in cooperation with the TJPA, will complete a tentative parcel or subdivision map subdividing Lot 025 into at least two parcels, the Public Parcel and the remainder parcel as shown on the Proposed Site Plan (Attachment 3-B) and described in the Proposed Site Legal Description (Attachment 4-B), and if required, merging or adjusting the shared lot line between the Public Parcel and the Private Parcel.

(ii) The Private Parcel is an approximately 2,635-square-foot site on the corner of Howard and Beale Streets comprised of Lot 12 of Assessor's Block 3718.

(b) The Open Space Parcels comprise 15,212 square feet of public open space on Parcel M1 and Parcel N3 and/or on an alternative site as provided in this Agreement (the "**Open Space Parcels**").

1.05 Purchase Price

(a) The purchase price for the Public Parcel, which the Developer shall deposit, in cash or immediately available funds, into Escrow (as defined in Section 2.03(a) below) for deposit into the

Trust Account shall be ONE HUNDRED SEVENTY TWO MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$172,500,000) (“**Purchase Price**”), and shall be paid prior to close of Escrow in one lump sum, less, if applicable, the Good Faith Deposit (defined in Section 1.06 below) already paid.

(b) If Escrow fails to close by September 16, 2015, an additional FIFTEEN THOUSAND AND 00/100 DOLLARS (\$15,000) shall be added to the Purchase Price (“**Additional Purchase Payment**”) for each calendar day after September 16, 2015 until Escrow closes. The Developer shall not be required to pay the Additional Purchase Payment as a result of any delay in the close of Escrow (i) caused or requested by the Successor Agency, (ii) caused by a failure to satisfy any of the Developer Conditions set forth in Section 2.08(a), or (iii) due to Force Majeure. “**Caused or requested by the Successor Agency**” for purposes of the previous sentence shall not include an extension granted by the Successor Agency beyond September 1, 2015 for the Developer’s failure to pay the Purchase Price and Additional Purchase Payment or otherwise to satisfy the Agency Conditions set forth in Section 2.08(b).

(c) The Developer also shall be responsible for paying any costs associated with this transaction, either directly or through reimbursement of any related internal Successor Agency costs in excess of the amount contributed by Developer under Section 3 of the ENA or third party costs, including, but not limited to, title report costs, title insurance premiums and endorsement charges, escrow fees, surveys, environmental review, parcel mapping, lot line adjustments, quiet title actions, permits, and inspections.

1.06 Good Faith Deposit

Within thirty (30) days after the Effective Date of this Agreement, the Developer shall deposit into an account designated by the TJPA a good faith deposit in the amount of TWO MILLION AND 00/100 DOLLARS (\$2,000,000) (“**Good Faith Deposit**”). If the Parties close on the purchase-sale of the Public Parcel, the Good Faith Deposit shall be applied to the Purchase Price and deposited into the Trust Account at the close of Escrow. The Good Faith Deposit is 100% nonrefundable, except in the event of failure to close solely due to the failure of a Developer Condition as defined in Section 2.08(a) or pursuant to Section 8.07(e) or 8.09(a)(ii). As Successor Agency’s sole and exclusive remedy for Developer’s failure to close, Developer shall forfeit any right to reimbursement of the Good Faith Deposit if Escrow fails to close on or before the Outside Closing Date unless such failure is due to (1) failure of a Developer Condition or (2) Force Majeure. In the event of the termination of this Agreement other than for an Event of Default by Developer the Good Faith Deposit shall be returned promptly to Developer, less any amounts due under Section 105(c). None of the ENA Deposit or any other amounts paid by Developer during the ENA Term for the costs of OCII to retain legal counsel shall be credited against the Good Faith Deposit or otherwise refunded.

1.07 Intentionally Omitted

1.08 Redevelopment Plan and Project Area Declaration of Restrictions

The Redevelopment Plan and the Project Area Declaration of Restrictions are the Redevelopment Plan and Project Area Declaration of Restrictions defined in the Recitals to this Agreement, as the same may be amended and extended from time to time. Development on the Site is subject to all the terms and conditions of the Redevelopment Plan and the Project Area Declaration of Restrictions. The Site is located within Zone 1 as described in the Redevelopment Plan and the Development Controls, both of which determine the land use designation for the Site

1.09 Term of this Agreement/Schedule of Performance

(a) The term of this Agreement will begin on the Effective Date and continue until the earlier of termination in accordance with its terms or Successor Agency's issuance and recordation of a Notice of Termination, as provided in Section 4.13 ("Term"), subject to the surviving provisions set forth in Section 5.08.

(b) Developer will perform its obligations under this Agreement in accordance with the Schedule of Performance, Attachment 5, subject to the provisions of this Agreement.

1.10 Definitions/Interpretation of Agreement

(a) Terms are defined in Article 13 or have the meanings given them when first defined.

(b) Whenever an 'Attachment' is referenced, it means an attachment to this Agreement unless otherwise specifically identified. All such Attachments are incorporated herein. Whenever a section, article or paragraph is referenced, it is a reference to this Agreement unless otherwise specifically referenced.

ARTICLE 2 - CONVEYANCE TERMS

2.01 As-Is Condition

The Public Parcel shall be conveyed by Successor Agency to Developer, and Developer shall accept the Public Parcel at close of Escrow, in an "as-is" condition, subject only to any representations, warranties and covenants of Successor Agency contained in the ENA or this Agreement. At the close of Escrow, Developer shall release the Successor Agency, the TJPA, and the City from and against any all environmental, construction, and other ongoing liabilities relating to the Public Parcel whether or not they originate or accrue from and after the close of Escrow.

2.02 Purchase and Development

Subject to all of the terms, covenants and conditions of this Agreement, and Community Redevelopment Law as amended by Redevelopment Dissolution Law, the Successor Agency agrees to sell and convey the Public Parcel to Developer for the Purchase Price, and Developer agrees to purchase the Public Parcel from Successor Agency and pay the Purchase Price (including any Additional Purchase Payment) to Successor Agency for deposit into the Trust Account. In accordance with this Agreement, Developer shall develop, construct, maintain and operate the Improvements (as defined in Recital T above and further described in the Scope of Development in Attachment 6) on the Site.

2.03 Escrow

(a) Open, Close of Escrow. On or before the date specified therefor in the Schedule of Performance (Attachment 5), Developer shall establish an escrow with any reputable title company doing business in the City and County of San Francisco selected by Developer and approved by Successor Agency ("**Title Company**") and shall notify Successor Agency in writing of such escrow ("**Escrow**"). At least fifteen (15) business days prior to the Closing Date (as defined in Section 2.03(b) below), the Successor Agency and the Developer shall provide escrow instructions to the Title Company as shall be necessary and consistent with this Agreement; at the same time, providing copies to each other. Except to the extent this Agreement provides otherwise, at least one (1) business day prior to the Closing Date, the

parties shall each deposit into Escrow all documents and instruments that such party is obligated to deposit into Escrow in accordance with this Agreement.

(b) Closing Date. The date on which Escrow closes (“**Closing Date**”) shall not be later than September 16, 2015 except as may be necessary to satisfy the Developer Conditions and Agency Conditions, and in no event shall the Closing Date be later than September 23, 2015 (“**Outside Closing Date**”) unless the Outside Closing Date is extended pursuant to the terms of this Section, in which case the Outside Closing Date shall be such later date. The Outside Closing Date shall not otherwise be extended except (i) for Force Majeure, (ii) for delays caused by the inability of the Successor Agency to satisfy each of the Developer Conditions or to deliver title as described in Section 2.04, notwithstanding the exercise of its commercially reasonable efforts to do so, or (iii) by the Successor Agency to a date certain, not later than ten (10) days following the Outside Closing Date, at its sole discretion. If close of Escrow does not occur on or before the Outside Closing Date for any reason other than those set forth herein, then the Successor Agency shall have the right, but not the obligation, to terminate this Agreement at its sole discretion.

(c) Title, Escrow and Closing Costs. Developer shall pay to the Title Company or the appropriate payee thereof all title report costs; title insurance premiums and endorsement charges as requested by Developer; recording fees; and any escrow fees in connection with the conveyance of the Public Parcel by Successor Agency to Developer.

2.04 Title

(a) The escrow instructions shall provide that, upon the close of Escrow, the Title Company shall provide and deliver to Developer an owner's title insurance policy (“**Title Policy**”) (which at Developer's option may be an ALTA owner's policy) issued by the Title Company in an amount reasonably designated by Developer, at the sole cost and expense of Developer, insuring that fee simple title to the Public Parcel is vested in the Developer, without any liens, encumbrances, or other matters affecting title except for the title conditions set forth in Attachment 18 (“**Approved Title Conditions**”).

(b) Developer shall bear all cost and responsibility for any required compliance with the Subdivision Map Act, the San Francisco Building and Fire Codes, the Destroyed Land Records Relief Act, and all other federal, state and local laws related to the acquisition or development of the Site.

(c) If Developer elects to secure an ALTA owner's policy, Successor Agency shall cooperate with Developer to secure such policy by providing surveys and engineering studies in its possession or control, if any, at no cost to Successor Agency and without warranty of any kind, which relate to or affect the condition of title. The responsibility of Successor Agency assumed by this paragraph is limited to providing such surveys and engineering studies, if any. Developer shall be responsible for securing any other surveys and engineering studies at its sole cost and expense. Successor Agency shall also execute, or obtain from the TJPA, a commercially reasonable form of Owner's Affidavit, as required by the Title Company.

(d) At the close of Escrow, Successor Agency shall convey to Developer fee simple title to the Public Parcel by Grant Deed, in substantially the form attached hereto as Attachment 11, free and clear of any liens, encumbrances and other matters affecting title except for the Approved Title Conditions. The Successor Agency shall work in good faith with Developer to obtain whatever additional assurances are necessary from any City department or agency, including the Department of Public Works and the City Surveyor, so that the Successor Agency conveys marketable and insurable title to the Public Parcel.

(e) At the close of Escrow, Developer shall deposit an Agreement and Quitclaim Deed re Reserved Rights in substantially the form of Attachment 15, executed by Developer and the TJPA, quitclaiming and assigning to the TJPA certain reserved rights described therein.

(f) Nothing in this section shall be construed as limiting the obligations of the Successor Agency, the TJPA or any other governmental authority under applicable laws.

2.05 Payment of Purchase Price

The Purchase Price (including any Additional Purchase Payment, if applicable) shall be deposited into the Trust Account upon close of Escrow, and shall be deposited by the Developer into escrow in cash or immediately available funds no later than twenty four (24) hours prior to the Closing Date.

2.06 Taxes and Assessments

(a) Ad valorem taxes and assessments levied, assessed or imposed from and after close of Escrow shall be the responsibility of the Developer.

(b) Consistent with the TIFIA Loan, Successor Agency shall record a deed restriction for the term of the TIFIA Loan that the Public Parcel will not be used, in whole or in part, by any entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the lender under the TIFIA Loan, with the exception of the following: 1) property that is used for infrastructure and other public facilities, and 2) property that is used for the production of affordable housing, as contemplated by the Redevelopment Plan (“**Deed Restriction re Taxes**”). The Deed Restriction re Taxes shall be substantially in the form of Attachment 20.

2.07 Access and Entry by Developers to the Public Parcel/Permit to Enter

(a) The Parties agree that the Right of Entry Agreement entered into between Developer and the TJPA dated December 17, 2014, provides reasonable access to the Public Parcel for the purpose of obtaining data and making surveys and tests, including site tests and soil borings, necessary to carry out the purposes of this Agreement, and is for a period of time which reasonably will permit Developer to complete the activities for which access and entry is authorized.

2.08 Conditions Precedent to Closing

(a) Conditions to Developer’s Obligations to Close. The following are conditions to Developer’s obligation to close Escrow (“**Developer Conditions**”), to the extent not expressly waived by Developer:

(i) There shall not be an Event of Default by Successor Agency that would have a material adverse effect on the value of or financing for the purchase of the Public Parcel, on the construction of the Improvements, or on the use of the Site;

(ii) The TJPA shall have caused to be submitted an executed and acknowledged Relinquishment of Power of Termination for the Public Parcel, in substantially the form attached to the Cooperative Agreement as Exhibit ‘D’ (“**Caltrans Relinquishment**”), together with escrow instructions from Caltrans to the Escrow Agent that provide that the Escrow Agent is authorized to record the Caltrans Relinquishment in the Official Records immediately following, and subject only to, the deposit into the Trust Account at the Closing of all funds due from the Closing. For purpose of clarity, the Caltrans Relinquishment shall serve to finally and fully extinguish any right of conditional

termination and/or reversion in favor of Caltrans and/or the State of California under the Power of Termination Provision as defined in California Civil Code Section 885.110, both with regard to the Public Parcel and with regard to Natoma Street as described in the TJPA Agreement;

(iii) The Title Company is unconditionally prepared to issue the Title Policy to Developer subject only to the Approved Title Conditions;

(iv) This Agreement shall not have been previously terminated pursuant to any other provision hereof;

(v) Successor Agency shall have delivered to Developer and the Title Company all instructions and documents to be delivered by Successor Agency at close of Escrow pursuant to the terms and provisions hereof;

(vi) The Board of Supervisors shall have held the public hearing and approved the sale of the Public Property under Section 4.7.2 of the Redevelopment Plan requiring review and approval pursuant to California Health & Safety Code Section 33433;

(vii) The Board of Supervisors shall have held a public hearing and approved necessary amendments to the Redevelopment Plan to provide for office construction at the Site and, thereafter, the ninety day referendum period shall have expired with no referendum having become effective;

(viii) The Planning Commission shall have held the public hearing and approved an office space allocation for the Project under Planning Code Sections 321-322, and all applicable administrative appeal periods have run with no appeal being filed, or if an appeal of the Planning Commission approval is filed, denial of the appeal and denial of any subsequent request for a rehearing;

(ix) The TJPA shall have executed the TJPA Agreement, defined in Recital T;

(x) Successor Agency shall have received a quitclaim deed for the Public Parcel from the TJPA;

(xi) Successor Agency shall have executed, acknowledged and deposited with the Title Company the Grant Deed for the Public Parcel in substantially the form of Attachment 11; and

(xii) Successor Agency shall have instructed the Title Company to consummate the Escrow as provided in Section 2.03;

(xiii) All trailers and above-ground utilities servicing the Public Parcel shall have been removed (below ground conduit will be abandoned in place); and

(xiv) The TJPA shall have executed the Agreement and Quitclaim Deed in substantially the form of Attachment 15, and the Temporary License for Use of Parcel M-3 ("Parcel M-3 License) in substantially the form of Attachment 16.

In the event the Closing is delayed for any period beyond September 23, 2015 due to any one or more of the Developer Conditions not having been satisfied, then all applicable dates set forth in the Schedule of Performance shall automatically be extended by the same number of days in such period.

(b) Conditions to Successor Agency's Obligation to Close. The following are conditions to the Successor Agency's obligation to close Escrow ("**Agency Conditions**") to the extent not expressly waived by Successor Agency:

(i) Developer shall have deposited the Purchase Price and any Additional Purchase Payment in cash or immediately available funds into Escrow for deposit into the Trust Account under Section 1.05;

(ii) Subject to the provisions of this Agreement, Developer shall have timely performed all obligations set forth in the Schedule of Performance that are required to be performed prior to the Closing Date;

(iii) Successor Agency shall have received and approved all items referred to in Section 2.09(a), to the extent therein provided;

(iv) Developer shall have instructed the Title Company to consummate the Escrow as provided in Section 2.03;

(v) Developer shall have furnished certificates of insurance or duplicate originals of insurance policies as required by this Agreement;

(vi) TJPA and Developer shall have executed the TJPA Agreement

(vii) Successor Agency shall have received a quitclaim deed for the Public Parcel from the TJPA;

(viii) This Agreement shall not have been previously terminated pursuant to any other provision hereof;

(ix) Developer shall have delivered to Successor Agency and the Title Company all instructions, executed Deed Restriction re Taxes, any required executed declarations of restrictions, and other documents to be delivered at close of Escrow pursuant to the terms and provisions hereof; and

(x) Developer shall have acquired fee title to the Private Parcel.

2.09 Submission of Evidence of Financing and Project Commitments

(a) Successor Agency Requirements. No later than 30 days before the Closing Date, Developer shall submit to Successor Agency for review and approval a statement in a form reasonably satisfactory to the Successor Agency sufficient to demonstrate that Developer has adequate funds or will have adequate funds and is committing such funds to the costs for the purchase of the Public Parcel, together with supporting documents as Successor Agency may reasonably require.

Successor Agency will notify Developer in writing of its approval or disapproval of any of the foregoing documents within fifteen (15) days after submission of such documents to the Successor Agency, including written reasons for disapproval. The Successor Agency shall not unreasonably withhold such approval. Failure of Successor Agency to notify the Developer of its approval or disapproval of a document or submission within said periods of time shall entitle the Developer to a time extension for the approval of such document or submission until the later of (i) the date of approval by the Successor Agency, or (ii) fifteen (15) days after the Successor Agency provides written reasons for a disapproval.

(b) TIFIA Requirements. To allow the TJPA to comply with the TIFIA Loan requirements, Developer covenants that no later than December 1, 2015, Developer will submit to Successor Agency at least one of the following, in a form reasonably acceptable to the Successor Agency and the TJPA:

(i) Signed financing agreements such as a loan agreement, line or letter of credit agreement, equity contribution or grant agreements or other similar agreements or instruments or term sheets or letters of intent therefor.

(ii) A certificate from Developer certifying to the USDOT as the lender under the TIFIA Loan that funds are available to be drawn by Developer from identified accounts maintained with a financial institution and that such funds are adequate to pay the costs of planning, design, engineering, procurement, permitting, construction, installation and equipping of the Project for its intended uses and purposes; or

(iii) A construction contract(s) for the full scope of work to design, equip, construct, and install the Project; and a copy of the notice to proceed issued to the general contractor, the design/build contractor, or the construction manager at risk; and a certificate from Developer that there have been no amendments, changes or waivers to such construction contracts.

(iv) Such other evidence of financing that TIFIA has determined in writing is acceptable for purposes of satisfying the TJPA's obligations under the TIFIA Loan requirements, provided TIFIA's written determination is obtained or expressly waived by TIFIA prior to December 1, 2015.

2.10 Conveyance of Title to the Public Parcel and Delivery of Possession

Subject to the provisions of Section 2.08, and provided that Developer is not then in default under the terms of this Agreement, pursuant to Section 8.01, the Agency Conditions and the Developer Conditions have been satisfied or expressly waived no later than the Outside Closing Date, and Developer has paid to Successor Agency all sums due hereunder, then Successor Agency shall convey to Developer, and Developer shall accept the conveyance of, the fee simple interest in the Public Parcel, subject to the Approved Title Conditions.

2.11 Representations of Successor Agency.

Successor Agency represents, warrants and covenants as follows:

(a) Successor Agency has all requisite power and authority to execute and deliver this Agreement and to carry out and perform all of the terms and covenants of this Agreement. This Agreement will be a legal, valid and binding obligation of Successor Agency, but does not supersede applicable law or bind the independent regulatory discretion of the agencies having jurisdiction over the development of the Project.

(b) To the best of its knowledge, Successor Agency has not received any written notice of any existing or threatened litigation or arbitration involving the Public Parcel.

(c) To the best of its knowledge, Successor Agency has received no written notice of any currently outstanding violations of any federal, state, county or municipal law, ordinance, order, regulation, or requirement affecting the Public Parcel.

(d) To the best of its knowledge, Successor Agency has received no written information of any unrecorded possessory rights.

(e) To the best of its knowledge, Successor Agency has provided Developer with all environmental reports in Successor Agency's possession or control.

As used in this Agreement, the phrase "Successor Agency's knowledge" will be limited to the actual knowledge of current employees who work for, or assigned to, the Successor Agency.

ARTICLE 3 - PUBLIC PARCEL CONDITION; HAZARDOUS MATERIALS

INDEMNIFICATION

3.01 Prior to Conveyance/Public Parcel "As Is"

(a) Intentionally Omitted.

(b) The Successor Agency shall convey the Public Parcel in its present, "AS IS" condition, free of any liens, encumbrances, or other matters affecting title except for the Approved Title Conditions, and shall not prepare the Public Parcel for any purpose whatsoever prior to conveyance to Developer. So long as the obligations in Section 3.01(a) are met, and there is otherwise no material adverse change in the condition of the Public Parcel after the Effective Date, Developer agrees to accept the Public Parcel in "AS IS" condition at the close of Escrow in the Approved Title Condition.

(c) Developer acknowledges that Successor Agency, City, TJPA, or any employee, representative or agent of Successor Agency, City or TJPA, have not made any representation or warranty, express or implied, with respect to the Public Parcel, and it is agreed that Successor Agency makes no representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Public Parcel; or as to any other matter whatsoever; it being expressly understood that, subject only to the obligations set forth in 3.01(a), the Public Parcel is being sold in an "AS IS" condition. The provisions of this Section 3.01, as with the other provisions of this Agreement, shall survive the close of Escrow and shall not merge into the Grant Deed delivered to Developer at close of Escrow.

(d) Developer has been given the opportunity to investigate the Public Parcel fully, using experts of its own choosing, as described in Section 2.07.

(e) After close of Escrow, Developer, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the Public Parcel and all uses, improvements and appurtenances of and to the Public Parcel, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required pursuant to any Environmental Law, and Successor Agency, City, and the TJPA and their respective members, officers, agents and employees, shall have no responsibility or liability with respect thereto.

(f) Any costs associated with the security, maintenance/repair, and demolition of any existing structures on the Public Parcel are the sole and absolute responsibility of the Developer.

3.02 Hazardous Materials Indemnification

(a) Developer shall indemnify, defend and hold Successor Agency, the City and the TJPA, and their respective members, officers, agents and employees (individually, “**Indemnified Party**” and collectively, “**Indemnified Parties**”) harmless from and against any losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (A) Developer’s violation of any Environmental Law, or (B) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Public Parcel, occurring after the close of Escrow, except where such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Indemnified Party seeking indemnification.

(b) For purposes of this Section 3.02, the term “**Hazardous Substance**” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos-containing materials, polychlorinated biphenyls (“**PCBs**”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Public Parcel.

(c) The term “**Environmental Law**” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(d) For purposes of this Section 3.02, the term “**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

(e) DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED HEREIN, SUCCESSOR AGENCY IS CONVEYING AND DEVELOPER IS ACCEPTING THE PUBLIC PARCEL ON AN “AS-IS WITH ALL FAULTS” BASIS SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING WITHOUT LIMITATION, ANY ZONING ORDINANCES, OR OTHER REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE PUBLIC PARCEL. DEVELOPER REPRESENTS AND WARRANTS THAT DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SUCCESSOR AGENCY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PUBLIC PARCEL, ITS SUITABILITY FOR DEVELOPER’S INTENDED USES OR ANY OF THE PUBLIC PARCEL CONDITIONS. SUCCESSOR AGENCY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PUBLIC PARCEL, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PUBLIC PARCEL OR ITS USE WITH ANY STATUTE, RESOLUTION OR REGULATION. DEVELOPER AGREES THAT NEITHER SUCCESSOR AGENCY NOR ANY OF SUCCESSOR AGENCY’S AGENTS HAVE MADE, AND

SUCCESSOR AGENCY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PUBLIC PARCEL CONDITIONS.

In connection with the foregoing release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES 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.

INITIALS: DEVELOPER: _____

ARTICLE 4 - CONSTRUCTION OF IMPROVEMENTS

4.01 The Improvements

The Improvements are defined in Recital U and further described in the Scope of Development in Attachment 6.

4.02 Developer's Construction Obligations

(a) Developer shall commence construction and carry the development of Improvements diligently to completion on the Site within the times and in the manner set forth herein and in the Schedule of Performance and Scope of Development, as such dates may be extended from time to time as provided herein (including, without limitation, events of Force Majeure).

(b) Intentionally Omitted.

(c) Developer shall construct, or cause to be constructed, the Improvements to a Leadership in Energy and Environmental Design Gold standard.

(d) Developer shall construct, or cause to be constructed, the Improvements in accordance with the seismic requirements for the TJPA's proposed extension of the Train Box of the Transbay Transit Center along the north side of the Project, as set forth in an agreement with TJPA and Developer substantially conforming to the form in Attachment 19 ("**TJPA Agreement**").

4.03 Compliance with Project Approval Documents and Law

Developer shall construct the Improvements in compliance with the Project Approval Documents (as defined in the Design Review and Document Approval Procedures ("**DRDAP**"), Attachment 7) approved by the Successor Agency or such similar documents as reasonably required by the City, as applicable, and in compliance with all applicable local, state and federal laws and regulations, including all laws relating to accessibility for persons with disabilities.

4.04 Compliance with Redevelopment Requirements/City Requirements

The Project Approval Documents shall be in compliance with: (i) this Agreement, including the Scope of Development and (ii) to the extent applicable the Redevelopment Plan (as amended), the Project Area Declaration of Restrictions, the Development Controls (as amended), the Streetscape Plan, and the DRDAP. The Redevelopment Plan, the Declaration of Project Restrictions, the Declaration of Site Restrictions, the Development Controls, the Streetscape Plan, the DRDAP, and this Agreement, including the Scope of Development, are sometimes for convenience referred to as “**Redevelopment Requirements.**”

4.05 Preparation of Project Approval Documents/Approval of Architect

(a) The Project Approval Documents shall be prepared by or signed by an architect (or architects) licensed to practice architecture in and by the State of California. A California licensed architect shall coordinate the work of any associated design professions, including engineers and landscape architects. In any event:

(i) A California licensed architect shall inspect all construction to certify that all construction has been built based on the design standards in the drawings and specifications as submitted by the architect and as included in the Project Approval Documents;

(ii) A California licensed structural and civil engineer shall review and certify all final foundation and grading design to be in substantial conformity with Project Approval Documents.

(b) The architect(s) for the Improvements shall certify that the Improvements have been designed in accordance with all local, state and federal laws and regulations relating to accessibility for persons with disabilities.

4.06 Submission of Project Approval Documents

Developer shall prepare and submit Project Approval Documents to the Successor Agency for review and approval in accordance with the Scope of Development and at the times established in the Schedule of Performance.

4.07 Scope of Successor Agency Review/Approval of Developer's Construction

(a) Successor Agency's review and approval of Project Approval Documents is limited to (i) a determination of their compliance with (A) the Redevelopment Requirements, including the Scope of Development, and (B) the Mitigation Measures referred to in Section 9.01 [if any]; (ii) urban design issues, including implementation of the Successor Agency's urban design objectives; and (iii) architectural design including, but not limited to, landscape design, including materials, plantings selection and irrigation, site planning, the adequacy of utilities for servicing the Site, exterior and public area signs and public art work, if any.

(b) No Successor Agency review is made or approval given as to the compliance of the Project Approval Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable local, state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the Improvements for use by persons with disabilities.

(c) Successor Agency's review and approval or disapproval of Project Approval Documents as heretofore provided in this Section shall be final and conclusive, subject to the Developer's compliance with any conditions of approval. Successor Agency shall act in good faith in its review and approval process. Successor Agency will not disapprove, or require changes subsequently (except by mutual agreement or as necessary to comply with conditions of approval) in, or in a manner which is inconsistent with, matters which it has approved previously, unless the change is required by law applicable to the development of the Project.

4.08 Construction Schedule

Developer shall commence construction and carry the development of Improvements diligently to completion within the times specified in the Schedule of Performance or within such extension of such times as may be set forth in this Agreement or granted by the Successor Agency for Developer performance as provided by this Agreement. Compliance with the Open Space Requirement will require the construction of the Project in three phases: (i) the Tower Improvements, (ii) the Interim Open Space Improvements (as defined in Section 9.05(b)), and (iii) the Permanent Open Space Improvements (as defined in Section 9.05(b)). The "**Construction Commencement Date**" for construction of the applicable Improvements means the date specified in the written notification from Developer to the Successor Agency of the date of commencement of construction, as approved by the Successor Agency consistent with the Schedule of Performance and any approved extensions under Section 8.09 (b), which date shall be based upon either (i) the date of commencement of construction identified in the Developer's contract/agreement with its general contractor, or (ii) the date identified in a notice to proceed issued by Developer and/or its architect to the general contractor. Developer shall deliver to the Successor Agency separate written notification of the dates of commencement for (i) the Tower Improvements (ii) the Interim Open Space Improvements and (iii) the Permanent Open Space Improvements. Notwithstanding the foregoing, the construction schedule for the Open Space Requirement may be modified, subject to the reasonable approval of the Successor Agency, in accordance with the TJPA Agreement.

4.09 Cost of Developer Construction

The cost of developing the Site and construction of all Improvements shall be borne solely by Developer.

4.10 Issuance of Building Permits

(a) Developer shall have the sole responsibility for obtaining all necessary site permits and associated addenda, and building permits and shall make application for such permits directly to the Central Permit Bureau of the City. When applicable, the Successor Agency shall reasonably and expeditiously cooperate with Developer in its efforts to obtain such permits, at no cost or expense to Successor Agency. Prior to commencing construction of any portion of the Improvements, Developer shall have obtained the requisite building permits. From and after the date of its submission of any such application, Developer shall diligently prosecute such application.

(b) Developer is advised that the Central Permit Bureau forwards all site and building permits to Successor Agency, when applicable, for Successor Agency approval of compliance with Redevelopment Requirements. Successor Agency shall use its best efforts to complete such review within 10 days or less. Successor Agency's review of the Project Approval Documents does not include any review of compliance thereof with the requirements and standards referred to in Section 4.07(b) above, and Successor Agency shall have no obligations or responsibilities for such compliance. Successor Agency evidences its approval by signing the permit and returning the permit to the Central Permit Bureau for issuance directly to Developer. Approval of a site permit or any intermediate permit, however, is not

approval of compliance with all Redevelopment Requirements necessary for a building permit. It is the intent of the Developer to use the Site Permit process.

4.11 Delay of Construction Tax Increment Fee

If the Construction Commencement Date or the issuance of a Final C of O for the Site and Tower Improvements as provided in Section 4.13 below does not occur by the date specified in the Schedule of Performance, as those dates may be extended in accordance with the last sentence of Section 2.08(a) or Section 8.09, then Developer shall pay the Delay of Construction Tax Increment Fee (as defined below) unless such delay is due to Developer's delay in obtaining permits required for the construction of the Improvements through no fault of the Developer after the Developer has satisfied the Permit Submission Condition (as defined below). The "**Permit Submission Condition**" shall mean that Developer has timely submitted documents necessary for a regulatory body, including but not limited to the Successor Agency, and any agency, commission or department of the City ("**Regulatory Agency**") to review and approve said permits, and (a) the Regulatory Agency has deemed the permit application to be complete, and the Regulatory Agency has not approved the permits through no fault of the Developer, or (b) the Regulatory Agency has not responded as to the completeness of the submitted documents within the time period provided by law or then existing adopted written policy, or if no specific time period is so provided, within a reasonable period of time. The "**Delay of Construction Tax Increment Fee**" shall be an amount equal to the estimated property taxes that the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") would have assessed based on the fair market value of the Site and Tower Improvements if construction had commenced or been completed by the dates specified in the Schedule of Performance (as so extended) less any property taxes actually assessed and paid by Developer for the Site and Tower Improvements. To establish the fair market value for purposes of determining the Delay of Construction Tax Increment Fee, the parties shall utilize the Appraisal Process described in Section 8.03 (a) (ii) (A) – (D) of this Agreement; provided, however, that the Successor Agency may initiate, at any time after the Developer has failed to satisfy the dates in the Schedule of Performance for commencement or completion of construction, the Appraisal Process upon 21 days of notice to the Developer; and provided further that the Successor Agency shall not initiate the Appraisal Process more than once in a twelve month period. The Appraisal Process shall determine the estimated fair market value of the Site and Tower Improvements if the Developer had complied with the Schedule of Performance. Specifically, the Developer shall pay directly to the TJPA 2/3 of the Delay of Construction Tax Increment Fee, which reflects an approximation of the amount due to the TJPA under the Pledge Agreement, and shall pay the remaining 1/3 of the fee directly to the Successor Agency for its use in fulfilling its obligations under the Transbay Implementation Agreement. The Developer shall not receive a credit of any kind with the Assessor-Recorder for any payments made pursuant to this Section 4.11.

4.12 Construction Signs and Barriers

Developer shall provide appropriate construction barriers and construction signs and post the signs on the Site during the period of construction in conformance with Planning Code Section 604(e). The size, design and location of such signs and the composition and appearance of any non-moveable construction barriers shall be submitted to Successor Agency, if applicable, for approval before installation, which approval shall not be unreasonably withheld and shall otherwise comply with applicable laws.

4.13 Notice of Termination – Issuance

(a) When the Developer has achieved completion of the Tower Improvements in accordance with this Agreement, the Developer may request in writing that the Successor Agency issue a Partial Notice of Termination, in the form of Attachment 13-A hereto, recognizing that the Developer has met the development obligations of this Agreement governing those portions of the Improvements. When

the Developer has achieved completion of construction of each phase of the Open Space Requirement, the Developer may request in writing that the Successor Agency issue a Partial Notice of Termination, in the form of Attachment 13-A hereto, recognizing that the Developer has met the development obligations of this Agreement for each phase of the Open Space Requirement.

In submitting such requests to the Successor Agency for a Partial Notice of Termination, the Developer shall provide (i) the City and County of San Francisco's Department of Building Inspection ("DBI") Final Certificate of Occupancy ("**Final C of O**") for the applicable portion of the Improvements and (ii) a certification from the Developer that it has satisfied in all material respects all obligations that are required to be satisfied under this Agreement for issuance by the Successor Agency of a Notice of Termination. The Developer's certification shall include the following supporting documentation: certification from the Developer's architect that the Improvements have been constructed in accordance with the Project Approval Documents and in compliance with all applicable local, state and federal laws and regulations (including all laws relating to accessibility for persons with disabilities), written determinations by the City of completion of streetscape or other public infrastructure improvements required under this Agreement, and any information necessary to determine compliance with the Successor Agency Equal Opportunity Program, as described in Article 10, including Small Business Enterprise utilization reports, final certified payroll reports from the Developer's construction contractors and subcontractors, and the executed First Source Hiring Agreement between Developer and the Office of Economic and Workforce Development - CityBuild. Upon receipt of such request, the Agency shall review the request and notify the Developer within fifteen (15) days of receipt of the request of the Successor Agency's determination of whether or not it will issue a Partial Notice of Termination for those portions of the Improvements covered by the request. Any notice from the Agency stating that it will not issue a Notice of Termination shall specify the reasons therefor following which Developer may seek to satisfy any unfulfilled obligations and again submit a request for a Notice of Termination. The Successor Agency's determination shall be based on Developer's compliance with the requirements of this Agreement that must be complied with to the date of the issuance of the Final C of O for the applicable portion of the Improvements. Upon the Successor Agency's determination that it will issue a Partial Notice of Termination, provided that at such time there is not an uncured Event of Default of the Developer of any obligations that remain in effect after such partial termination of this Agreement, Successor Agency shall promptly issue to Developer, in recordable form, a duly executed Partial Notice of Termination in the form of Attachment 13-A, which results in the termination of the Agreement with respect to the construction of Improvements within the applicable phase, except for those provisions that survive termination of this Agreement as provided in Section 5.08. "**Completion of Construction**" with respect to a particular phase of the Improvements shall mean the date on which a Final C of O and written determination by the City or OCII of completion of all applicable public improvements for that phase have been issued. "**Completion of Construction of the Improvements**" shall mean the date on which a Final C of O and written determination by the City or OCII of completion of all public improvements for the final phase of the Improvements have been issued.

The Partial Notice of Termination shall be a conclusive determination of the Completion of Construction of the Improvements within the applicable phase in accordance with this Agreement and the full performance of the agreements and covenants contained in this Agreement and in the Grant Deed with respect to the obligations of the Developer, and its successors and assigns, to construct the Improvements within the applicable phase in accordance with the approved Project Approval Documents. In addition, notwithstanding anything contained in this Agreement to the contrary, upon issuance of a Partial Notice of Termination for the Tower Improvements, all provisions of this Agreement regarding the Public Parcel and Tower Improvements, other than those set forth in Sections 5.08, Sections 9.01-9.02, and Sections 9.05-9.07, shall terminate and Developer will be deemed discharged of all obligations with respect to such provisions. Upon Completion of Construction of the Improvements, the Agency may issue, upon the Developer's request, a final Notice of Termination ("**Final Notice of Termination**") in the form of

Attachment 13-B and the Developer will be deemed to be discharged of all obligations of this Agreement, except for those provisions that survive termination of this Agreement as provided in Section 5.08. For purposes of this Section 4.13(a) and Attachment 13-A, Sections 9.01-9.02, and Sections 9.05-9.07 shall not be considered provisions regarding the Public Parcel and Tower Improvements.

(b) Agency's issuance and recordation of any Notice of Termination does not relieve Developer or any other person or entity from any City requirements or conditions to occupancy of such Improvements, which requirements or conditions shall be complied with separately.

4.14 Right to Reconstruct the Improvements in the Event of Casualty

Without limiting Developer's obligations under Section 5.05(b), in the event that the Improvements are destroyed by casualty prior to the issuance of the Notice of Termination, the Developer shall have the right to rebuild the applicable Improvements substantially in conformity with the approved Project Approval Documents, subject to changes necessary to comply with the applicable building code, and in the event the Redevelopment Requirements are no longer in effect, the planning code, and other local requirements then in effect for the Site.

4.15 Intentionally Omitted

4.16 Access to Public Parcel – Successor Agency

From and after delivery of possession of the Public Parcel to Developer, upon reasonable prior notice to Developer, the Successor Agency, the City, the TJPA and their respective representatives will have the right to enter upon the Public Parcel at reasonable times, with 48 hour prior notice, at no cost or expense to the Successor Agency, the City, or the TJPA during normal business hours, during the period of construction of the Improvements to the extent necessary to carry out the purposes of this Agreement, including inspecting the work of construction of the Improvements. Developer will have the right to have an employee, agent or other representative of Developer accompany the Successor Agency, the City, the TJPA and their representatives at all times while they are present on the Public Parcel. The Successor Agency, the City, the TJPA and their respective representatives will exercise due care in entering upon and/or inspecting the Public Parcel, and will perform all entry and inspection in a professional manner and so as to preclude any damage to the Public Parcel or Improvements, or any disruption to the work of construction of the Improvements. The Successor Agency, the City, the TJPA and their respective representatives will abide by any reasonable safety and security measures Developer or its general contractor imposes.

4.17 Intentionally Omitted

4.18 Off-Site Infrastructure and Improvements Damage

In addition to the indemnification provisions contained in Section 12.01 of this Agreement, Developer further agrees to repair fully and/or replace to the satisfaction of the Successor Agency, any damage to the off-site infrastructure and improvements within the Project Area, including streets, sidewalks, curbs, gutters, drainage ditches, fences and utility lines lying within or adjacent to the Site resulting from work performed by or for such Party in the development of the Site as set forth herein. Developer or its respective general contractor, before commencement of such off-site work, shall secure this obligation with a \$250,000 bond or insurance in form acceptable to the Successor Agency, or other security acceptable to the Successor Agency, such as a personal guaranty. Developer's liability under this provision shall be limited to the amount of the bond or insurance.

4.19 Insurance Requirements

(a) Without in any way limiting Developer's indemnification obligations under this Agreement or Developer's indemnification or insurance obligations under the TJPA Agreement or the Right of Entry Agreement, and subject to approval by the Successor Agency of the insurers and policy forms, Developer shall obtain and maintain, or shall contractually require others to maintain, throughout the Term the minimum insurance coverage as set forth in this Section, at no expense to Successor Agency. If the Developer maintains broader coverages and/or higher limits than the minimums shown in this Section 4.19, the Successor Agency requires and shall be entitled to the additional coverage and/or the higher limits so maintained in the insured or beneficiary capacities set forth in this Article 4.19. Exceptions and/or deviations from the requirements of this Section 4.19 shall be permitted with the written approval of the person serving as Successor Agency's risk manager, which approval shall not unreasonably be withheld or delayed.

(b) Minimum Scope. Coverage must be at least as broad as:

(i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 01) or other form approved by the Successor Agency.

(ii) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – "any auto") or other form approved by the Successor Agency.

(iii) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(iv) Professional Liability Insurance: Developer must require that all architects, engineers, and surveyors, and all other design professionals for the Project have liability insurance covering their negligent acts, errors and omissions. Developer must provide the Successor Agency with copies of consultants' insurance certificates showing such coverage.

(v) Property Insurance: Special form coverage against direct physical loss to the Project, excluding earthquake or flood, but including vandalism and malicious mischief, during the course of construction.

(c) Minimum Limits. Developer must maintain limits no less than:

(i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage, which may be satisfied by a combination of primary and excess limits. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to this development or the general aggregate limit must be twice the required occurrence limit.

(ii) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employers Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

(iv) Professional Liability: Developer shall require the project architects, engineers, surveyors and other design professionals to carry insurance covering such vendors' negligent acts, errors and omissions in amounts not less than \$2,000,000 each occurrence and in the annual aggregate, with such minimum limits to be maintained for no less than ten (10) years beyond the Completion of Construction of the Improvements.

(v) Builders Risk and Property Insurance: During the course of construction, builder's risk insurance in the full completed value of the Project including coverage in transit and storage off-site, with a deductible not to exceed \$50,000 each loss. Following Completion of Construction, full replacement value of the Project with no coinsurance penalty provision.

(d) Intentionally Omitted.

(e) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over \$25,000 must be declared to and approved by the Successor Agency. In the event such deductibles or self-insured retentions are in excess of \$25,000, at the option of the Successor Agency, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the Successor Agency, the City, the TJPA, and their respective commissioners, members, officers, agents, and employees; or the Developer shall procure a financial guarantee satisfactory to the Successor Agency guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(f) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage:

a. Additional Insureds: "The Successor Agency to the San Francisco Redevelopment Agency, the City, the TJPA and their respective commissioners, members, officers, agents, and employees" shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Developer; products and completed operations of such party, premises owned, occupied or used by such party; and automobiles owned, leased, hired or borrowed by or on behalf of such party. The coverage shall contain no special limitations on the scope of protection afforded to the Successor Agency, the City, the TJPA, and their respective commissioners, members, officers, agents or employees.

b. Defense: Defense shall be outside the limits with respect to all Developer's required general liability insurance and auto insurance. Defense may permissibly be inside the limits with respect to any professional liability and pollution legal liability insurance.

c. Primary Insurance: For any claims related to this Project, Developer's insurance coverage must be primary insurance as respects to the Successor Agency, the City, the TJPA and their respective commissioners, members, agents, and employees. Any insurance or self-insurance maintained by the Successor Agency, the City, the TJPA, and their respective commissioners, members, agents, officers or employees must be in excess of the applicable party's insurance and will not contribute with it.

d. Reporting Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the Successor Agency, the City, the TJPA and their respective commissioners, members, officers, agents or employees.

e. Separation of Insureds Condition: Developer's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(ii) Builder's Risk (Course of Construction) Insurance: Developer may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall contain the following provision:

a. Successor Agency shall be named as loss payee.

(iii) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given to Successor Agency, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

(g) Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII or as otherwise approved by the Successor Agency.

(h) Waiver of Subrogation. Developer hereby grants to the Successor Agency and the additional insureds a waiver of any right to subrogation which any insurer of said Developer may acquire against the Successor Agency and the additional insureds by virtue of the payment of any loss under such insurance. Developer agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the Successor Agency or any of the additional insureds has received a waiver of subrogation endorsement from the insurer.

(i) Reservation of Rights. Successor Agency reserves the right to require an increase in Developer's insurance coverage: (i) limits in the event the Successor Agency reasonably determines that changed conditions show cause for an increase; and/or (ii) in the event of a material change in existing law, additional endorsements to Developer's coverage required herein as necessary to maintain comparable coverage to that required herein, unless Developer demonstrates to the Successor Agency's reasonable satisfaction that such increase in coverage limits or additional endorsements are commercially unreasonable and/or unavailable to Developer.

(j) If any of the policies provide coverage on a claims-made basis:

(i) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase "extended reporting" coverage for a minimum of five years after completion of contract work.

(k) Verification of Coverage. Developer must furnish the Successor Agency with certificates of insurance and with original endorsements effecting coverage required by this Article 4.19. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by

the Successor Agency before work commences. The Successor Agency reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Approval of Developer's insurance by Successor Agency will not relieve or decrease the obligations of Developer under this Agreement.

(l) Contractor, Subcontractors and Consultants Insurance. Before Developer's general contractor, subcontractors, consultants, architects, and engineers ("Developer's Contractors") enter the Site, Developer shall cause each of the Developer's Contractors to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by the Successor Agency's Risk Manager, and furnish or cause to be furnished to Successor Agency and the TJPA with the certificates of insurance and original endorsements effecting coverage required by this Section 4.19.

ARTICLE 5 - COVENANTS AND RESTRICTIONS

5.01 Covenants

Developer expressly covenants and agrees for itself, its successors and assigns and all persons claiming under or through it, that as to the Site, the Open Space Requirement, and any Improvements constructed or to be constructed, or alterations or changes thereto, and in addition to any other term, covenant and condition of this Agreement, Developer and all such successors and assigns and all persons claiming under or through it, shall use, devote, operate and maintain the Site and the Improvements, and every part thereof, only and in accordance with the provisions of this Article 5 unless Developer has received the express written consent of the Successor Agency to make any Change in the Improvements pursuant to Section 5.07 of this Agreement. The provisions hereof are contained in the Grant Deed (Attachment 11), and Declaration of Site Restrictions (Attachment 14).

5.02 General Restrictions

The Site and the Improvements shall be devoted only to the uses permitted by (i) the Redevelopment Plan and (ii) the Project Area Declaration of Restrictions for the period during which they are in effect.

5.03 Restrictions Before Completion

Prior to the Successor Agency's issuance of the Notice of Termination, the Site shall be used only for construction of the Improvements in accordance with this Agreement, including, but not limited to the Scope of Development (Attachment 6).

5.04 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation,

including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site.

(b) Developer itself (or any person or entity claiming under or through it) further agrees and covenants that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

(c) Notwithstanding the above, Developer shall not be in default of its obligations under this Section 5.04 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer.

(d) The covenants of this Section 5.04 shall run with the land, and any transferee, successor, assign, or holder of any interest in the Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, shall be bound hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above.

5.05 Compliance with Requirements of TIFIA Loan

Consistent with the requirements of the TIFIA Loan:

(a) Developer shall not object to any conclusion that the assessed value of the Public Parcel shall be the greater of: (i) the existing assessed value of the Public Parcel as determined by the Assessor Recorder, or (ii) the sum of: (x) the purchase price for the Public Parcel (\$172,500,000), plus (y) the cost of the building(s) constructed pursuant to this Agreement; provided, however, that Developer shall have the right to contest a tax valuation by the Assessor-Recorder in the event of a market downturn.

(b) Subject to the rights of any Mortgagee (defined in Section 7.01) under any Mortgage (defined in Section 7.01), Developer shall apply fire and casualty property insurance proceeds to the restoration of the Public Parcel if, in the reasonable judgment of the Successor Agency, the funds available to Developer in the event of all or partial destruction of the Project are sufficient to restore the Public Parcel to its prior use and condition.

5.06 Effect, Duration and Enforcement of Covenants

(a) It is intended and agreed, and the Grant Deed and/or Declaration of Site Restrictions shall expressly provide, that the covenants provided in this Article 5 shall be covenants running with the land as and to the extent set forth in the Grant Deed and the Declarations of Restrictions and that they shall be, in any event and without regard to technical classification or designation, legal or otherwise, and except only as otherwise specifically provided in this Agreement itself, to the fullest extent permitted by law and equity,

(i) binding for the benefit and in favor of Successor Agency, as beneficiary, as to all covenants set forth in this Article 5; and the City and the owner of any other land or of any interest in any land in the Project Area (as long as such land remains subject to the land use requirements and restrictions of the Redevelopment Plan and the Project Area Declaration of Restrictions), as beneficiary, as to the covenants provided in Sections 5.02 and 5.04; and their respective successors and assigns: and

(ii) binding against Developer, its successors and assigns to or of the Site and any Improvements thereon or any part thereof or any interest therein, and any party in possession or occupancy of the Site or the Improvements thereon or any part thereof. It is further intended and agreed that the covenants provided in this Article 5 shall remain in effect respectively as set forth herein, and the covenants in Section 5.02 shall remain in effect for the respective duration of the Redevelopment Plan and the Project Area Declaration of Restrictions; provided, however, that such agreements and covenants shall be binding on Developer itself, each successor in interest or assign, and each party in possession or occupancy, respectively, only for such period as it shall have title to or an interest in or possession or occupancy of the Public Parcel or part thereof.

(b) In amplification, and not in restriction, of the provisions of the preceding Sections, it is intended and agreed that Successor Agency and the City and their respective successors and assigns, as to the covenants provided in this Article 5 of which they are stated to be beneficiaries, shall be beneficiaries both for and in their own right and also for the purposes of protecting the interest of the community and other parties, public or private, and without regard to whether Successor Agency or the City has at any time been, remains, or is an owner of any land or interest therein to which, or in favor of which, such covenants relate. Successor Agency and the City and their respective successors and assigns shall have the right, in the event of any of such covenants of which they are stated to be beneficiaries, to exercise all the rights and remedies, and to maintain any actions at law or suits in equity or other proper proceedings, to enforce the curing of such breach of such covenants to which it or any other beneficiaries of such covenants may be entitled including, without limitation, restraining orders, injunctions and/or specific enforcement, judicial or administrative. These rights and remedies are in addition to, and not in derogation of, the rights and remedies of the Successor Agency set forth in this Agreement.

(c) The conveyance of the Public Parcel by Successor Agency to Developer is made and accepted upon the express covenants contained in this Article 5 as set forth herein, which, except only as otherwise specifically provided in this Agreement itself, shall survive the Final Notice of Termination and shall be provided for in the Grant Deed and/or the Declaration of Site Restrictions.

(d) Developer shall be entitled to notice and shall have the right to cure any breach or violation of all or any of the foregoing in accordance with Article 8.

5.07 No Changes Without Approval

For the period during which the Redevelopment Plan and Declaration of Restrictions are in effect, neither Developer nor any successor or assign may make or permit any change in the uses permitted on the Site or any Change in the Improvements (as defined below), unless the express prior written consent for the change in uses or any Change in the Improvements has been requested and obtained from the Successor Agency; and if obtained, upon any terms and conditions the Successor Agency reasonably requires. The Successor Agency's approval may be granted or withheld in its reasonable discretion. "**Change in the Improvements**" is defined as any material alteration, modification, addition and/or substitution of or to the Site or the Improvements that affects: (a) the density of development; (b) the extent and nature of the open space on the Site from that certified by the Successor Agency as complete in accordance with this Agreement; (c) the exterior design (to the extent material); (d) the exterior materials

(to the extent material); and/or (e) the exterior color (to the extent material). For the purposes of this Section, “**exterior**” also includes the roof of the Improvements.

5.08 Provisions Surviving Completion of Construction of the Improvements

The following provisions (together with any definitions or other general provisions necessary to implement the following provisions) shall survive the Successor Agency’s issuance and recordation of the Notice of Termination, and shall also be incorporated into the Declaration of Site Restrictions (Attachment 14), and/or the Grant Deed, as applicable (Attachment 11):

- (a) All requirements contained in Section 3.01(b),(c), and (e) of this Agreement;
- (b) All requirements contained in Section 3.02 of this Agreement until the expiration of such requirements as set forth therein;
- (c) All requirements contained in Section 4.19(c)(iv) of this Agreement until the expiration of such requirements as set forth therein;
- (d) All requirements contained in Section 5.02 of this Agreement until the expiration of the Redevelopment Plan and the Declaration of Site Restrictions;
- (e) All requirements contained in Section 5.04 of this Agreement;
- (f) All requirements contained in Section 5.07 of this Agreement until the expiration of the Redevelopment Plan and the Declaration of Site Restrictions; and
- (g) All requirements contained in Section 12.01 of this Agreement until the expiration of such requirements as set forth therein.

ARTICLE 6 – ANTI-SPECULATION, ASSIGNMENT, AND TRANSFER PROVISIONS

6.01 Representation as to Developer

Developer represents and agrees that its purchase of the Public Parcel and its other undertakings pursuant to this Agreement shall be used for the purpose of redevelopment of the Public Parcel and not for speculation in land holding.

6.02 Prohibition Against Transfer of the Public Parcel, the Improvements and the Agreement

Subject to the terms of Article 7 (which sets forth certain provisions with respect to Mortgages which may encumber the Project) and the transfers described in Section 2.04(d), and except as expressly set forth herein, Developer shall not make or create or suffer to be made or created before the Partial Notice of Termination for the Tower Improvements any total or partial sale, conveyance, encumbrance, lien, assignment, option to acquire, or transfer in any other mode or form (other than with respect to Developer’s mortgage financing of the Project), of this Agreement, the Site or the Improvements thereon, or any part thereof, or interest therein, or permit any significant change in the ownership of the Developer to occur or contract or agree to do any of the same (collectively a “**Transfer**”) without the prior written approval of Successor Agency (“**Successor Agency Approval**”), which approval shall not be unreasonably withheld, conditioned or delayed; provided, however, that the Developer shall have the right, without the consent of the Successor Agency, to Transfer to an entity that does not include either Golub or John Buck so long as one of these two members of Developer retains the right to control or to manage the day-to-day operation of the Project, in which event Developer shall provide the Successor Agency with written notice of any such Transfer. Following the Final Notice of Termination, no Transfer(s) shall require the approval of Successor Agency.

Successor Agency's approval of any replacement Developer shall not be unreasonably withheld, conditioned or delayed and shall be deemed given if the Successor Agency has not objected in writing to the replacement entity within five (5) business days of being notified of such a change.

Furthermore, the Developer agrees that any future leases for any portion of the Public Parcel entered into prior to the Construction Commencement Date will include a provision that allows for the termination of the lease by the Successor Agency subsequent to its exercise of its Exclusive Right of Repurchase and subject to any notice requirements (not to exceed 30 days) under the lease.

6.03 Effect of Violation

(a) In the event that, contrary to the provisions of this Agreement, a Transfer does occur, in addition to all other remedies provided herein or by law, including, but not limited to, termination of this Agreement, Successor Agency, as provided in Section 8.03(a) shall have an Exclusive Right to Repurchase prior to the Construction Commencement Date.

(b) In the absence of specific written approval by Successor Agency, and except to the extent set forth in this Agreement, no Transfer shall be deemed to relieve Developer or any other party from any obligations under this Agreement prior to the Transfer or deprive Successor Agency of any of its rights and remedies under this Agreement or the Grant Deed.

ARTICLE 7 - MORTGAGE FINANCING: RIGHTS OF HOLDERS

7.01 Mortgagee

For purposes of this Agreement, the term "**Mortgagee**" shall singly and collectively include the following: (a) a mortgagee or beneficiary under a mortgage or a deed of trust concerning all or any portion of the Public Parcel (a "**Mortgage**"), and (b) any insurer or guarantor of any obligation or condition secured by a Mortgage concerning all or any portion of the Public Parcel.

7.02 Required Provisions of Any Mortgage

Developer agrees to use commercially reasonable efforts to have any Mortgage provide that the holder of such Mortgage ("**Holder**") shall give notice to Successor Agency in writing by registered or certified mail of the occurrence of any default by Developer under the Mortgage, and that Successor Agency shall be given notice at the time any Holder initiates any Mortgage foreclosure action. In the event of any such default, Successor Agency shall have the right to cure such default, provided that Developer is given not less than ten (10) days' prior notice of Successor Agency's intention to cure such default. If Successor Agency shall elect to cure such default, Developer shall pay the cost thereof to Successor Agency upon demand, together with the interest thereon at the rate of 8% per annum, unless (i) Developer cures such default within such 10-day period, or (ii) if curing the default requires more than ten (10) days and Developer shall have commenced cure within such ten (10) days after such notice, Developer shall have (A) cured such default within thirty (30) days or such greater time period as may be allowed by Holder after commencing compliance, or (B) obtained from the Holder a written extension of time in which to cure such default. Developer also agrees to have any Mortgage provide that such Mortgage is subject to all of the terms and provisions of this Agreement.

7.03 Address of Holder

No Holder shall be entitled to exercise the rights set forth in this Article 7 unless and until written notice of the name and address of the Holder shall have been given to Successor Agency, notwithstanding any other form of notice, actual or constructive.

7.04 Holder's Right to Cure

If Developer shall create a Mortgage on the Public Parcel in compliance with the provisions of this Article 7, then so long as any such Mortgage shall remain unsatisfied of record, the following provisions shall apply:

(a) Successor Agency, upon serving Developer any notice of default or any other notice under the provisions of or with respect to this Agreement, shall also serve a copy of such notice upon any Holder at the address provided to the Successor Agency pursuant to this Agreement, and no notice by Successor Agency to Developer hereunder shall affect any rights of a Holder unless and until a copy thereof has been so served on such Holder;

(b) Any Holder, in case Developer shall be in default hereunder, shall have the right to remedy, or cause to be remedied, such default within the later to occur of (i) one hundred twenty (120) days following the date of Holder's receipt of the notice referred to in Section 7.04(a) above, or (ii) one hundred twenty (120) days after the expiration of the period provided herein for Developer to remedy or cure such default, and Successor Agency shall accept such performance by or at the insistence of the Holder as if the same had been timely made by Developer.

(c) Any notice or other communication which Successor Agency shall desire or is required to give to or serve upon the Holder shall be in writing and shall be served in the manner set forth in Section 12.03, addressed to the Holder at the address provided for in this Agreement.

(d) Any notice or other communication which Holder shall give to or serve upon Successor Agency shall be deemed to have been duly given or served if sent in the manner and at Successor Agency's address as set forth in Section 12.03, or at such other address as shall be designated by Successor Agency by notice in writing given to the Holder in like manner.

7.05 Application of Agreement to Mortgagee's Remedies

No provision of this Agreement shall limit the right of any Mortgagee to foreclose or otherwise enforce any mortgage, deed of trust or other encumbrance upon the Public Parcel, nor the right of any Mortgagee to pursue any remedies for the enforcement of any pledge or lien upon the Public Parcel; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust or other lien or encumbrance or sale pursuant to any power of sale contained in any such mortgage or deed of trust, or other lien or encumbrance, the purchaser or purchasers and their successors and assigns and the Public Parcel shall be, and shall continue to be, subject to all of the conditions, restrictions and covenants herein provided for, subject to §7.04, but not any past due obligations of Developer, for which Developer shall remain liable. In no event shall Mortgagee be in default of any such future obligations provided for in this Agreement until at least 120 days after the date of the transfer of title, plus any cure periods provided for hereunder.

7.06 No Obligation to Construct Improvements or Pay Money Damages

The Mortgagee, including without limitation any Mortgagee who obtains title to the Public Parcel or any part thereof as a result of foreclosure proceedings or action in lieu thereof (but not including any other party who thereafter obtains title to the Public Parcel or any part thereof from or through such Mortgagee or any purchaser at a foreclosure sale other than the Mortgagee), shall in no way be obligated by the provisions of the Agreement to either pay money damages or other consideration to the Successor Agency, or to construct or complete, nor shall any covenant or any other provision in the Redevelopment Plan, the Project Area Declaration of Restrictions, or any other document, instrument or plat whatsoever be construed to so obligate such Mortgagee; provided, however, that nothing in this Agreement shall be construed to permit or authorize such Mortgagee to devote the Public Parcel or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment Plan, the Project Area Declaration of Restrictions, and this Agreement.

7.07 Accommodation of Mortgagees

The Successor Agency is obligated to act reasonably in all dealings with Mortgagees, to make reasonable accommodations with respect to the interests of Mortgagees, and to agree to reasonable amendments to this Agreement as reasonably requested by a prospective mortgagee.

ARTICLE 8 - DEFAULTS AND REMEDIES

8.01 Developer Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by Developer under this Agreement.

(a) Developer suffers or permits an unpermitted Transfer to occur, or Developer allows any other person or entity (except Developer's authorized representatives) to occupy or use all or any part of the Public Parcel in violation of the provisions of this Agreement, and such event or condition shall not have been cured within thirty (30) business days following the date of written demand to cure by Successor Agency to Developer;

(b) Developer fails to pay real estate taxes or assessments on the Public Parcel when due or places any mortgages, encumbrances or liens upon the Public Parcel or the Improvements thereon or any part thereof in violation of this Agreement, and such event or condition shall not have been cured within thirty (30) days following the date of written demand to cure by Successor Agency to Developer;

(c) Subject to the provisions of this Agreement, Developer fails to commence promptly, or after commencement fails to prosecute diligently to completion (as evidenced by a Temporary Certificate of Occupancy), the construction of the Improvements within the times set forth in the Schedule of Performance (Attachment 5) (as such times may be extended in accordance with the provisions hereof), or abandons or suspends construction of the Improvements for more than one hundred eighty (180) consecutive days, and such failure, abandonment or suspension continues for a period of (i) thirty (30) days following the date of written notice thereof from Successor Agency as to an abandonment, suspension or failure to commence construction; or (ii) one hundred eighty (180) days following the date of written notice thereof from Successor Agency as to a failure to complete construction within the time set forth in the Schedule of Performance (Attachment 5) (as such times may be extended in accordance with the provisions hereof) (the "Cessation of Construction");

(d) Developer defaults under any other agreement between Successor Agency and Developer and fails to cure the same in accordance with such other agreement, provided that Successor Agency's remedies for a default under the other agreement between Successor Agency and Developer shall be limited to the remedies respectively set forth therein;

(e) Developer fails to pay any amount required to be paid hereunder, other than the Purchase Price for the Public Parcel, and such failure continues for a period of thirty (30) business days following the date of written notice thereof from Successor Agency;

(f) Developer does not accept conveyance of the Public Parcel in violation of this Agreement upon tender by Successor Agency pursuant to this Agreement; or Developer fails to pay the Purchase Price when due, or otherwise fails to close by the Closing Date for any reason other than failure of Developer Conditions or as otherwise provided herein. A default under this paragraph (f) shall be immediate without the requirement of notice and an opportunity to cure.

(g) Developer is in default under the Successor Agency's Equal Opportunity Program, Attachment 10; provided, however, that any rights to cure and Successor Agency's remedies for any default under the Successor Agency's Equal Opportunity Program shall be only as set forth in the Successor Agency's Equal Opportunity Program, Attachment 10;

(h) Developer fails to obtain a Building Permit or Site Permit with foundation and excavation addenda, as the case may be, and all other necessary permits for the Improvements to be constructed on the Site within the periods of time specified in this Agreement or the Schedule of Performance, except as may be extended due to actions or requirements of the Department of Building Inspection, and such failure continues for a period of sixty (60) days following the date of written notice thereof from Successor Agency;

(i) Developer does not submit all material Project Approval Documents as required by this Agreement within the periods of time respectively provided therefor in the Schedule of Performance, and Developer does not cure such default within thirty (30) days following the date of written demand from Successor Agency;

(j) Developer defaults in the performance of or violates any covenant, or any part thereof, set forth in Section 4.04, the then-effective provisions of Article 5, or in the Grant Deed, and such default or violation continues for a period of thirty (30) days after the date of written demand to cure from Successor Agency to Developer; or in the case of a default which is not cured within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

(k) Developer fails to perform under any other agreements or obligations on Developer's part to be performed under this Agreement, other than Developer's failure to perform a condition of closing under Section 2.08(b) or to perform its obligations under Sections 4.08 or 8.02, or a material breach of any representation or warranty made by Developer, and such failure or breach continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Successor Agency to Developer to perform such agreement or obligation or cure such breach, or in the case of a default not susceptible of cure within thirty (30) days, Developer fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time including, without limitation, any obligations set forth in Sections 8.01(i) and 8.01(j).

8.02 Intentionally Omitted

8.03 Remedies of Successor Agency upon the Occurrence of an Event of Default by the Developer

Upon the occurrence of an Event of Default by the Developer, the Successor Agency shall have the remedies set forth below.

(a) Exclusive Right of Repurchase.

(i) Following close of Escrow and transfer of the Public Parcel to the Developer, in the event the Construction Commencement Date does not occur as required under this Agreement, then unless such failure is due to (i) an inability or delay, through no fault of the Developer, to obtain any permits required for construction of the Improvements after the Developer has satisfied the Permit Submission Condition, or (ii) an inability, through no fault of the Developer, to obtain a customary level of construction financing on Commercially Reasonable Terms due to adverse office market conditions ("**Commercially Reasonable Terms**" shall mean, without limitation, (i) non-recourse (except as against the Site and assuming acceptance of standard terms typically required by institutional lenders), (ii) loan-to-cost equal to 50%, and (iii) maximum interest rate of LIBOR + 300 points) from an institutional and reputable third party construction lender, the Successor Agency shall have as its sole and exclusive remedy for such failure (other than imposition of the Delay in Construction Fee, which shall apply in accordance with Section 4.11 and shall no way be limited by this Section 8.03(a)) an exclusive right ("**Exclusive Right of Repurchase**") to repurchase the Public Parcel from the Developer for an amount equal to the lesser of (1) the Purchase Price paid by Developer or (2) the purchase price paid by the Subsequent Purchaser as described below (the "**Repurchase Payment**"). Notwithstanding anything contained herein to the contrary, this Exclusive Right of Repurchase shall terminate on the Construction Commencement Date. To exercise its rights under this Subsection, Successor Agency shall deliver to Developer a written notice of an Event of Default with respect to the failure to timely commence construction of the Improvements, notifying the Developer of the Successor Agency's intent to (i) exercise its Exclusive Right of Repurchase and (ii) record the **Notice of Exclusive Right of Repurchase** on the Public Parcel (Attachment 12).

(ii) Following the delivery of the Notice of Exclusive Right to Repurchase, the Parties shall commence an appraisal process (the "**Appraisal Process**"). The Appraisal Process shall be as follows:

(A) Each Party shall, at its own expense, designate a licensed MAI Appraiser with at least ten (10) years' experience in the sale and purchase of comparable commercial properties in the San Francisco market. If either party fails to designate its appraiser as set forth in this subparagraph within twenty-one (21) days after Successor Agency delivers written Notice of the Exclusive Right to Repurchase, then the appraiser selected by the other Party shall act alone and his/her determination shall be binding.

(B) The two (2) appraisers selected by the Parties (the "**Party Appraisers**") shall each select a similarly qualified, independent appraiser, whose expenses shall be shared equally by Developer and Successor Agency (the "**Neutral Appraiser**"). If the Neutral Appraiser cannot be agreed to by the Parties, then the American Arbitration Association, or any successor organization, shall select the Neutral Appraiser in accordance with its rules and procedures and subject to California law regarding the selection of arbitrators. The Parties shall jointly share the fees charged by the American Arbitration Association.

(C) The Party Appraisers selected by the Parties shall, after soliciting, accepting and reviewing such information and documentation as they may deem necessary and appropriate, including that submitted by either Party, within thirty (30) days after appointment, prepare a statement of what they consider the fair market value of the Public Parcel (the “**FMV**”).

(D) Once the two (2) Party Appraisers reach their conclusions, then the Neutral Appraiser shall select as the purchase price one of the FMV determinations submitted by the Party Appraisers that he or she determinates to be closest to the actual FMV, without averaging or otherwise compromising between the two values, and the amount so calculated being the FMV shall be binding on the Parties.

(iii) Following the Appraisal Process and determination by the Parties as to the FMV, the Successor Agency shall issue a request for proposals for the Public Parcel and shall require a minimum bid of 90% of the FMV to qualify as a potential purchaser of the Public Parcel (the “**Minimum Bid**”). If no qualified proposals that meet the Minimum Bid are received, then Successor Agency, in its sole discretion, shall have the right to sell the Public Parcel for an amount less than the Minimum Bid. Repurchase of the Public Parcel shall occur after a new developer (“**New Developer**”) selected through the new request for proposals process has deposited into escrow its purchase price for the Public Parcel determined through such process (“**Repurchase Payment**”). Simultaneously upon Successor Agency’s receipt of the Repurchase Payment from the New Developer, (a) Successor Agency shall transmit to Developer an amount that is the lesser of the Purchase Price or the Repurchase Payment from the New Developer; and (b) Developer shall convey fee simple title to the Public Parcel to Successor Agency (or its designee); and (c) the balance of the Repurchase Payment (if any) shall be released to Successor Agency.

The Successor Agency and any New Developer or other entity that acquires the Public Parcel after the Successor Agency’s exercise of this Exclusive Right of Repurchase shall acquire the Public Parcel in its then-existing as-is condition, subject to any then-existing encumbrances other than Mortgage(s) placed on the Public Parcel by Developer, which Developer shall cause to be removed prior to or concurrently with reconveyance.

(b) Retain Good Faith Deposit. Upon occurrence of an Event of Default by Developer prior to close of Escrow with Developer, the Successor Agency may, in its sole option, terminate this Agreement; in such case, Developer shall forfeit any right to reimbursement of the Good Faith Deposit and Successor Agency shall be entitled to receive and retain the Good Faith Deposit as its sole and exclusive remedy.

(c) Other Remedies. Following the Construction Commencement Date, the Successor Agency shall be entitled to exercise all remedies at law or in equity, excluding specific performance and punitive and consequential damages.

(d) Limitation on Personal Liability of Developer. No owner, manager, partner, officer, director, member, official or employee of Developer shall be personally liable to the Successor Agency, or any successor in interest, for any default by Developer or for any obligations under the terms of this Agreement.

8.04 Intentionally Omitted

8.05 Additional Remedies of Successor Agency

Except as so limited by the provisions of Sections 8.03(c) and (d), the remedies provided for herein are in addition to and not in limitation of other remedies at law or in equity including, without limitation, (i) those provided in the Grant Deed and elsewhere in violation of the covenants set forth in Article 5; (ii) the remedies set forth in the Equal Opportunity Program; and (iii) the remedies set forth in the Prevailing Wage Provisions.

8.06 Successor Agency Default

The occurrence of any one of the following events or circumstances shall constitute an Event of Default by the Successor Agency under this Agreement:

(a) Successor Agency fails to convey the Public Parcel to Developer in violation of this Agreement, pursuant to Section 2.10, and such failure continues for a period of ten (10) days following the date of written notice thereof from Developer; or

(b) Successor Agency fails to perform any other agreements or obligations on Successor Agency's part to be performed under this Agreement, and such failure continues for the period of time for any cure or the expiration of any grace period specified in this Agreement therefor, or if no such time or grace period is specified, within thirty (30) days after the date of written demand by Developer to Successor Agency to perform such agreement or obligation, or, in the case of a default not susceptible of cure within thirty (30) days, Successor Agency fails promptly to commence to cure such default and thereafter diligently to prosecute such cure to completion within a reasonable time.

8.07 Remedies of Developer

For an Event of Default by the Successor Agency hereunder, the Developer shall have the following remedies:

(a) Limitation on Damages. Successor Agency shall not be liable to Developer for damages caused by any default by Successor Agency, including general, special, or consequential damages, or to expend money to cure a default by Successor Agency, except as provided in subparagraph (e) below, subject to the limitations contained in subparagraph (d) below.

(b) Right of Termination. If the Outside Closing Date is extended pursuant to the last sentence of Section 2.08(a), Section 8.09, or by the Successor Agency for reasons other than the request of Developer, for more than 12 months, Developer shall have the right to terminate this Agreement and obtain a prompt return of the Good Faith Deposit.

(c) Other Remedies. Subject to subparagraphs (a), (b) and (e), Developer shall be entitled to exercise all other remedies at law and in equity.

(d) Non-liability of Successor Agency Members, Officials and Employees. No member, official or employee of Successor Agency, City or TJPA shall be personally liable to Developer, or any successor in interest, for any default by Successor Agency, City or TJPA or for any amount which may become due to Developer or any successor in interest under the terms of this Agreement.

(e) Successor Agency Liability. If Escrow fails to close due to a failure of a Developer Condition, Successor Agency shall be liable for return of the Good Faith Deposit prior to

conveyance, but Successor Agency shall have no liability for money except as provided in this Section 8.07(e).

8.08 Rights and Remedies Cumulative

Except with respect to rights and remedies expressly declared to be exclusive in this Agreement, the rights and remedies of the parties to this Agreement, whether provided by law, in equity or by this Agreement, shall be cumulative, and the exercise by either party of any one or more of such rights or remedies shall not preclude the exercise by such parties of any other or further rights or remedies for the same or any other default or breach by the other party. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition to its own obligation under this Agreement shall be effective beyond the particular obligation of the other party or condition to its own obligation expressly waived and to the extent thereof, or a waiver in respect to any other rights of the party making the waiver or any other obligations of the other party.

8.09 Force Majeure/Extensions of Time

(a) Force Majeure.

(i) In the event of Force Majeure, neither Successor Agency nor Developer, as the case may be, nor any successor in interest (“**Delayed Party**”, as applicable) shall be considered in breach of or default in any obligation or satisfaction of a condition, and all applicable dates set forth in the Schedule of Performance shall automatically be extended for any period of Force Majeure; provided, however, Force Majeure shall apply only if the Delayed Party seeking the benefit of the provisions of this Section has notified the other party in writing no later than five (5) business days (or 30 days if Escrow has closed) after learning of the enforced delay, stating the cause or causes thereof and requesting an extension for the period of the enforced delay. “**Force Majeure**” for purposes of this Agreement means events that cause enforced delays in the Delayed Party’s performance of its obligations under this Agreement due to one or more of the following causes, to the extent the cause is beyond the Delayed Party’s reasonable control: acts of God or of a public enemy, acts of Government (but not those of Successor Agency with regard to its own acts), fires, casualties, floods, earthquakes, epidemics, quarantine restrictions, freight embargoes, inability to obtain supplies or materials or reasonably acceptable substitute supplies or materials (provided that Developer has ordered such materials on a timely basis), unusually severe weather, archeological finds on the Site, substantial interruption of work because of labor disputes, administrative appeals, litigation and arbitration, changes in laws, codes or ordinances or in the interpretation thereof (provided in each such case that Developer proceeds with due diligence to resolve any dispute that is the subject of such action, and in no event shall Force Majeure include any administrative or judicial challenge to the validity or enforcement of Transbay Transit Center Community Facilities District 2014-1), or delays of subcontractors due to any of these causes.

(ii) Force Majeure shall also include delays caused by administrative appeals, litigation or arbitration (“**Litigation**”) not initiated by Developer or an entity under Developer’s control or the control of Developer or its affiliates, provided that in each such case that the Delayed Party proceeds, to the extent that is within its reasonable control to do so, with due diligence to resolve any dispute that is the subject of such Litigation and provided further that extension of time to perform obligations or conditions may not exceed a total of six (6) months for all such events.

(iii) Prior to close of Escrow, Force Majeure shall apply only to the extent it prevents (i) the Successor Agency from performing its obligations under Sections 2.03(a) or 2.04(c), or from depositing the Grant Deed into Escrow, (ii) the TJPA from delivering to Escrow the Caltrans Relinquishment or the quitclaim deed, or from executing the TJPA Agreement, as required to satisfy the

Developer Conditions and the Agency Conditions, or (iii) Developer from obtaining a Title Policy meeting the requirements of Section 2.04(a) at close of Escrow, If the delay caused by Force Majeure prior to close of Escrow extends for more than six (6) months, then either Successor Agency or Developer, by notice to the other, may terminate this Agreement, whereupon the Good Faith Deposit shall promptly be returned to Developer and the parties shall have no further liabilities or obligations under this Agreement arising or accruing following such termination.

(b) Extensions by the Executive Director. The Executive Director of the Successor Agency, with prior notice to the TJPA, may extend the time for Developer's performance of any term, covenant or conditions of this Agreement or permit the curing of any default upon such terms and conditions as Successor Agency determines appropriate, from time to time, without the necessity for further Commission action, so long as (i) close of Escrow is not extended past the date herein provided and (ii) the cumulative extensions of any particular item do not exceed a total of twelve (12) months after the original dates in the Schedule of Performance; provided, however, that any such waiver or extension or permissive curing of any particular default shall not release any of Developer's obligations nor constitute a waiver of Successor Agency's rights with respect to any other term, covenant or condition of this Agreement or any other default in, or breach of, this Agreement.

8.10 Other Rights and Remedies

The rights and remedies provided to Successor Agency and Developer in this Article 8 are in addition to and not in derogation of other rights and remedies found in this Agreement and in the Grant Deed, but not set forth in this Article 8, but in no event shall (i) Successor Agency have any liability for money or to expend money except as provided in Section 8.07(e).

8.11 General

(a) Subject to the limitations thereon contained in this Agreement, either party may institute legal action to cure, correct or remedy any default, or to obtain any other remedy consistent with the terms of this Agreement. Such legal actions shall be instituted in the Superior Court of the City and County of San Francisco, State of California, and any other appropriate court in that City and County or, if appropriate, in the Federal District Court in San Francisco, California.

(b) In the event that any legal action is commenced by Developer against Successor Agency, service of process on Successor Agency shall be made by any legal service upon the Executive Director of Successor Agency, or its counsel, or in such other manner as may be provided by law. In the event that any legal action is commenced by Successor Agency against Developer, service of process on Developer shall be made by personal service upon the Developer at the address provided for Section 1.02 or at such other address as shall have been given to Successor Agency by Developer pursuant to Section 12.03 of this Agreement, or in any other manner as may be provided by law, and shall be valid whether made within or without the State of California.

ARTICLE 9 - SPECIAL TERMS, COVENANTS AND CONDITIONS

9.01 Mitigation Measures

The Developer agrees that the construction and subsequent operation of all or any part of the Improvements shall be in accordance with the mitigation measures set forth in the Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Final Environmental Impact Statement/Environmental Impact Report dated March, 2004 ("EIS/EIR") and included as Attachment 9, Mitigation Measures. Additionally, the Developer shall provide, to the entity, or entities, specified in

Attachment 9, any required reports detailing the mitigation measures implemented by the Developer and/or its contractors at the Site during demolition and construction of the Improvements until Completion of Construction of the Improvements, and through operation of the Improvements as applicable. As appropriate, these mitigation measures shall be incorporated by the Developer into any contract for the construction or operation of the Improvements.

9.02 Established and Proposed Districts

(a) Community Benefit District.

(i) The Greater Rincon Hill Community Benefit District (“**CBD**”) is now under consideration for adoption by property owners in the Transit Center District to help finance community services and the maintenance of public improvements in the Transbay Center District, including the rooftop park on the Transit Center. The CBD will help fund activities and improvements such as community services and maintenance of public improvements in the Transbay Center District to benefit the properties in the CBD, including maintenance of the rooftop park on the Transit Center.

(ii) If Developer has the right to vote on a CBD that would require Developer to pay an assessment for the Site and the Improvements that, as determined in an Engineer’s Report for the CBD, does not exceed the proportional special benefit to the Site and the Improvements from the community services and the maintenance of public improvements in the Transbay Center District to be funded by the CBD, including maintenance of the rooftop park of the Transit Center, then Developer shall cast its ballot in favor of the CBD.

(iii) Developer waives and releases any and all rights, claims, losses, injuries, costs, damages, or causes of action that it may have now or in the future to, and shall not challenge, and shall not assist others in challenging, the initial assessment rates of the CBD, provided that the CBD does not require Developer to pay an initial assessment that exceeds the rates stated in Section 9.02(a)(ii). 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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 releases 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 acknowledges the above general release.

(b) Mello-Roos Community Facilities District.

(i) The Improvements shall be subject to the provisions of the City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) (“**CFD**”), to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension (“**DTX**”), and other infrastructure in the Transit Center District Plan area. Participation in the CFD is required because the Developer has been granted the right to build the

Improvements at a significantly greater density than would have been allowed under the zoning regulations in effect before adoption of the Transbay Redevelopment Plan, and because the infrastructure funded by the CFD will have direct benefits for, and considerable value to, the Improvements. The special tax rates have been finally established as of the effective date of this Agreement, as set forth in the CFD Rate and Method of Apportionment (“RMA”) attached hereto as Attachment 17.

(ii) If the Improvements are not subject to a CFD that will help pay the costs of constructing the new Transbay Transit Center, the DTX, and other improvements in the Transit Center District Plan area on the date that a Final Certificate of Occupancy is issued for the Improvements, then the Developer shall pay to the TJPA the estimated CFD special tax amount that otherwise would have been due to the San Francisco Office of the Assessor-Recorder (“Assessor-Recorder”), and on the same payment schedule that would have been required, if the CFD had been established on the date that the Final Certificate of Occupancy is issued for the Improvements.

(iii) The “amount that otherwise would have been due” under Section 9.02(b)(ii) above shall be the amount that would have been due under the RMA (Attachment 17), calculated as if the Improvements were subject to the RMA from, and after, the date of issuance of the Final Certificate of Occupancy for the Improvements until the Improvements are subject to the CFD.

(iv) The Developer waives any rights it may have now or in the future to challenge, and shall not assist others in challenging, the legal validity of the CFD or any part of the CFD. Developer shall Indemnify the City, OCII, and the TJPA (each an “Indemnified Party”) and the Indemnified Party’s officers, agents and employees from and, if requested, shall defend them against any and all loss, cost, damage, injury, liability, and claims arising or resulting directly or indirectly from Developer’s breach of this Section 9.02(b) of this Agreement. 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 which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.

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 releases 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 acknowledges the above general release

9.03 Intentionally Omitted

9.04 Streetscape Improvements

(a) Design and Construction; Reimbursement of Costs

The Developer shall complete or cause to be substantially completed the design and construction of the Streetscape Improvements (as defined in this Section 9.04 and in accordance with the standards set forth in Attachment 6), including improvements to Howard, Main and Beale Streets and the

creation of a portion of Natoma Street. Upon issuance of the Final C of O of the Office Tower and issuance of a Determination of Completion by the City for the Streetscape Improvements, the Successor Agency shall, subject to appropriation and approval by the City and the Successor Agency's governing bodies, reimburse the Developer or its successor buyer for the actual and reasonable cost of the Streetscape Improvements up to TWO MILLION FIVE HUNDRED THOUSAND DOLLARS AND 00/100 (\$2,500,000). Any costs incurred to complete the streetscape improvements as provided under the Streetscape Plan in excess of \$2,500,000 shall be the sole responsibility of the Developer.

(b) Maintenance

The Developer shall maintain or cause to be maintained the roadway portion of the Natoma Street Extension, as defined in Attachment 6, Streetscape Improvements in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco and subject to the requirements relating to Natoma Street in the TJPA Agreement.

9.05 Open Space

(a) In accordance with the Development Controls, the Developer is required, at its sole cost and expense, to provide and maintain, for the actual lifetime of the Project, public open space based on certain size and design standards of the Development Controls, totaling approximately 15,180 square feet or pay an in lieu fee as provided in this Section 9.05 (the "**Open Space Requirement**"). The Parties acknowledge that the preferred location of the public open space is within 900 feet from the Site, but that construction of the open space under this standard requires the availability and use of property owned by the TJPA.

(b) The Developer shall complete or cause to be completed, in accordance with the Project Approval Documents, the design, construction, and maintenance of improvements to satisfy the Open Space Requirement on the Open Space Parcels and that open space shall consist of (1) Interim Open Space Improvements (for improvements constructed on Parcel M1 or Parcel N3); and (2) if TJPA has provided the requisite open space, Permanent Open Space Improvements (collectively, the "**Open Space Improvements**"). Developer shall maintain the Interim Open Space Improvements for as long as Parcel M1 or Parcel N3 is made available by the TJPA for that purpose under the TJPA Agreement. Developer shall maintain the Permanent Open Space Improvements for the actual lifetime of the Project.

(c) Developer's obligation to design, construct and maintain the open space, and its right to access TJPA or alternate property for those purposes, shall run with the land, and shall be subject to the provisions of the TJPA Agreement for the TJPA's use of the Open Space Parcels; provided, however, that the Open Space Improvements shall be developed and open for public use as provided in the TJPA Agreement. Developer's obligation to provide open space shall not be affected by the TJPA's exercise of its reserved right to construct the Escalator on Parcel N3 as that term is defined in the TJPA Agreement or any of its other reserved rights in the TJPA Agreement.

(d) The Parties acknowledge that the timing for the construction of the Open Space Improvements is subject to the terms of conditions of the TJPA Agreement and that Completion of Construction of the Open Space Improvements is unlikely by the date of issuance of a Final C of O for the Block 5 Tower. Developer shall develop the Interim Open Space Improvements within 180 days after the TJPA makes Parcel M1 and Parcel N3 available to Developer as provided in the TJPA Agreement. Developer shall develop the Permanent Open Space Improvements on Parcel M1 and N3, or portions thereof, or on an alternate Open Space Parcel, within one (1) year after the TJPA makes such parcels, or portions thereof, available to Developer for that purpose as provided in the TJPA Agreement.

(e) Notwithstanding the foregoing, in the event the TJPA does not provide all or any portion of the land necessary to construct the Interim Open Space Improvements within one year following the issuance of the Final C of O for the Tower Improvements, or the Permanent Open Space Improvements within five years of issuance of the Final C of O for the Tower Improvements, the Successor Agency may require, in its sole discretion, the Developer to pay, to the Successor Agency or its designee, an in lieu fee for each square foot of required open space not already constructed. Within 30 days of notice from Successor Agency to Developer that it will be required to pay an in lieu fee, , Developer shall submit to the Successor Agency an estimate of the amount of the in lieu fee prepared by a licensed landscape architect or contractor for review and approval by the Successor Agency. The estimate shall be based upon the costs of design and construction (including construction management) of the Permanent Open Space Improvements, together with an amount sufficient to cover the estimated costs for operation, maintenance and repair of the improvements for a period of forty (40) years, escalated at the rate of 2% annually, and discounted to its then net present value utilizing a discount rate of 4%. The Successor Agency's approval shall be based on a review by a third-party landscape architect or contractor to be retained by the Successor Agency. Developer shall pay the in lieu fee to Successor Agency, or its designee, within thirty (30) of the Successor Agency's approval of the fee amount. Upon payment of the in lieu fee, Developer shall be relieved of its open space obligations under this Agreement to the extent of the square footage covered by the in lieu fee.

(f) The open space required by this Section and by Section 9.07 is in addition to (i) open space areas required to be provided on the Site in accordance with the Project Approval Documents and (ii) the Streetscape Improvements, neither of which shall be counted toward the required square footage for the Open Space Requirements or for the Supplemental Open Space.

9.06 Pavilion Relocation

(a) Developer shall be responsible for the relocation and installation of the art deco pavilion presently located on the Private Parcel ("**Pavilion**"). The Developer may fulfill this obligation by relocating and installing the Pavilion, at its sole expense, in a public open space or park site that has incorporated the Pavilion into the approved designs within the Transbay Redevelopment Project Area or the Transit Center District Plan Area. Installation of the Pavilion on TJPA property will subject approval of the TJPA.

(b) Prior to the identification of a permanent site for relocation and installation of the Pavilion, Developer may temporarily store the Pavilion under the terms of the Parcel M3 License Agreement, which expires by December 31, 2020. If, by the date the Parcel M3 License Agreement expires (i) a permanent site for the Pavilion within the Transbay Redevelopment Project Area or Transit Center District Plan Area has not been made available for the relocation of the Pavilion and (ii) Developer has used its commercially reasonable efforts to transfer ownership of the Pavilion at no cost to Developer, locate an alternative receiver site at no cost to Developer acceptable to Successor Agency in its reasonable determination within San Francisco city limits and has reported to the Successor Agency on those efforts consistent with the Scope of Development and (iii) the Successor Agency has not approved an alternative plan for the relocation of the Pavilion that includes a site, at no cost to the Developer, then the Developer's obligations under this Section 9.06 shall terminate. For purposes of this paragraph, Developer's costs associated with the relocation and installation of the Pavilion required by Section 9.06(a), and the costs associated with Developer's obligation to make commercially reasonable efforts under clause (ii) of this paragraph, are not a "cost to Developer."

(c) Developer shall not move the Pavilion to Parcel M3 until it has caused to be prepared, and the Successor Agency in consultation with Planning Department Preservation staff has approved, a conditions assessment, relocation, and structural stabilization plan in accordance with the

requirements of the Scope of Development.

9.07 Supplemental Open Space

(a) In addition to the open space required under the Development Controls and Section 9.05 of this Agreement, Developer shall design, construct and maintain 5,368 square feet of open space within the Transbay Project Area, Zone 1 or Zone 2 (“**Supplemental Open Space**”). The sites to be considered shall include, without limitation, the proposed Howard Square open space at Howard Street and Second Street. Developer, in consultation with TJPA and Successor Agency shall have until issuance of the Final C of O for the Tower Improvements to designate the location of and complete construction of improvements on the Supplemental Open Space. The type and quality of the landscaping and amenities on the Supplemental Open Space shall be comparable to the landscaping and amenities provided to comply with the Open Space Requirement.

(b) While the Parties desire to have the location of the Supplemental Open Space be the same as the final location of the Pavilion, the Developer’s obligations under Sections 9.06 and 9.07(a) may be satisfied separately. If the Pavilion ultimately is located on land that is developed as the Supplemental Open Space area, the area of the Pavilion footprint shall be credited towards the total area of the Supplemental Open Space.

(c) In the event the Developer, after consulting with Successor Agency and TJPA, is unable to designate all or a portion of the Supplemental Open Space contemplated by this Agreement prior to issuance of the Final C of O for the Tower Improvements, the Developer shall pay an in lieu fee based upon the costs, prepared by a licensed landscape architect or contractor and reviewed and reasonably approved by the Successor Agency, of design and construction (including construction management) of the improvements on Supplemental Open Space, which shall include an amount sufficient to cover the estimated costs for operation, maintenance and repair of the improvements for a period of forty (40) years, escalated at the rate of 2% annually, and discounted to its then net present value utilizing a discount rate of 4%.

ARTICLE 10 – SUCCESSOR AGENCY EQUAL OPPORTUNITY PROGRAM

Developer will comply with the Successor Agency’s Equal Opportunity Program, as described in this Article 10 and in Attachment 10, and will submit all documents required pursuant to the policies included in Attachment 10 (“**Equal Opportunity Program**”), pursuant to the Schedule of Performance (Attachment 5).

(a) Non-Discrimination

(i) Non-Discrimination in Benefits. Developer does not as of the date of this Agreement and will not during the term of this Agreement, in any of their operations in San Francisco or with respect to their operations under this Agreement (i.e., providing services related to the Development project) elsewhere in the United States discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits (collectively “**Core Benefits**”) as well as any benefits other than the Core Benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership had been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in the Successor Agency’s Non-Discrimination in Contracts and Benefits Policy, adopted September 9, 1997, as amended February 4, 1998 as set forth in Attachment 10.

(ii) Elimination of Discriminatory Restrictions. Developer agrees to take and to permit the Successor Agency to take all steps legally necessary or appropriate to remove restrictions against the Public Parcel, if any, that would violate any of the non-discrimination provisions of this Section, whether the restrictions are enforceable or not.

(b) Compliance with Minimum Compensation Policy and Health Care Accountability Policy. The Successor Agency finds that it has a significant proprietary interest in the Public Parcel that is being transferred to the Developer, pursuant to this Agreement. Developer will comply with the applicable provisions of the Successor Agency's Minimum Compensation Policy ("**MCP**"), Attachment 10, and Health Care Accountability Policy ("**HCAP**"), Attachment 10, adopted by Agency Resolution No. 168-2001 on September 25, 2001, as these policies may be amended from time to time (jointly, "**Policies**"). The requirements of the Policies include the following:

(i) the payment of the "Minimum Compensation" specified in MCP Section 3 to all "Covered Employees," as defined under MCP Section 2.7, who work on the Project, who are employed by Developer or any of its subcontractors who enter into an "Included Subcontract" (as defined in Attachment 10).

(ii) the payment of one of the health care benefit options described in HCAP Section 3 as to all "Covered Employees," as defined under HCAP Section 2.7, who work on the Project, who are employed by Developer or any of its subcontractors who enter into an "Included Subcontract" (as defined in Attachment 10).

(c) Small Business Enterprise and Workforce Agreements. Developer and the Successor Agency acknowledge that the Project will create employment opportunities at all levels, including opportunities for qualified economically disadvantaged small business enterprises, qualified economically disadvantaged Project Area residents and San Francisco residents. In recognition of these opportunities, Developer shall develop and implement the Small Business Enterprise Agreement described in Attachment 10, the Construction Workforce Agreement described in Attachment 10, and the First Source Hiring Agreement described in Attachment 10 ("**Policies**").

Successor Agency shall rely on the Office of Economic and Workforce Development - CityBuild ("**CityBuild**") to implement the Construction Workforce Agreement described in Attachment 10, the First Source Hiring Agreement described in Attachment 10, and the Trainee Hiring Goal in the Small Business Enterprise Agreement described in Attachment 10; accordingly, the Developer shall execute an agreement with CityBuild to fund CityBuild's staff costs for such services, up to a maximum of One Hundred Sixty One Thousand Seventy Dollars (\$161,070) of staff costs for every Five Hundred Million Dollars (\$500,000,000) in total Project costs.

(d) Prevailing Wages (Labor Standards). The Parties acknowledge that the development of the Project is a private work of improvement on public land. Developer agrees to pay or cause to be paid prevailing rates of wages in accordance with the requirements set forth in Attachment 10 for construction work done at the Site prior to the issuance of the City's Final C of O.

ARTICLE 11 – INTENTIONALLY OMITTED

ARTICLE 12 - GENERAL PROVISIONS

12.01 Indemnification

Developer shall indemnify, defend, and hold harmless the Indemnified Parties from and against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out of this Agreement, including with respect to any challenge to the entitlement of the Developer to undertake the program described in the Scope of Development, or in any way connected with the death of or injury to any person or damage to any property occurring on or adjacent to the Site and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer and its agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) due primarily to the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified or its respective agents, employees or contractors. Developer's obligations under this Section 12.01 shall survive Successor Agency's recordation of the Final Notice of Termination as to any acts or omissions occurring prior to such recordation.

Provisions with Respect to Time Generally

All references in this Agreement to time limitations, including those in the Schedule of Performance, shall mean such time limitations as they may be extended pursuant to the terms of this Agreement.

12.02 Notices

Any notice, demand or other communication required or permitted to be given under this Agreement by either party to the other party shall be sufficiently given or delivered if transmitted by (i) registered or certified United States mail, postage prepaid, (ii) personal delivery, (iii) nationally recognized private courier services, or (iv) facsimile transmission, provided that, in such case, a confirming copy is sent by first class mail or pursuant to subsections (i), (ii) or (iii), in every case addressed as follows:

If to Successor Agency: Successor Agency to the San Francisco Redevelopment Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director

If to Developer: MA West, LLC
c/o The John Buck Company
1 North Wacker Drive, Suite 2400
Chicago IL 60606
Attention: Kevin Hites

With a copy to: Golub Real Estate Corp
625 North Michigan Avenue, Suite 2000
Chicago IL 60611
Attention: Lee Golub

Any such notice, demand or other communication transmitted by registered or certified United States mail, postage prepaid, shall be deemed to have been received forty-eight (48) hours after mailing (unless it is never delivered), and any notice, demand or other communication transmitted by personal delivery, facsimile transmission or nationally recognized private courier service shall be deemed to have

been given when received by the recipient. Any party may change its address for notices under this Section 12.03 by written notice given to the other party in accordance with the provisions hereof.

12.04 Time of Performance

(a) All dates for performance (including cure) shall expire at 5:00 p.m. (San Francisco, California time) on the performance or cure date.

(b) A performance date which falls on a Saturday, Sunday or Agency or national holiday is automatically extended to the next day which is not a Saturday, Sunday or Agency or national holiday.

(c) Unless otherwise specified, whenever an action is required in response to a submission, request or other communication, the responding party shall respond within thirty (30) days.

(d) Time is of the essence with respect to each provision of this Agreement, including each milestone set forth in this Agreement.

12.05 Attachments/Recitals

All attachments and recitals to this Agreement are hereby incorporated herein and made a part hereof as if set forth in full.

12.06 Non-Merger in Deed

None of the provisions of this Agreement are intended to, or shall be, merged by reason of any deed transferring title to the Public Parcel from Successor Agency to Developer or any successor in interest, and any such deed shall not be deemed to affect or impair the provisions and covenants of this Agreement.

12.07 Headings

Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. The terms "Paragraph" and "Section" may be used interchangeably.

12.08 Successors and Assigns

This Agreement shall be binding upon and, subject to the provisions of Article 6, shall inure to the benefit of, the successors and assigns of Successor Agency, Developer and any Holder. Where the term "Developer," "Successor Agency" or "Holder" is used in this Agreement, it shall mean and include their respective successors and assigns, including as to any Holder, any transferee of such Holder or any successor or assign of such transferee, whether or not the terms "successors and assigns" are used in conjunction therewith, except where the Agreement expressly provides that successors and assigns are not so included.

12.09 Counterparts/Formal Amendment Required

(a) This Agreement may be executed in counterparts, each of which shall be deemed to be an original, and all such counterparts shall constitute one and the same instrument.

(b) This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof.

(c) Any modifications or waiver of any provisions of this Agreement or any amendment thereto shall be in writing and signed by a person or persons having authority to do so, on behalf of both Successor Agency and Developer.

12.10 Governing Law

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

12.11 Recordation

Successor Agency shall cause this Agreement to be recorded in the Official Records at the time of conveyance of the Public Parcel to the Developer.

12.12 Estoppels

At the request of any party, the other Parties, within ten (10) days following such request, shall execute and deliver to the requesting Party a written statement in which such other Parties shall certify that this Agreement is in full force and effect; that this Agreement has not been modified or amended (or stating all such modifications and amendments); that no Party is in default under this Agreement (or setting forth any such defaults); that there are not then existing set-offs or defenses against the enforcement of any right or remedy of any Party, or any duty or obligation of the certifying Parties (or setting forth any such set-offs or defenses); and as to such other matters relating to this Agreement as the requesting Party shall reasonably request.

12.13 Attorneys' Fees

In the event that any Party brings a legal action to enforce rights under this Agreement against any other Party, the prevailing Party in any such proceeding will be entitled to recover its reasonable attorneys' fees and costs of the proceeding.

12.14 Further Assurances

Each party agrees to execute and deliver to the other party such additional documents and instruments as the other party reasonably may request in order to fully carry out the purposes and intent of this Agreement.

12.15 No Personal Liability

(a) No member, official or employee of Successor Agency, the City, or the TJPA shall be personally liable to Developer or any successor in interest in the event of any default or breach by Agency or for any amount which may become due to Developer or successor or on any obligations under the terms of this Agreement.

(b) No officer, director, member, official or employee of owner or Developer shall be personally liable to Successor Agency, the City, the TJPA, or any successor in interest in the event of any

default or breach by Developer or for any amount which may become due to Successor Agency, the City, the TJPA, or successor or on any obligations under the terms of this Agreement.

12.16 Effective Date

Representatives of Developer shall sign this Agreement before the Successor Agency staff calendars consideration of this Agreement by the Commission to conform to the Performance Schedule. The effective date of this Agreement and the parties' rights and obligations hereunder shall be the date on which this Agreement is approved by the Commission ("**Effective Date**"). The Successor Agency shall insert such date into the appropriate locations in this Agreement, but the failure to do so shall not in any way affect the enforceability of this Agreement.

ARTICLE 13 - REFERENCES AND DEFINITIONS

Terms are defined in this Article 13 or have the meanings given them when first defined.

Agreement means this Disposition and Development Agreement.

Commission means the Commission on Community Investment and Infrastructure.

City means the City and County of San Francisco.

Current Site Configuration is attached as Attachment 3-A.

DRDAP means the Design Review and Document Approval Procedures, as shown in Attachment 7.

Delay of Construction Tax Increment Fee is defined in Section 4.11.

Developer Default is defined in Section 8.01.

Effective Date is defined in Section 12.16.

Environmental Law is defined in Section 3.02(c).

Escrow is defined in Section 2.03.

Exclusive Right of Repurchase is defined in Section 8.03, a form of which is shown on Attachment 12.

Final C of O is defined in Section 4.13.

Final Notice of Termination is defined in Section 4.13.

Force Majeure is defined in Section 8.09.

Grant Deed means a grant deed in the form attached as Attachment 11.

Hazardous Substance is defined in Section 3.02(b).

Improvements is defined in Recital U, Section 4.01 and the Scope of Development, Attachment 6.

Partial Notice of Termination is defined in Section 4.13.

Project is defined in Recital U.

Project Area means the Transbay Redevelopment Project Area as described in the Redevelopment Plan.

Proposed Site Plan is attached as Attachment 3-B.

Redevelopment Plan is defined in Recital B of this Agreement.

Redevelopment Requirements are defined in Section 4.04

Schedule of Performance is attached as Attachment 5.

Scope of Development is attached as Attachment 6.

Site is defined in Section 1.04.

Site Permit is defined in Attachment 7.

Streetscape Improvements is defined in Attachment 6.

Successor Agency Default is defined in Section 8.06.

Term is defined in Section 1.09 (a).

Title Company is defined in Section 2.03(a).

TJPA Agreement is defined in Recital T and the form is attached as Attachment 19.

Trust Account is defined in Recital N.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

Authorized by Successor Agency Resolution No. _____-2015, adopted _____, 2015.

AGENCY:

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

By: _____
Tiffany J. Bohee
Executive Director

DEVELOPER:

MA WEST, LLC, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____,
Managing Member

By: _____

APPROVED AS TO FORM:

By: _____
James Morales
General Counsel

ATTACHMENT 1

Transbay Final and Conclusive Determination



April 15, 2012

Ms. Tiffany Bohee, Executive Director
City and County of San Francisco Successor Agency
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103

Dear Ms. Bohee:

Subject: Request for Final and Conclusive Determination

On November 7, 2012, the City and County of San Francisco Successor Agency (Agency) submitted a petition to the Department of Finance (Finance) requesting written confirmation that its determination of three enforceable obligations as approved in a Recognized Obligation Payment Schedule (ROPS) is final and conclusive. The three obligations subject of the request are all connected to the Transbay Transit Center Redevelopment Project and are specifically listed on the ROPS III (July 1, 2012 through December 31, 2012) and ROPS 13-14A (January 1, 2013 through June 30, 2013) as the following:

ROPS III Item No.	ROPS 13-14A Item No.	Project Name / Debt Obligation	Contract Execution Date
85	102	Tax Increment Sales Proceeds Pledge Agreement (Tax Increment)	1/31/2008
86	105	Implementation Agreement	1/2/2005
192	237	Affordable Housing Program funded by LMIHF for Transbay	1/20/2005

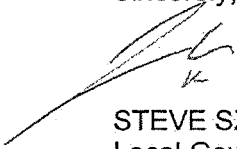
Finance has completed its review of the Agency's petition, which included obtaining clarification on items provided and additional supporting documentation. Pursuant to Health and Safety Code section 34177.5 (i), we are pleased to inform you that the approval of 102, 105, and 237 as listed on the approved ROPS 13-14A is final and conclusive. Finance's review of these obligations in a future ROPS shall be limited to confirming that the requested payments are required by the prior enforceable obligation. This final and conclusive determination is only valid for the three items listed above.

Please be advised that there may be activities included in the enforceable obligations described in this letter that are permissive that the Agency may no longer have the statutory authority to carry out. This final and conclusive determination neither grants additional authority to the Agency nor does it authorize acts contrary to law. Additionally, any amendments to the above items are not subject to this final and conclusive determination.

Ms. Tiffany Bohee
April 15, 2013
Page 2

Please direct inquiries to Justyn Howard, Assistant Program Budget Manager at
(916) 445-1546.

Sincerely,

A handwritten signature in black ink, appearing to read 'Steve Szalay', with a long horizontal stroke extending to the left.

STEVE SZALAY
Local Government Consultant

cc: Ms. Sally Oerth, Deputy Director, City and County of San Francisco
Mr. James Whitaker, Property Manager, City and County of San Francisco
California State Controller's Office



Trans Bay Transit Center Property Transactions

Howard, Justyn to: tiffany.bohee@sfgov.org

Cc: "Szalay, Steve", "Howard, Justyn"

09/10/2013 09:17 AM

1 attachment



winmail.dat

Dear Tiffany Bohee and Other Interested Parties (Including Title Companies),

This email confirms that the Department of Finance (Finance) has issued a final and conclusive enforceable obligation determination related to San Francisco's Trans Bay Transit Center Redevelopment Project. As such, any sale, transfer, or conveyance of property related to this project, and as outlined in the project documents, is authorized. These activities would be done in compliance with an approved final and conclusive enforceable obligation. Title companies may rely conclusively on this email from Finance as verification that no objection to any sale, transfer and/or conveyance of property related to this project will be initiated.

Should any parties have further questions related to this San Francisco Successor Agency obligation please do not hesitate to ask.

Regards,

Justyn Howard

Assistant Program Budget Manager

Department of Finance

Local Government Unit

915 L St., 10th Floor

Sacramento, CA 95814

Phone: 916-445-1546

Email: justyn.howard@dof.ca.gov<<mailto:justyn.howard@dof.ca.gov>>

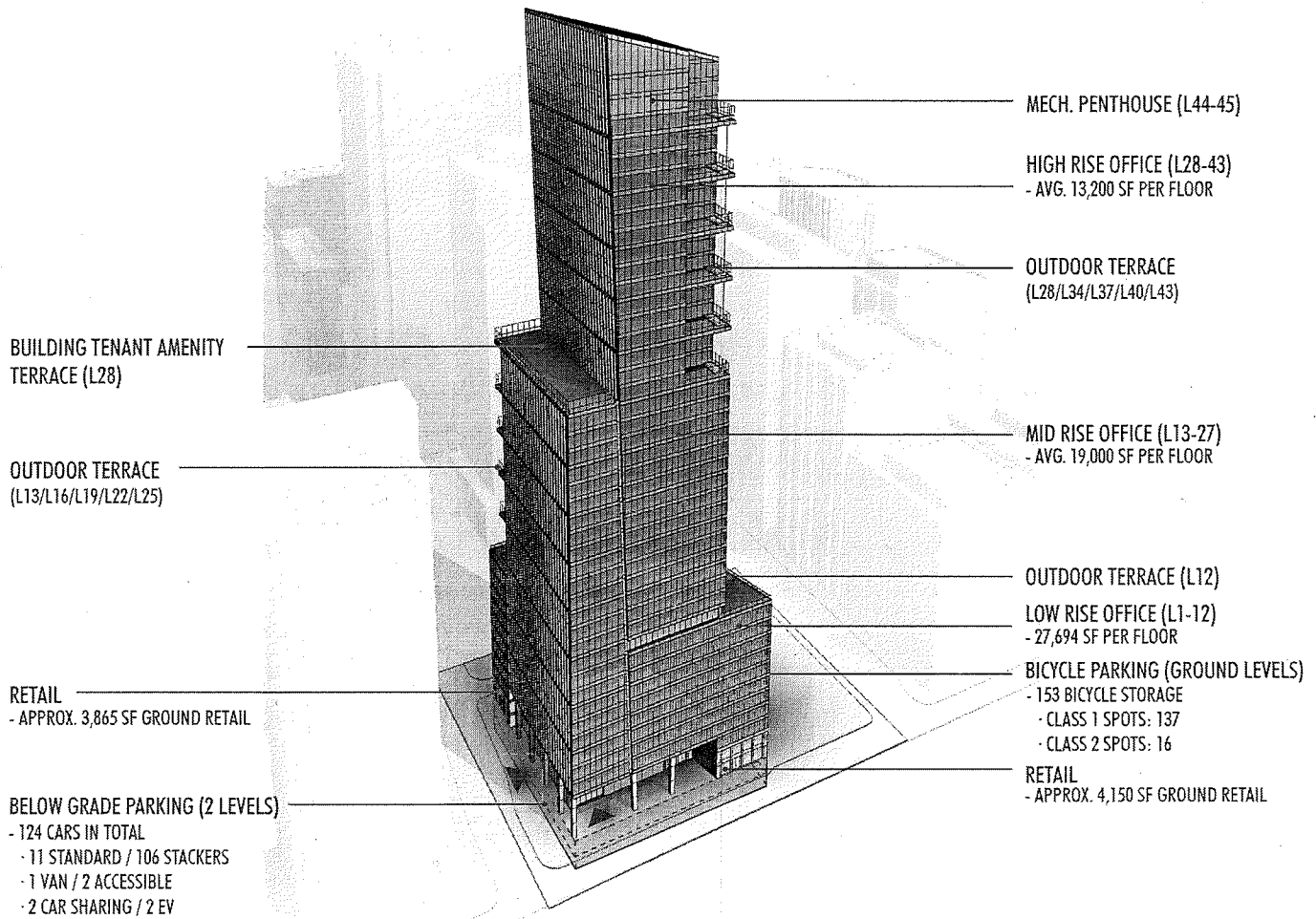
BLOCK 5

TRANSBAY BLOCK 5 PARK TOWER

PROJECT OVERVIEW

COMMERCIAL OFFICE

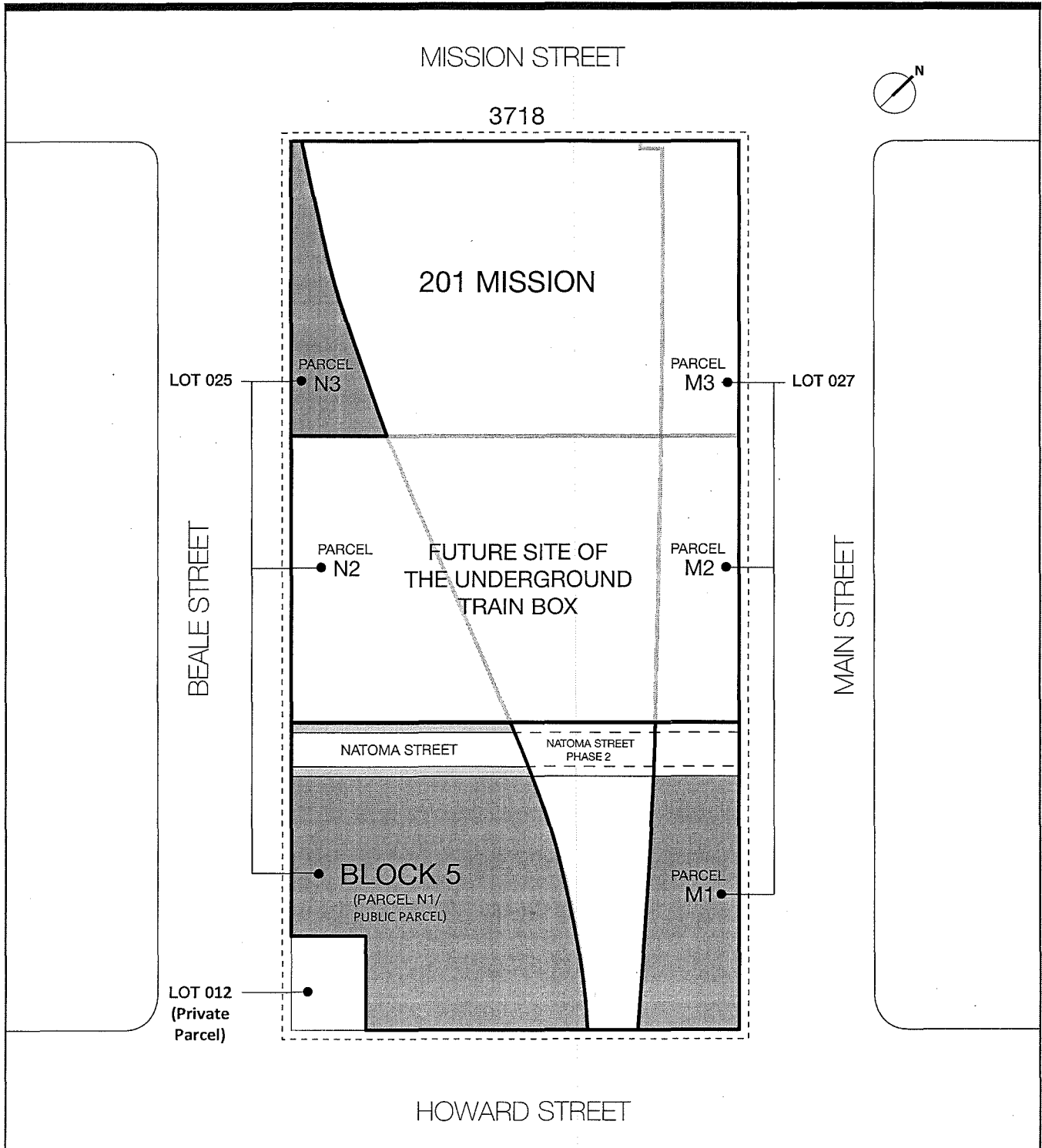
- 45 STORIES / 550 FT (605 FT TOP OF SCREENWALL)
- INCLUDES 2 LEVELS OF MECH. PENTHOUSE
- CONCRETE CONSTRUCTION: B2-L12
- STEEL CONSTRUCTION: L13-L45
- CONTINUOUS CONCRETE CORE



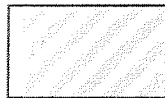
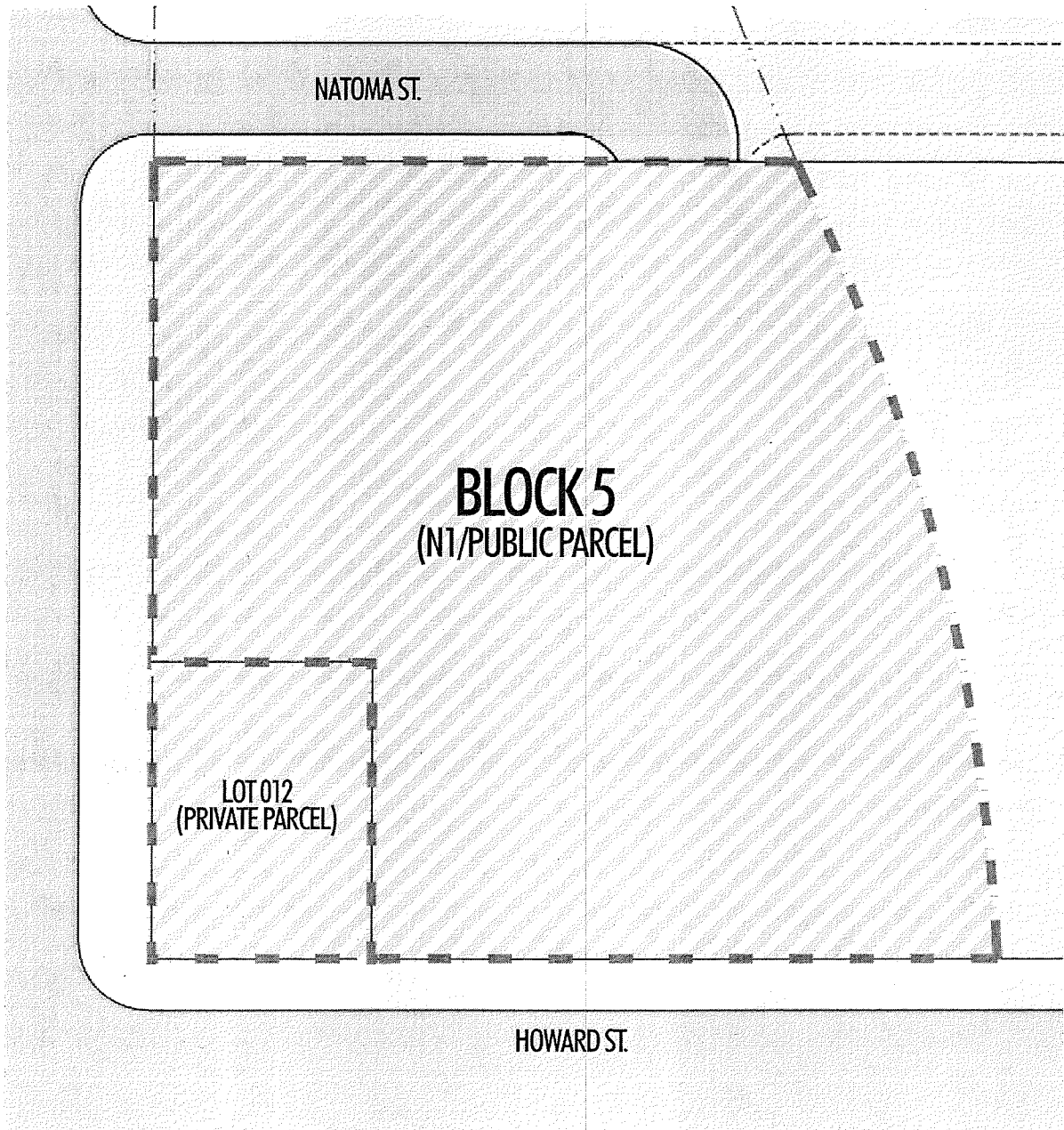
ATTACHMENT 3-A

Current Site Configuration

Assessor's Block 3718



ATTACHMENT 3-B
PROPOSED SITE PLAN



DEVELOPMENT SITE

ATTACHMENT 4-A

Site Legal Description

PUBLIC PARCEL

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PRIVATE PARCEL

ASSESSORS PARCEL NUMBER: LOT 012 BLOCK 3718

ATTACHMENT 4-B

Proposed Site Legal Description

PUBLIC PARCEL

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, DESCRIBED AS FOLLOWS:

PARCEL A, AS SAID PARCEL IS SHOWN ON PARCEL MAP 8677 FILED FOR RECORD _____, 2015, IN BOOK _____ OF PARCEL MAPS, PAGE _____, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

PRIVATE PARCEL

ASSESSORS PARCEL NUMBER: LOT: 012 BLOCK: 3718

ATTACHMENT 5

Schedule of Performance

Task	Performance Date	Outside Date for Performance (subject to provisions of Agreement)
Schematic Design -- Submission to Successor Agency	Complete*	---
Redevelopment Plan Amendment -- Approval by Commission		April 7, 2015
Schematic Design -- Approval by Commission	Approved concurrently with Commission approval of the OP/DDA	
DCDG Amendment -- Approval by Commission		
Proposition M Allocation and Redevelopment Plan Amendment Conformance -- Approval by Planning Commission		May 5, 2015
Developer Pays Good Faith Deposit	Per Section 1.06	
Section 33433 Findings and Redevelopment Plan Amendment -- Approved by the Board of Supervisors		June 9, 2015
Developer Opens Escrow	At least 30 days prior to close of Escrow	August, 2015
Evidence of Financing and Project Commitments and Construction Contract-- Submission to Successor Agency	Per Section 2.09(a)	
Evidence of Financing and Project Commitments -- Approval by Successor Agency	Within 15 days after receipt of Evidence of Financing and Project Commitments	
Parties Submit Escrow Instructions	At least 15 business days prior to close of Escrow	August 15, 2015
Design Development Documents -- Submission to Successor Agency	Within 4 months after Effective Date*	November, 2015
Design Development Documents -- Completeness Check by Successor Agency	Within 7 working days after submittal	November, 2015
Parties Submit Closing Documents to Escrow	No later than 1 business day prior to close of Escrow	August 29, 2015
Developer Deposits Purchase Price into Escrow	No later than 1 business day prior to close of Escrow	August 29, 2015
Payment of Purchase Price and Close of Escrow	September 16, 2015, or date on which closing conditions satisfied, but not later than Outside Closing Date.	September 23, 2015
Design Development Documents -- Approval by Successor Agency	Within 45 days after the date Design Development Documents are determined to be complete	December 1, 2015
Construction Commencement Date for the Tower Improvements		December 1, 2016
Final Construction Documents -- Submission to Successor Agency	Concurrent with submission to DBI	January 1, 2017

Final Construction Documents -- Approval by Successor Agency	Within 21 days after receipt of the Final Construction Documents from and approved by DBI and any other City agencies with jurisdiction	February 1, 2017
Completion of Construction of the Tower Improvements	Within 39 months of Commencement of Construction	December 1, 2019
Construction Commencement Date for the Interim Open Space	Within 12 months of Completion of Construction of the Tower Improvements, if TJPA makes M1 and N3 available per TJPA Agreement	
Construction Commencement Date for the Permanent Open Space	Within 60 months of Completion of Construction of the Tower Improvements, if TJPA makes M1 and N3 available per TJPA Agreement	
Completion of Construction of the Interim Open Space Improvements	Within 180 days after TJPA makes M1 and N3 available per TJPA Agreement	
Completion of Construction of the Permanent Open Space Improvements	Within 12 months after TJPA makes M1 and N3 available per TJPA Agreement	

ATTACHMENT 6

Scope of Development

I. Description of Improvements

The Improvements, to be constructed on the Site, are defined as follows:

- A. Commercial Office Tower. Consistent with the Development Controls, as amended, the Developer shall construct, or cause to be constructed, a commercial office tower of up to 550 feet in height conforming to the San Francisco Planning Department Bulk Controls set forth in Planning Code Sections 270 and 272 (the "Block 5 Tower"). The Block 5 Tower will include approximately 766,745 square feet of gross floor area of office space.
- B. Parking Garage. The Developer shall construct, or cause to be constructed, an underground parking garage as part of the Block 5 Tower. The garage shall include no more than 3.5% of the gross floor area of the building as prescribed in the Development Controls. The garage shall include two levels of parking with approximately 120 parking spaces, achieved through the use of mechanical parking lifts and stackers.
- C. Ground Floor Retail. The Developer shall construct, or cause to be constructed, approximately 8,642 square feet of ground level retail.
- D. Streetscape Improvements. The Developer shall construct, or cause to be constructed, the streetscape improvements for Block 5 in accordance with the Transbay Redevelopment Area Streetscape and Open Space Concept Plan ("Streetscape Plan"), except that (i) on Howard Street from Beale to Main Street, the sidewalk width will be 16 feet and the Developer will provide landscape and street furnishings in concert with the theme of the Streetscape Plan, which will be reviewed and approved by OCII. The Developer will not be required to place trees closer to high-pressure utility lines than allowed by various utility requirements for normal clearance of trees located within Howard Street; (ii) the Beale Street sidewalk width may be slightly narrower at the northern portion of the site as depicted in the approved Schematic Design in order to accommodate existing water lines; and (iii) on Main Street adjacent to parcel M1, the sidewalk width will be 22 feet as depicted in the approved Schematic Design to accommodate existing water lines, and the Developer will provide landscape and street furnishings in concert with the Streetscape Plan, which will be reviewed and approved by OCII. Beale street sidewalk will be constructed as generally dimensioned in the Schematic Design documents. The trees will be located so that they do not conflict with existing utilities. The Developer will not be required to place trees closer to high-pressure utility lines than allowed by various utility requirements for normal clearance of trees located within Main Street. The actual dimensions of each sidewalk are subject to further review and approval of the OCII Executive Director and City departments with purview over sidewalks, streets, and utilities, including but not limited to the Department of Public Works, the Municipal Transportation Agency, and the San Francisco Public Utilities Commission.
- E. Required Open Space. The Developer shall design, construct, and maintain approximately 15,189 square feet of public open space on Parcel M1 and Parcel N3 based on the size and design requirements of the Development Controls, and subject to the provisions of Section 9.05 of the OP/DDA and the TJPA Agreement.

- F. Supplemental Open Space. The Developer shall design, construct, and maintain 5,432 square feet of Supplemental Open Space with the Project Area, subject to the provisions of Section 9.07 of the OP/DDA.
- G. Pavilion. Developer shall be responsible for the relocation and installation of the Pavilion, currently located at 195 Beale Street to the north end of Parcel M3, consistent with the provisions of Section 9.06 of the OP/DDA, the Parcel M3 License Agreement, and this Attachment 6.
1. Prior to Close of Escrow, Developer shall develop and implement a plan for the temporary relocation and storage of the Pavilion. The plan shall be prepared by a professional consultant approved by the Successor Agency, with consultation from the Planning Department Preservation Staff. The Developer shall submit the plan to the Successor Agency, which will determine, in consultation with the Planning Department Preservation staff, whether the plan meets standards for conditions assessment, relocation, and structural stabilization of the Pavilion, including:
 - a. exterminate and control pests, such as rodents, etc.;
 - b. protect from moisture penetration or decay;
 - c. secure and protect the structure and its features from damage, vandalism, or break-ins
 - d. provide adequate ventilation; and
 - e. provide maintenance and monitoring while the structure is mothballed, including the identification of responsible parties.
 2. While the structure is located on Parcel M3, the Developer will use good faith efforts to locate a permanent site for the structure, subject to Successor Agency review and approval, in consultation with Planning Department Preservation Staff. These good faith efforts shall include working with the Successor Agency, the Planning Department, and TJPA for the possible relocation of the structure to a future park, and working with preservation groups to determine possible relocation sites. The Developer shall provide the Successor Agency and Planning Department Preservation Staff with quarterly reports, which shall include a description of the Developer's outreach efforts for permanent relocation of the Pavilion, and a description of any barriers Developer has encountered in its outreach efforts.
 3. If, prior to the December 31, 2020 expiration of the Parcel M-3 License, (i) a permanent site for the Pavilion within the Transbay Redevelopment Project Area or Transit Center District Plan Area has not been made available for the relocation of the Pavilion, (ii) Developer has used its commercially reasonable efforts to transfer ownership of the Pavilion, locate an alternative receiver site acceptable to OCII within San Francisco city limits and has reported to OCII on those efforts consistent with the requirements above, and (iii) OCII has not approved an alternative plan for the relocation of the Pavilion that includes a site, at no cost to the Developer, the Developer's obligation shall terminate.

II. Developer Responsibilities

Consistent with Section 4.09 and Section 4.18 of the DDA, the Developer shall be responsible, at its sole expense, for the installation and/or coordination of all public improvements required for the development of the Site. Such public improvements, whether within the Site or in the adjacent public right-of-way include, but are not limited to, the following:

- A. All site preparation activities on the Site.

- B. All utility services and public improvements required for the Development either within the Site or the adjacent public right-of-way including, but not limited to, the following: (i) Water, (ii) Power, (iii) Sewer, (iv) Storm, (v) Natural Gas, (vi) Telephone, Cable and Internet, (vii) Sidewalks, and Sidewalk Tree Well Installation, and (viii) Street improvements. The above items shall be performed in accordance with City requirements.

- C. The Developer will not be required to relocate the high pressure gas and water lines within Main, Beale, and Howard Streets.

ATTACHMENT 7

Design Review and Document Approval Procedures

INTRODUCTION

This Transbay Block 5 **Design Review and Document Approval Procedure ("DRDAP")** sets forth the procedure for design submittals of the plans and specifications for the developments of Block 5 of Zone 1 of the Transbay Redevelopment Project Area ("Project Area") and their review and consideration for approval by the Office of Community Investment and Infrastructure ("OCII"), as Successor Agency to the former San Francisco Redevelopment Agency (the "Former Agency"). The development will include a mixed use residential and commercial project, new streets and streetscape designs, public and private open spaces, and other permanent structures, as well as potential interim uses. Other departments and agencies of the City and County of San Francisco ("City Agencies") will review plans and specifications for compliance with applicable City and County of San Francisco ("City") regulations.

REVIEW

Subdivision Map Review

The review and approval of Design and Construction Documents by OCII pursuant to this DRDAP are in addition to and do not waive the requirements for subdivision review and approval as specified in the Subdivision Map Act. The processing of a subdivision map may occur concurrently with or independently of a project approval.

Temporary and Interim Uses

OCII staff shall review applications for temporary and interim uses.

DOCUMENTS FOR PROJECT APPROVAL

Project Approval documents shall consist of three components or stages:

- Schematic Design Documents,
- Design Development Documents, and
- Final Construction Documents.

SCOPE OF REVIEW

OCII in consultation with the San Francisco Planning Department and the San Francisco Department of Building Inspection (DBI), and other City Agencies shall review and approve Schematic Design plans, Design Development Documents and Final Construction Documents, each as defined below, for conformity with any prior approvals, the Redevelopment Plan for the Project Area ("Redevelopment Plan") and accompanying Plan Documents, including but not limited to the Transbay Development Controls and Design Guidelines ("Development Controls") and the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan ("Streetscape Plan"). OCII's review shall include consideration of such items as the architectural design, site planning and landscape design as applicable and appropriate to each submittal. The applicant shall submit a report regarding compliance with the Mitigation Monitoring and Reporting Program previously adopted by the Former Agency pursuant to the California Environmental Quality Act (CEQA). The mitigation measures are a part of the Final Environmental Impact Statement/Environmental Impact Report for the Project Area (EIS/EIR). The

mitigation measures are intended to reduce the major impacts of this development on the environment. OCII shall review such report to ensure compliance with the CEQA and the adopted Mitigation Monitoring and Reporting Program.

OCII PROCESS

Review by OCII

The redevelopment of Zone 1 of the Project Area established by the Redevelopment Plan and the Development Controls is a priority project for the City and OCII. OCII shall review all applications for project approvals as expeditiously as possible. OCII staff shall keep the applicant informed of OCII's review and comments, as well as comments by City Agencies, other government agencies, or community organizations consulted by OCII, and shall provide applicant opportunities to meet and confer with OCII and City staff prior to the Commission on Community Investment and Infrastructure ("CCII") hearing, to review the specific application for project approval.

Pre-Submission Conference(s)

Prior to filing an application for any project approval, the applicant or applicants may submit to OCII project review staff preliminary maps, plans, design sketches and other data concerning the proposed project and request a pre-submission conference. Within fifteen (15) days after the receipt of such request and material, OCII staff shall hold a conference with the applicant to discuss the proposed application.

Cooperation by Applicant

In addition to the required information set forth in Exhibit 1 attached hereto, the applicant shall submit materials and information as OCII staff may reasonably request which are consistent with the type of documents listed in Exhibit 1 and which are required to clarify a submittal provided pursuant to this DRDAP. Additionally, the applicant shall cooperate with, and participate in, design review presentations to the CCII and to the public through the Transbay Citizens Advisory Committee ("CAC").

COMMUNITY REVIEW OF DESIGN SUBMITTALS

OCII staff will provide the CAC, its designee, or successor, with regular updates on the design review process. Once a submittal is deemed complete, OCII staff will schedule CAC meetings to allow adequate review by CAC and community members before further approvals.

Before bringing Schematic Design proposals to the CCII for consideration, the Developer shall bring their design proposal before the CAC, its designee, or successor for a recommendation to the CCII. The Developer shall provide the CAC with sufficient presentation materials to fully describe design submittals, using the submission materials described in Exhibit 1 and/or other presentations materials as determined by OCII staff.

REVIEW OF SCHEMATIC DESIGN

Schematic Design Documents shall be submitted to the OCII for review and consideration. Schematic Design Documents shall relate to schematic design level of detail for a specific project.

Timing of OCII's Review

OCII staff shall review the Schematic Design for completeness and advise the applicant in writing of any deficiencies within seven (7) working days following receipt of the applicant's Schematic Design submittal. In the event OCII staff does not so advise the applicant, the application for Schematic Design shall be deemed complete. The time limit for OCII staff's review shall be within forty-five (45) days

from the date the Schematic Design has been determined to be complete. OCII shall take such reasonable measures necessary to comply with the time periods set forth herein.

The CCII shall review and approve, conditionally approve or disapprove the application for Schematic Design. If the CCII disapproves the Schematic Design in whole or in part, the CCII shall set forth the reasons for such disapproval in the resolution adopted by the CCII. If the CCII conditionally approves the Schematic Design, such approval shall set forth the concerns and/or conditions on which the CCII is granting approval. If the CCII disapproves an application in part or approves the application subject to specified conditions, then, in the sole discretion of the CCII, the CCII may delegate approval of such resubmitted or corrected documents to OCII design review staff.

The applicant and OCII may agree to any extension of time necessary to allow revisions of submittals. OCII shall review all revisions as expeditiously as possible. If revisions are made within an existing review period, the revisions shall permit up to fifteen (15) days of additional review within the original timeframe of review or within a revised time frame of the extension agreed to by OCII and the applicant. If revisions made after an original design approval by the CCII, and the revisions are determined to be required to be resubmitted to the CCII, the CCII shall either approve or disapprove such resubmitted or corrected documents as soon as practicable.

Document Submittals

The applicant shall submit Schematic Design Documents, which plans shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

REVIEW OF DESIGN DEVELOPMENT DOCUMENTS

Design Development Documents shall be submitted for review and either approval, conditional approval, or disapproval by OCII architectural staff, following approval of the Schematic Design.

Scope of Review

OCII staff shall review the Design Development Documents for consistency with earlier approved documents, the Redevelopment Plan and other Plan Documents, including the Development Controls and the Streetscape Plan. Design Development Documents will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

Timing of OCII's Review

OCII staff shall review the Design Development Documents for completeness and general consistency with the schematic design and shall advise the applicant in writing of any deficiencies within seven (7) working days after the receipt of the Design Development Documents. In the event OCII staff does not so advise the applicant, the Design Development Documents shall be deemed complete. The time limit for OCII staff's review shall be forty-five (45) days from the date the Design Development Documents were determined to be complete. OCII staff shall take such reasonable measures necessary to comply with the time periods set forth herein. If the Design Development deviates significantly from the approved schematic design, does not meet the conditions outlined in the schematic approval, or extensive revisions or clarifications to the Design Development are required, the time limit may be extended at OCII Executive Director's discretion.

The applicant and OCII staff may agree to any extension of time necessary to allow revisions of submittals prior to a decision by OCII architectural staff. OCII architectural staff shall review all such revisions as expeditiously as possible, within the time frame of the extension agreed to by OCII architectural staff and the applicant.

Document Submittals

The applicant shall submit Design Development Documents, which submittal shall include the documents and information listed in Exhibit 1 attached hereto. OCII staff may waive certain document submittal requirements if OCII staff determines such documents are not necessary for the specific application.

REVIEW OF FINAL CONSTRUCTION DOCUMENTS

OCII Review

Final Construction Documents will relate to the construction documents' level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents to their final form, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting. Final Construction Documents may be divided and submitted in accordance with an addenda schedule for the project approved in writing in advance by the City's Department of Building Inspection and OCII architectural staff or their designee. Provided the applicant's Final Construction Documents are delivered to OCII architectural staff concurrently with submittal to the Department of Building Inspection, Final Construction Documents shall be reviewed by OCII architectural staff within thirty (30) days following OCII staff's receipt of such documents from and approved by the Department of Building Inspection and any other appropriate City Agencies with jurisdiction. In the event that the applicant's Final Construction Documents are not delivered concurrently to OCII staff, OCII staff shall review the Final Construction Documents as expeditiously as possible.

Document Submittals

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The Final Construction Documents submittal shall include the information specified for the Design Development Documents in Exhibit 1 attached hereto.

COMPLIANCE WITH OTHER LAWS

No OCII or CCII review will be made or approval given as to the compliance of the Design Development Documents or Final Construction Documents with any building codes and standards, including building engineering and structural design, or compliance with building codes or regulations, or any other applicable state or federal law or regulation relating to construction standards or requirements, including, without limitation, compliance with any local, state or federal law or regulation related to the suitability of the improvements for use by persons with physical disabilities.

OCII REVIEW OF CITY PERMITS

No demolition, new construction, tenant improvement, alteration, or signage permit shall be issued by the Department of Building Inspection unless OCII has reviewed and approved the permit application.

SITE PERMITS

The applicant may apply for a Site Permit and addenda from the Department of Building Inspection upon OCII staff's determination that the Design Development Documents are approved or conditionally approved and generally consistent with the Schematic Design Documents. The applicant however may

not obtain an approved Site Permit until the Design Development documents have been approved or conditionally approved by OCII staff. The Site Permit application can be submitted before the Final Construction Documents for the project have been completed and submitted for approval to OCII architectural staff and the Department of Building Inspection. Applicant may apply for a Site Permit after approval of the Schematic Design Documents but prior to approval of the Design Development Documents or the Final Construction Documents at its own risk.

Notwithstanding the foregoing, the applicant may also apply for City permits related to grading and excavation activities prior to OCII architectural staff's approval of the Design Development Documents, provided that OCII architectural staff approves such activities prior to issuance of any City permits. Grading and excavation are often the first two addenda to site permits.

Pursuant to such site permit process, the Final Construction Documents may be divided and submitted to the Department of Building Inspection in accordance with an addenda schedule for the project approved in writing in advance by OCII architectural staff and the Department of Building Inspection. Construction may proceed after the appropriate Site Permit addenda have been issued, including, for example, and without limitation, addenda for foundations, superstructure, and final building build-out. In no case shall construction deviate from, or exceed the scope of, the issued addenda.

MODIFICATIONS AND AMENDMENTS TO PROJECT APPROVAL

OCII staff may, by written decision, approve project applications which amend or modify the previously approved project, provided that OCII makes the following determinations:

- (1) the project approval requested involves a deviation that does not constitute a material change;
- (2) the requested project approval will not be detrimental to the public welfare or injurious to the property or improvements in the vicinity of the project; and
- (3) the granting of the project approval will be consistent with the general purposes and intent of the Transbay Redevelopment Plan, Development Standards and Design Guidelines, and other Plan Documents and will not interfere with the TJPA's implementation of the Transbay Transit Center Project.

In the event that OCII determines that the project application deviates materially from the project already approved by OCII, OCII may require submittal of an amended project application, as appropriate, for review by the CCII and City Agencies in accordance with the provisions herein.

Major amendments and modifications will be processed in accordance with this DRDAP.

GOVERNMENT REQUIRED PROVISIONS, CHANGES

OCII and the applicant acknowledge and agree that neither one will delay or withhold its review or approval of those elements of or changes in the Schematic Design, Design Development Documents or Final Construction Documents which are required by any City agency, including the City's Department of Building Inspection, the Fire Marshall, or any other government agency having jurisdiction; provided, however, that (i) the party whose review or approval is sought shall have been afforded a reasonable opportunity to discuss such element of, or change in, documents with the governmental authority requiring such element or change and with either the applicant's or OCII's architect, as the case may be, and (ii) the applicant or OCII shall have reasonably cooperated with the other and such governmental authority in seeking such reasonable modifications of such required element or change as the other shall deem necessary or desirable. The applicant and OCII each agrees to use its diligent, good faith efforts to

obtain the other's approval of such elements or changes, and its request for reasonable modifications to such required elements or changes, as soon as reasonably possible.

**EXHIBIT 1:
DOCUMENTS TO BE SUBMITTED FOR PROJECT APPROVALS**

During each stage of the project design review process, OCII architectural staff and the applicant shall agree upon the scale of the drawings for project submissions. OCII staff and the applicant shall also discuss and agree upon the scope of the subsequent project submissions recognizing that each project is unique and that all documents outlined herein may not be required for each project.

Design Development Documents and other Construction Documents to be submitted shall be prepared by an architect licensed to practice in and by the State of California.

The applicant shall submit a report outlining compliance with the adopted Mitigation and Monitoring Program with each stage of design review.

SCHEMATIC DESIGN

Six (6) hard copies of the Schematic Design Documents shall be submitted to OCII, as well as one digital file (PDF). Documents submitted at this stage in the design review will relate to schematic design level of detail for a specific project. The program of uses, the height of buildings or other factors in the proposed project may trigger some variation in the submittal requirements in order to illustrate consistency with standards and guidelines in the Transbay Redevelopment Plan, Development Controls, the Streetscape Plan, the EIS/EIR or and other Plan Documents. Schematic Designs will illustrate building height, building bulk, block development, streetscape installation, public infrastructure and schematic park designs. A Schematic Design submittal will include the following documents.

Written Statement

Each submittal shall include a written statement of the design strategy and the proposed land use program; conformance with the Development Standards and Design Guidelines and sustainability measures to be implemented by the proposed development; descriptions of the structural system and principal building materials; and floor area calculations.

Data Charts

Data charts submitted should provide information for the project being proposed, including:

- 1) Program of uses and approximate square footage of each use
- 2) Approximate square footage of all proposed parcels
- 3) Housing unit count including affordable units
- 4) Number of on and off-street automobile parking, bike parking and loading spaces, including car share spaces (if any).

Schematic Design Drawings

Vicinity Plan

In addition to the site plan for the immediate area of the project under review, a diagrammatic vicinity plan should be submitted showing this project in the context of planned and existing:

- 1) Land uses, particularly retail facilities;
- 2) Vehicular, transit bicycle and pedestrian circulation; and
- 3) Public open space and community facilities

Infrastructure Plans

Infrastructure Plans should be submitted show this project in the context of planned and/or existing:

- 1) Proposed roadway and streetscape improvements (including pathways) and the dimensions thereof;
- 2) Off-site transportation measures required as part of the Mitigation and Monitoring program (if any); and
- 3) Utilities, including water, wastewater, and dry utilities.

Site Plan

The Site Plan will pertain to the total area of development and improvement included in this project which may include required streets, open space and other existing infrastructure improvements. A Site Plan or Plans as needed (at a scale of 1" = 40'-0" or another appropriate scale as agreed to by OCII staff), should indicate the location of uses; the general location, scale, relationship, and orientation of buildings; the general site circulation and relationship of ground floor uses, and:

- 1) Phasing (if any), proposed parcel boundaries and dimensions
- 2) Building footprints and proposed uses
- 3) Massing of future buildings including height and bulk measurements, illustrated in plans, sections and three dimensional figures
- 4) Planned public open space areas
- 5) Private open space areas
- 6) Setback areas
- 7) Diagram of proposed roads, sidewalks, and pedestrian connections
- 8) Parking and loading facilities (including interim facilities)
- 9) Circulation diagram including entry locations for pedestrians, autos, bikes, and service vehicles

Phasing Plan

Within the project, any anticipated phasing of construction or temporary improvements, including temporary or interim parking facilities, construction staging areas, and interim infrastructure, if any, shall be indicated.

Site sections showing height relationships of those areas noted above. Scale: minimum 1" = 40'-0" (or another appropriate scale as agreed to by OCII staff).

Building plans, elevations and sections sufficient to describe the development proposal, the general architectural character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/16"=1 '0 (or another appropriate scale as agreed to by OCII staff)

Landscape plans and elevations sufficient to describe the development proposal, the general landscape and open space character, and materials proposed at appropriate scale to fully explain the concept. Scale: minimum 1/16"=1 '0 (or another appropriate scale as agreed to by OCII staff)

Model

A model shall be submitted to OCII which shall be prepared at an appropriate scale indicating the exterior building design including façade articulation and texture of materials.

Perspectives, Sketches and Renderings

Perspectives, sketches, and renderings, (and other appropriate illustrative materials acceptable to OCII) as necessary to indicate the architectural character of the project and its relationship to the pedestrian level shall be submitted to OCII.

Materials Board

Samples of proposed materials and exterior colors for both buildings and landscapes shall be submitted to OCII in a manner to allow reviewing staff and members of the public to understand where materials are to be used and how they relate to each other.

DESIGN DEVELOPMENT DOCUMENTS

Documents submitted at the design development stage in design review will relate to design development level of detail for a specific project. The purpose of this submittal is to expand and develop the Schematic Design incorporating changes resulting from resolution of comments and concerns during the Schematic Design phase and to prepare drawings and other documents as to architectural, structural, mechanical and electrical systems.

The Design Development Document submission for a specific project should generally be consistent with the Schematic Design approval.

Site plans showing where applicable:

- Building relationships to landscaped areas, parking facilities, loading facilities, roads, sidewalks, mid-block connections, any transit facilities, and both public and private open space areas. All land uses within the subject parcel shall be designated. Streets and points of vehicular and pedestrian access shall be shown, indicating proposed new paving, planting and lighting if applicable.
- All utilities or service facilities which are a part of or link this project to the public infrastructure shall be shown.
- Grading plans depicting proposed finish site elevations.
- Site drainage and roof drainage.

- Required connections to existing and proposed utilities.
- All existing structures adjacent the site.
- Building floor plans and elevations including structural system, at an appropriate scale (1/8" to 1' minimum, or another appropriate scale as agreed to by OCII staff).
- Building sections showing typical cross sections at an appropriate scale, and in particular indicating street walls and adjacent open spaces, relationship of ground floor uses to pedestrian outdoor areas, and including mechanical equipment.
- Landscape design plans showing details of landscape elements including walls, fences, planting, outdoor lighting, ground surface materials. Appropriate reference to improvements in the City's right of way shall be shown.
- Drawings showing structural, mechanical and electrical systems.
- Materials and colors samples as they may vary from those submitted for Schematic Design approval.
- Sign locations and design.
- Outline specifications for materials and methods of construction.
- Roof plan showing location of and screen design for all rooftop equipment; and roof drainage.
- Wall sections illustrating exterior cladding systems, store fronts, canopies, etc. at an appropriate scale (1/8" minimum).
- Design details of all primary exterior conditions sufficient to establish baseline for Final Construction Documents.

FINAL CONSTRUCTION DOCUMENTS

Documents submitted at this stage in the design review will relate to the construction documents level of detail for a specific project. The purpose of this submittal is to expand and develop the Design Development Documents, prepare drawings and specifications in sufficient detail to set forth the requirements of construction of the project and to provide for permitting.

The Final Construction Documents shall generally be consistent with the approved Design Development Documents. The Final Construction Documents shall comply with the requirements of the City's Department of Building Inspection, including Site Plans and Construction Drawings and Specifications ready for bidding. In addition, the applicant shall submit a presentation of all exterior color schedules including samples, if appropriate, and design drawings for all exterior signs and graphics prior to completed construction. OCII architectural staff and applicant shall continue to work to resolve any outstanding design issues, as necessary.

ATTACHMENT 8
Intentionally Omitted

ATTACHMENT 9
Mitigation Measures

**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/
REDEVELOPMENT PROJECT
MITIGATION MONITORING AND REPORTING PROGRAM**

INTRODUCTION

Assembly Bill (AB) 3180 was enacted by the State Legislature to provide a mechanism to ensure that mitigation measures adopted through the California Environmental Quality Act ("CEQA") process are implemented in a timely manner and in accordance with the terms of project approval. Under AB 3180, local agencies are required to adopt a monitoring or reporting program designed to ensure compliance during project implementation.

The Transbay Terminal/Caltrain Downtown Extension/Redevelopment Project Mitigation Monitoring and Reporting Program ("Mitigation Monitoring Program"), pursuant to AB 3180, CEQA Section 21081.6 and CEQA Guidelines Section 15091, provides the basic framework through which adopted mitigation measures will be monitored to ensure implementation.

ORGANIZATION

The Mitigation Monitoring Program is organized in a table format, keyed to each adopted Final EIS/EIR mitigation measure. For each measure, the table: (1) lists the mitigation measure; (2) specifies the party responsible for implementing the measure; (3) establishes a schedule for mitigation implementation; (4) assigns mitigation monitoring responsibility; and (5) establishes monitoring actions and a schedule for mitigation monitoring.

IMPLEMENTATION

While the Mitigation Monitoring Program generally outlines the actions, responsibilities and schedule for mitigation monitoring, it does not attempt to specify the detailed procedures to be used to verify implementation (e.g., interactions between the Project Sponsor – the Transbay Joint Powers Authority, the San Francisco Redevelopment Agency and City departments, use of private consultants, signed-off on plans, site inspections, etc.). Specific monitoring procedures are either contained in approval documents or will be developed at a later date, closer to the time the mitigation measures will actually be implemented.

The majority of the measures will be monitored primarily by the Transbay Joint Powers Authority (TJPA), in consultation with other City and non-City agencies, as part of the site permit, building permit processes or other report.

**TRANSBAY TERMINAL/CALTRAIN DOWNTOWN EXTENSION/REDEVELOPMENT PROJECT
FEIS/FEIR MITIGATION MONITORING AND REPORTING PROGRAM**

MITIGATION MEASURE	Responsibility for Implementation	MITIGATION SCHEDULE	Monitoring Responsibility	Monitoring Actions/Schedule
Wind				
<p>W 1 – Consider potential wind effects of an individual project for the Redevelopment area. If necessary, perform wind tunnel testing in accordance with City Planning Code Section 148. If exceedences of the wind hazard criterion should occur for any individual project, require design modifications or other mitigation measures to mitigate or eliminate these exceedences. Tailor mitigation measures to the individual needs of each project. Examples of mitigation measures include articulation of building sides and softening of sharp building edges.</p>	San Francisco Redevelopment Agency (Agency)	During environmental review process preceding approval of each individual project in Transbay Redevelopment Area	Agency	Apply project review procedures for wind when projects are developed by or proposed to Agency.
Property Acquisition/Relocation				
<p>Prop 1 – Apply federal Uniform Relocation Act (Public Law 91 646) and California Relocation Act (Chapter 16, Section 7260 et seq., of the Government Code) and related laws and regulations governing both land acquisition and relocation. All real property to be acquired will be appraised to determine its fair market value before an offer is made to each property owner. (Minimum relocation payments are detailed in the laws, and include moving and search payments for businesses.) Provide information, assistance, and payments to all displaced businesses in accordance with these laws and regulations.</p>	City and County of San Francisco (CCSF), Agency, and TJPA	Prior to and during property acquisition and relocation activities	TJPA	TJPA to report to Board on compliance during acquisition and relocation activities.
Safety and Emergency Services				
<p>Saf 1 – Provide project plans to the San Francisco Fire Department for its review to ensure that adequate life safety measures and emergency access are incorporated into the design and construction of Project facilities</p>	Transbay Joint Powers Authority (TJPA)	Prior to project facility permitting and during construction	TJPA	Project facility plans to be forwarded to CCSF Fire Department prior to permit issuance. Inspect installation during construction.

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Saf 2 – Prepare a life safety plan including the provision of on-site measures such as a fire command post at the Terminal, the Fire Department’s 800-megahertz radio system and all necessary fire suppression equipment	TJPA	Prior to project facility permitting	TJPA	TJPA to develop life safety plan during facility design phases and implement during testing and startup up phase.
Saf 3 – Prepare a risk analysis to accurately determine the number of personnel necessary to maintain an acceptable level of service at Project facilities.	TJPA	Prior to project facility permitting	TJPA	TJPA to develop risk analysis during facility design phase.
Noise – Operations				
NoiO 1 – Apply noise mitigation at the following locations adjacent to the bus storage facility:	TJPA	During construction	TJPA	TJPA to design detailed noise mitigation during preliminary and final design phases. TJPA engineering staff to inspect installation and/or construction of mitigation measures.
<ul style="list-style-type: none"> • Provide sound insulation to mitigate noise impacts at the residences north of the AC Transit Facility at the corner of Perry and Third Street. At a minimum, apply sound insulation to the façade facing the bus storage facility (the south façade). • Construct two noise barriers to mitigate noise impacts to residences south of the AC Transit Facility along Stillman Street. The first noise barrier would be approximately 10 to 12 feet high and run along the southern edge of the AC Transit storage facility. The second noise barrier would be approximately 5 to 6 feet high and would be located on the portion of the ramp at the southwestern corner of the AC Transit facility. Treat the noise barriers with an absorptive material on the side facing the facility to minimize the potential for reflections off the underside of the freeway. • Construct a noise barrier to mitigate noise impacts to residences south of the Golden Gate Transit Facility along 				

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Stillman Street. The barrier would be approximately 10 to 12 feet high and run along the southern and a portion of the eastern edge of the Golden Gate Transit storage facility. Treat the noise barriers with an absorptive material on the side facing the facility to minimize the potential for reflections off the underside of the freeway.				
NoiO 2 – Landscape the noise walls. Develop the actual design of the walls in cooperation with area residents.	TJPA	During preliminary and final design	TJPA	TJPA to work with area residents during design of noise walls.
NoiO 3 – Construct noise walls prior to the development of the permanent bus facilities.	TJPA	During schedule development, construction document preparation and construction	TJPA	TJPA to develop program schedule and contract documents to implement this construction sequencing requirement.
Noise – Construction				
<p>NoiC 1 – Comply with San Francisco noise ordinance. The noise ordinance includes specific limits on noise from construction. The basic requirements are:</p> <ul style="list-style-type: none"> • Maximum noise level from any piece of powered construction equipment is limited to 80 dBA at 100 feet. This translates to 86 dBA at 50 feet. • Impact tools are exempted, although such equipment must be equipped with effective mufflers and shields. The noise control equipment on impact tools must be as recommended by the manufacturer and approved by the Director of Public Works. 	TJPA	During preparation of construction contract documents and construction	TJPA	TJPA to work with CCSF Department of Public Works (DPW) regarding construction noise mitigation program.

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<p>• Construction activity is prohibited between 8 p.m. and 7 a.m. if it causes noise that exceeds the ambient noise plus 5 dBA</p> <p>The noise ordinance is enforced by the San Francisco DPW, which may waive some of the noise requirements to expedite the project or minimize traffic impacts. For example, along Townsend Street where much of the land use is commercial, business owners may prefer nighttime construction since it would reduce disruption during normal business hours. The DPW waivers usually allow most construction processes to continue until 2 a.m., although construction processes that involve impacts are rarely allowed to extend beyond 10 p.m. This category would include equipment used in demolition such as jackhammers and hoe rams, and pile driving. It is not anticipated that the construction documents would have specific limits on nighttime construction. There may be times when nighttime construction is desirable (e.g., in commercial districts where nighttime construction would be less disruptive to businesses in the area) or necessary to avoid unacceptable traffic disruptions. Since the construction would be subject to the requirements of the San Francisco noise regulations, in these cases, the contractor would need to work with the DPW to come up with an acceptable approach balancing interruption of the business and residential community, traffic disruptions, and reducing the total duration of the construction.</p>				
<p>NoiC 2 – Conduct noise monitoring. The purpose of monitoring is to ensure that contractors take all reasonable steps to minimize noise.</p>	TJPA	During construction	TJPA	Monitoring data to be provided to CCSF DPW.
<p>NoiC 3 – Conduct inspections and noise testing of equipment. This measure will ensure that all equipment on the site is in good condition and effectively muffled</p>	TJPA	During construction	TJPA	Perform monitoring during construction.

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<p>NoiC 4 – Implement an active community liaison program. This program would keep residents informed about construction plans so they can plan around periods of particularly high noise levels and would provide a conduit for residents to express any concerns or complaints about noise.</p>	TJPA	During construction	TJPA	TJPA to develop and initiate community liaison program during final design prior to construction. Program will continue during construction.
<p>NoiC5 – Minimize use of vehicle backup alarms. Because backup alarms are designed to get people’s attention, the sound can be very noticeable even when their sound level does not exceed the ambient, and it is common for backup alarms at construction sites to be major sources of noise complaints. A common approach to minimizing the use of backup alarms is to design the construction site with a circular flow pattern that minimizes backing up of trucks and other heavy equipment. Another approach to reducing the intrusion of backup alarms is to require all equipment on the site to be equipped with ambient sensitive alarms. With this type of alarm, the alarm sound is automatically adjusted based on the ambient noise. In nighttime hours when ambient noise is low, the backup alarm is adjusted down.</p>	TJPA	During construction document preparation and construction	TJPA	Review contract specifications during final design and inspect construction.
<p>NoiC 6 – Include noise control requirements in construction specifications. These should require the contractor to</p> <ul style="list-style-type: none"> • Perform all construction in a manner to minimize noise. The contractor should be required to select construction processes and techniques that create the lowest noise levels. Examples are using predrilled piles instead of impact pile driving, mixing concrete offsite instead of onsite, and using hydraulic tools instead of pneumatic impact tools. 	TJPA	Final design and construction	TJPA	TJPA to develop detailed noise control requirements during preliminary engineering and final design. Ensure contractor obtains permits if necessary. Inspect construction activities for compliance and monitor noise levels. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such

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<ul style="list-style-type: none"> • Use equipment with effective mufflers. Diesel motors are often the major noise source on construction sites. Contractors should be required to employ equipment fitted with the most effective commercially available mufflers. • Perform construction in a manner to maintain noise levels at noise sensitive land uses below specific limits. • Perform noise monitoring to demonstrate compliance with the noise limits. Independent noise monitoring should be performed to check compliance in particularly sensitive areas. • Minimize construction activities during evening, nighttime, weekend and holiday periods. Permits would be required before construction can be performed in noise sensitive areas during these periods. • Select haul routes that minimize intrusion to residential areas. This is particularly important for the trench alternatives that will require hauling large quantities of excavation material to disposal sites. <p>Controlling noise in contractor work areas during nighttime hours is likely to require some mixture of the following approaches:</p> <ul style="list-style-type: none"> • Restrictions on noise producing activities during nighttime hours. • Laying out the site to keep noise producing activities as far as possible from residences, to minimize the use of backup alarms, and to minimize truck activity and truck queuing near the residential areas. • Use of procedures and equipment that produce lower noise 				<p>CCSF Department of Parking and Traffic (DPT) and DPW.</p>

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<p>levels than normal. For example, some manufacturers of construction equipment can supply special noise control kits with highly effective mufflers and other materials that substantially reduce noise emissions of equipment such as generators, tunnel ventilation equipment, and heavy diesel power equipment including mobile cranes and front-end loaders.</p> <ul style="list-style-type: none"> • Use of temporary barriers near noisy activities. By locating the barriers close enough to the noise source, it is possible to obtain substantial noise attenuation with barriers 10 to 12 feet high even though the residences are 30 to 40 feet higher than the construction site. • Use of partial enclosures around noisy activities. It is sometimes necessary to construct shed-like structures or complete buildings to contain the noise from nighttime activities. 				

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Vibration – Operations				
VibO1 – Use high-resilience track fasteners or a resiliently supported tie system for the Caltrain Downtown Extension for areas projected to exceed vibration criteria, including the following locations: (1) Live/Work condos, 388 Townsend Street (Hubbell an Seventh), (2) San Francisco Residences on Bryant (Harrison Parking Lot Site), (3) Clock Tower Building, and Second Street High Rise and (4) new Marriott Courtyard (Marine Firefighter’s Union).	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to develop locations/use of resilience track fasteners or resiliently supported tie system during preliminary engineering and final design. Review construction documents and inspect installation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as CCSF Department of Building Inspection (DBI) and DPW.
Vibration – Construction				
VibC1 – Limit or prohibit use of construction techniques that create high vibration levels. At a minimum, processes such as pile driving would be prohibited at distances less than 250 feet from residences.	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to ensure preliminary design, final design and contract documents preclude use of pile driving equipment within 250 feet of residences. Construction management and inspection will monitor contractors’ activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.

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VibC 2 – Restrict procedures that contractors can use in vibration sensitive areas. (It is often possible to employ alternative techniques that create lower vibration levels. For example, unrestricted pile driving is one activity that has considerable potential for causing annoying vibration. Using the cast-in-drilled-hole piling method instead will eliminate most potential for vibration impact from the piling.)	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to establish construction vibration design standards during final design. Include provisions in contract documents and monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
VibC 3 – Require vibration monitoring during vibration intensive activities.	TJPA	During construction	TJPA	TJPA to include provisions for vibration monitoring in construction contract documents or perform monitoring under a separate contract. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
VibC 4 – Restrict the hours of vibration intensive activities such as pile driving to weekdays during daytime hours.	TJPA	During design and construction	TJPA	TJPA to include provisions in contract documents and monitor contractors' activities to ensure compliance.
VibC 5 – Investigate alternative construction methods and practices to reduce the impacts in coordination with the construction contractor if resident annoyance from vibration becomes a problem.	TJPA	During final design and during construction	TJPA	TJPA to include provisions in contract documents and monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.

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VibC 6 – Include specific limits, practices and monitoring and reporting procedures for the use of controlled detonation. Control and monitor use of controlled detonation to avoid damage to existing structures. Include specific limits, practices, and monitoring and reporting procedures within contract documents to ensure that such construction methods, if used, would not exceed safety criteria.	TJPA	During final design and during construction	TJPA	TJPA to establish detailed limits, practices, and monitoring program for controlled detonation during final design. Include provisions in contract documents and monitor contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
Soils/Geology				
SG 1 – Monitor adjacent buildings for movement, and if movement is detected, take immediate action to control the movement.	TJPA	During construction	TJPA	TJPA to include provisions in contract documents requiring such monitoring and corrective measures and inspect contractors' activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
SG 2 – Apply geotechnical and structural engineering principles and conventional construction techniques similar to the design and construction of high-rise buildings and tunnels throughout the downtown area. Apply design measures and utilize pile-supported foundations to mitigate potential settlement of the surface and underground stations.	TJPA	During preliminary engineering and final design	TJPA	TJPA to review design and contract documents to ensure implementation. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
SG 3 – Design and construct structural components of the project to resist strong ground motions approximating the maximum anticipated earthquake (0.5g). The cut-and-cover portions will require pile supports to minimize non-seismic settlement in soft compressible sediments (Bay Mud). The underground Caltrain station at Fourth and Townsend will require pile-supported foundations due to the presence of underlying soft sediments.	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to design structural components to meet seismic standards during preliminary engineering and final design. Review design, contract documents and construction activities to ensure implementation. Where applicable, coordinate with JPB and CCSF departments with jurisdiction

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				over activities, such as DBI and DPW.
<p>SG 4 – Underpin existing building, where deemed necessary, to protect existing structures from potential damage that could result from excessive ground movements during construction. Design the tunneling and excavation procedures (and construction sequence), and design of the temporary support system with the objective of controlling ground deformations within small enough levels to avoid damage to adjacent structures. Where the risk of damage to adjacent structures is too great, special measures will be implemented such as: (1) underpinning, (2) ground improvement, and/or (3) strengthening of existing structures to mitigate the risks.</p> <p>Underpinning may include internal strengthening of the superstructure, bracing, reinforcing existing foundations, or replacing existing foundations with deep foundations embedded outside the tunnel zone of influence. Alternatives, in lieu of underpinning, involve strengthening the rock between the building and crown of tunnel. Grouting in combination with inclined pin piles can be used not only to strengthen the rock, but also make the rock mass over the tunnel act as a rigid beam, allowing construction of tunnels with no adverse effects on the buildings supported on shallow foundations over the tunnel.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to design tunneling, excavation procedures, underpinning, strengthening existing structures or ground improvement to protect existing structures from damage Include provisions in contract documents requiring contractors to implement measures during construction. Monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.

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<p>SG 5 – TJPA shall assure proper design and construction of pile-supported foundations for structures to control potential settlement of the surface. Stability of excavations and resultant impacts on adjacent structures can be controlled within tolerable limits by proper design and implementation of the excavation shoring systems.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to ensure foundations and excavation shoring systems are designed and constructed to minimize and control settlement and impacts on adjacent structures. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DBI and DPW.
Utilities				
<p>Util 1 – Coordinate with utility providers during preliminary engineering, continuing through final design and construction. Utilities would be avoided, relocated, and/or supported as necessary during construction activities to prevent damage to utility systems and to minimize disruption and degradation of utility service to local customers.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to identify utilities; design relocations or protection measures where required; and include requirements in contract documents. Monitor construction activities to ensure implementation of all required measures.
Cultural and Historic Resources				
<p>CH 1 – Comply with the provision of the signed Memorandum of Agreement (MOA) between the Federal Transit Administration, the State Historic Preservation Officer, and the TJPA.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA will assure compliance with MOA provisions during preliminary engineering, final design and construction, as described below.

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<p>CH 2 -- Professional Qualifications. Assure all activities regarding history, historic preservation, historic architecture, architectural history, historic and prehistoric archaeology are carried out by or under the direct supervision of persons meeting, at a minimum, the Secretary of the Interior's professional qualifications standards (48 FR 44738-9) (PQS) in these disciplines. Nothing in this stipulation may be interpreted to preclude any signatory or any agent or contractor thereof from using the properly supervised services or persons who do not meet the PQS.</p> <p>Historic Preservation Standards. Assure all activities regarding history, historic preservation, historic architecture, architectural history, historic and prehistoric archaeology are carried out to reasonably conform to the Secretary of Interior's Standards and Guidelines for Archaeology and Historic Preservation (48 FR 44716-44740) as well as to applicable standards and guidelines established by SHPO.</p> <p>Curation and Curation Standards. Ensure that FTA and TJPA shall, to the extent permitted under sections 5097.98 and 5097.991.[sic] of the California Public Resources Code, materials and records resulting from any archaeological treatment or data recovery that may be carried out pursuant to this MOA, are curated in accordance with 36 CFR Part 79.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	Prior to initiation of design and construction activities, TJPA will require submission of and review qualifications of professionals performing the MOA activities to assure that Secretary of Interior standards are met.
<p>CH 3 – Integrate into the design of the new terminal a dedicated space for a permanent interpretive exhibit. The interpretive exhibit will include at a minimum, but is not necessarily limited to: plaques or markers, a mural or other depiction of the historic Transbay Transit Terminal (TTT), ramps, or Key System, or other interpretive material.</p>	TJPA	During preliminary engineering and final design	TJPA	TJPA will include space for interpretive exhibit in terminal during design. Review contract documents and construction submittals and activities to ensure implementation.

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<p>CH 4 – Consult with the State Department of Transportation (Department) regarding the availability of historical documentary materials for the creation of the permanent interpretive display of the history of the original TTT building and its association with the San Francisco- Oakland Bay Bridge. Department will assist TJPA in planning the scope and content of the proposed interpretive exhibit. Invite the Oakland Heritage Alliance, the San Francisco Architectural Heritage, the California State Railroad Museum, and the Western Railway Museum to participate in this consultation. While retaining responsibility for the development of the exhibit, TJPA will jointly consider the Department’s and participating invitees’ recommendations when finalizing the exhibit design. TJPA will produce, install, and maintain the exhibit.</p>	TJPA	During preliminary engineering and final design	TJPA	TJPA will consult with Department regarding availability of documentary materials. TJPA will invite participation in this review from the other designated parties. TJPA will produce, install, and maintain the exhibit in the new Transbay Terminal.
<p>CH 5 – Consult with the City of Oakland about its possible interest in having a similar interpretive exhibit in the East Bay. If agreement is reached prior to completion of final design of the Transbay Terminal, TJPA will provide and deliver exhibit materials to a venue that is mutually satisfactory to TJPA and the City of Oakland.</p>	TJPA	During preliminary engineering and final design	TJPA	During preliminary engineering and final design, TJPA will consult with City of Oakland regarding its possible interest in establishing an exhibit. TJPA will provide and deliver exhibit materials to a venue in the City of Oakland that is mutually satisfactory to TJPA and the City of Oakland should such an exhibit be developed.
<p>CH 6 – Identify, in consultation with Department, elements of the existing TTT that may be suitable for salvage and interpretive use by museums. Within two years following execution of this MOA by FTA and SHPO, TJPA will offer any elements identified as suitable for salvage and interpretive use to San Francisco Architectural Heritage, the California State Railroad Museum, Sacramento, the Western Railway Museum, the Oakland Museum, and any other interested parties. Remove any elements selected in a manner that minimizes damage and deliver with legal title to the recipient. Items not accepted by interested</p>	TJPA	During preliminary engineering and final design	TJPA	Acceptance of items by interested parties must be completed at least 90 days prior to demolition of the Transbay Terminal

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parties for salvage or interpretive use within the time frame specified herein will receive no further consideration.				
CH 7 – Consult with Department and the Oakland Museum about contributing to Department’s exhibit and the production of an interpretive video at the Oakland Museum relating to the history and engineering of the major historic state bridges of the San Francisco Bay Area. TJPA will propose contributions to such an exhibit and video that would be related to the history of the TTT, bus ramp loop structures, and the Key System. Items contributed by TJPA to such an exhibit may include photographs, drawings, videotape, models, oral histories, and salvaged components from the TTT.	TJPA	During preliminary engineering and final design	TJPA	TJPA will produce and deliver to the Oakland Museum agreed-upon materials for such an exhibit and interpretive video.
CH 8 – Assist the Oakland Museum by contributing up to \$50,000 toward the cost of preparing and presenting the exhibit and preparing an exhibit catalog or related museum publication in conjunction with the exhibit, in a manner and to the extent that is mutually satisfactory to TJPA, Department, and the Oakland Museum. A separate agreement will outline the negotiated financial contributions. Work with the Oakland Museum and assist in the preparation of an exhibit and interpretive video if consultation results in agreement between TJPA and the Oakland Museum prior to demolition of the existing TTT.	TJPA	During preliminary engineering and final design	TJPA	TJPA will work with Oakland Museum and assist in the preparation of an exhibit and an interpretive video if consultation results in an agreement between TJPA and Oakland Museum prior to demolition of the existing Transbay Terminal

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<p>CH 9 – Request that SHPO, prior to the start of any work that would have an adverse effect on components of the Bay Bridge that are historic properties, determine whether these components, including the TTT and associated ramps, have been adequately recorded in existing documents. If SHPO determines that, collectively, such documents, which include the Department’s past recordation of a series of remodeling and seismic retrofit project that have occurred since 1993, adequately document the TTT and ramps, then no further documentation will be necessary.</p> <p>Seek, with the assistance of the Department, to obtain the original drawings of the TTT by architect T. Pflueger.</p> <p>If SHPO determines that existing <u>documentation is adequate</u>, compile such documentation into a comprehensive record. Components to be included in the review of past documentation are:</p> <ul style="list-style-type: none"> • 425 Mission Transbay Transit Terminal (APN 3719-003, 3720-001, 3721-006); • Upper Deck San Francisco Approaches or North Connector, Bridge #34-116F; • Upper Deck San Francisco Approaches or Center Ramps, Bridge #34-118L; • San Francisco Approaches or Lower Deck On-Ramp, Bridge #34-118R; • Transbay Terminal Loop ramp, Bridge #34-119Y; and • Harrison Street over-crossing Bridge #34-120Y. <p>Consult further with SHPO, if SHPO determines that existing documentation does not constitute adequate recordation of the Bay Bridge components addressed hereunder. SHPO will determine what level and type of additional documentation is necessary.</p> <p>Provide xerographic copies of this documentation to the SHPO and the Department Headquarters Library, upon a written</p>	<p>TJPA</p>	<p>During preliminary engineering and final design</p>	<p>TJPA</p>	<p>TJPA will consult with the SHPO regarding adequacy of prior recordation efforts.</p> <p>TJPA will work with Department to seek original drawings of the Transbay Transit Terminal.</p> <p>If SHPO determines that existing documentation is adequate, compile such documentation into a comprehensive record.</p> <p>If SHPO determines that existing documentation does not constitute adequate recordation of the Bay Bridge components, then TJPA and SHPO will consult further and SHPO will determine what level and type of additional documentation is necessary.</p>

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determination by SHPO that all documentation prescribed hereunder is satisfactory, to the History Center at the San Francisco Public Library, San Francisco Architectural Heritage, the Oakland History Room of the Oakland Public Library, the Oakland Museum of California, the Western Railway Museum, and Department District 4 Office. Thereafter, TJPA may proceed with that aspect of the Project that will adversely affect the historic properties documented hereunder.				If no response from SHPO within 45 days of receipt of each submittal of documentation, TJPA may assume that said documentation is adequate and may proceed with the project. TJPA will ensure that these records are accepted by SHPO prior to demolition of the TTT and provide copies of the documentation to designated agencies. Then, TJPA will proceed with the aspect of the project that will adversely affect the historic properties documented.
CH 10 – Within 180 days after FTA determines that the Project has been completed, TJPA, in consultation with FTA and SHPO, will re-evaluate the Bay Bridge, a property listed on the NRHP, and determine whether the National Register nomination should be amended or whether the bridge no longer qualifies for listing and should be removed from the National Register. As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR Part 60 (60.14 and 60.15).	TJPA	Within 180 days after FTA determines that the Project has been completed	TJPA	As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR part 60 (60.14 and 60.15). TJPA will coordinate these efforts with the CCSF Planning Department.
CH 11 – Develop and implement measures, in consultation with the owners of historic properties immediately adjoining the construction sites, to protect the contributing elements of the Second and Howard Streets Historic District and the Rincon Point/South Beach Historic Warehouse Industrial District from damage by any aspect of the Project. Such measures will include, but are not necessarily limited to those identified in the MOA. The protective measures herein stipulated will be developed and implemented by TJPA prior to the commencement of any aspect	TJPA	During preliminary engineering, final design, and construction	TJPA	TJPA will contact owners of record of historic properties that will be affected (but that will not be acquired and demolished) by the Project. TJPA will provide and review this mitigation monitoring program with the owners via correspondence and/or public and face-to-face meetings. TJPA will coordinate these efforts with the CCSF Planning Department prior to commencement of any aspect of the

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<p>of the Project that could have an adverse effect on historic properties immediately adjoining the construction sites herein identified. In addition, TJPA will monitor the effectiveness of the protective measures herein stipulated and will supplement or modify these measures as and where necessary in order to ensure that they are effective. The historic properties covered by the terms of this paragraph are</p> <ul style="list-style-type: none"> • 589-591 Howard Street/3736-098, NRHP Status: 1D, Contributing Element of Second & Howard District & New Montgomery/Second Street, Const. Date: 1906, Type of Impact: Cut-and-cover construction nearby. • 163 Second Street/3721-048, NRHP Status: 1D, Contributing Element of Second & Howard District & New Montgomery/Second Street, Const. Date: 1907, Type of Impact: Cut-and-cover construction nearby. • 166-78 Townsend Street/3788-012, NRHP Status: 3D Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1910 [1], 1988 [2], Type of Impact: Cut-and-cover construction nearby. Need construction easement. • 640-Second Street/3788-002, NRHP Status: 252, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1926, Type of Impact: Tunnel under or near property • 650 Second Street/3788-049 through 3788-073, NRHP Status: 252, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property • 670-680 Second Street/3788-043, 3788-044, NRHP Status: 252 (670), 3D (680), Contributing Element of Rincon Point/South 				<p>project that could have any adverse effect on historic properties immediately adjoining the construction sites herein identified.</p> <p>TJPA will monitor the effectiveness of the protective measures and will supplement or modify these measures as and where necessary in order to ensure that they are effective.</p>

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Beach District & South End District, Const. Date: 1913, Type of Impact: Tunnel under or near property				
<ul style="list-style-type: none"> • 301-321 Brannan Street/3788-037, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1909, Type of Impact: Tunnel under or near property • 130 Townsend Street/3788-008, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1910 [1], 1895-6 [2], Type of Impact: Tunnel under or near property • 136 Townsend Street/3788-009, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1902 [1], 1913 [2], Type of Impact: Tunnel under or near property • 144-46 Townsend Street/3788-009A, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property • 148-54 Townsend Street/3788-010, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1922, Type of Impact: Tunnel under or near property • 162-164 Townsend Street/3788-081, NRHP Status: 3D, Contributing Element of Rincon Point/South Beach District & South End District, Const. Date: 1919, Type of Impact: Tunnel under or near property 				
Notes: National Register Status Codes are as follows: I – Listed on the NRPH 251 – Determined eligible for listing by the Keeper of the				

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<p>Register 252 – Determined eligible for listing by the consensus of the SHPO and federal agency 1D – Listed on the National Register as a contributor to a district or multi-resource property</p>				
<p>CH 12 –TJPA will take the effect of the Project on the three historic properties listed below into account by recording these properties in accordance with the terms herein set forth. These buildings are:</p> <ul style="list-style-type: none"> • 191 2nd Street, (APN: 3721-022), • 580-586 Howard Street, (APN: 3721-092 through 3721-106), and • 165-173 2nd Street, (APN: 3721-025) <p>Prior to taking any action that could adversely affect these properties, consult SHPO and SHPO will determine the type and level of recordation that is necessary for these properties. Upon a written determination by SHPO that all documentation prescribed hereunder is complete and satisfactory, submit a copy of this documentation to SHPO, with xerographic copies⁸ to the History Center at the San Francisco Public Library, San Francisco Architectural Heritage, and the Oakland History Room of the Oakland Public Library. Thereafter, proceed with that aspect of the Project that will adversely affect the historic properties documented hereunder.</p> <p>If SHPO does not respond within 45 days of receipt of each submittal of documentation prescribed herein, assume that SHPO has determined that said documentation is adequate and may proceed with that aspect of the Project that will adversely affect the historic properties documented hereunder.</p>	TJPA	During preliminary engineering and final design	TJPA	<p>TJPA will consult SHPO and SHPO will determine the type of recordation necessary for the properties.</p> <p>TJPA will submit a copy of this documentation to SHPO, upon a written determination by SHPO that all documentation prescribed hereunder is complete and satisfactory, with copies to the designated agencies.</p> <p>If no response from SHPO within 45 days of receipt of each submittal of documentation, then TJPA may proceed with the project.</p>

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<p>CH 13 – Repair, in accordance with the Secretary of the Interior’s Standards for Rehabilitation, any damage to contributing elements of the Second and Howard Streets Historic District and the Rincon Point/South Beach Historic Warehouse Industrial District resulting from the Project.</p> <p>Photograph the condition of the contributing elements prior to the start of the Project to establish the baseline condition for assessing damage. Consult with property owner(s) about the appropriate level of photographic documentation of building interiors and exteriors. Provide a copy of this photographic documentation to the property owner(s), and retain on file.</p> <p>Submit repair plans and specifications to SHPO for review and comment, if repair of inadvertent damage resulting from the Project is necessary, to ensure that the work conforms to the Secretary of the Interior’s Standards for Rehabilitation. Consult with SHPO to establish a mutually satisfactory time frame for the SHPO’s review. TJPA will carry out any repairs required hereunder in accordance with the comments of SHPO.</p>	TJPA	Prior to, during, and following construction	TJPA	<p>TJPA will repair any damage to contributing elements.</p> <p>TJPA will photograph condition of contributing properties prior to the start of the Project to establish the baseline condition for assessing damage. TJPA will consult with property owner(s) about the appropriate level of photographic documentation of building interiors and exteriors, provide a copy of this photographic documentation to the property owner(s), and retain copy on file by TJPA.</p> <p>TJPA will submit repair plans and specifications to SHPO for review and comment, if repair of inadvertent damage is necessary, to ensure conformance to the Secretary of the Interior’s Standards for Rehabilitation.</p>
<p>CH 14 – Within 180 days after FTA determines that the Project has been completed, TJPA, in consultation with FTA and SHPO, will re-evaluate the Second and Howard Streets Historic District and determine whether the National Register nomination should be amended or whether the district no longer qualifies for listing and should be removed from the National Register. As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR Part 60 (60.14 and 60.15).</p>	TJPA	Within 180 days after FTA determines that the Project has been completed	TJPA	<p>As appropriate, TJPA will prepare and submit to the FTA and SHPO either an amended nomination or petition for removal, to be processed according to the procedures set forth in 36 CFR part 60 (60.14 and 60.15). TJPA will coordinate these efforts with the CCSF Planning Department.</p>

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<p>CH 15 – Within 45 days following execution of MOA, consult with FTA, SHPO, JPB and CCSF to initiate the process of determining how archaeological properties that may be affected by the Project will be identified, whether and how the NRHP eligibility of such properties may be addressed, and whether and how the Project's effects, if any, on those archaeological properties that may be considered historic properties for purposes of this MOA, may be taken into account. FTA and TJPA to invite Caltrans to participate in this consultation. Determine the time frame for this consultation with the consulting parties through consensus.</p> <p>Consultation will at minimum be informed by, and take into account, the following documents:</p> <ol style="list-style-type: none"> 1) Attachment 6, "Standard Treatment of Archaeological Sites: Data Recovery Plan," of the "Programmatic Agreement among the Federal Highway Administration, the Advisory Council on Historic Preservation, the California State Historic Preservation Office, and the California Department of Transportation regarding compliance with Section 106 of the National Historic Preservation Act, as it pertains to the Administration of the Federal Aid Highway Program in California;" 2) "Archaeological Research Design and Treatment Plan for SF-480 Terminal Separation Rebuild (Praetzellis and Praetzellis, 1993)" and "The San Francisco-Oakland Bay Bridge, West Approach Replacement: Archaeological Research Design and Treatment Plan (Ziesing, 2000); 3) "Revised Historical Archaeology Research Design for the Central Freeway Replacement Project (Thad M. Van Bueren, Mary Praetzellis, Adrian Praetzellis, Frank Lortie, Brian Ramos, Meg Scantlebury and Judy D. Tordoff)." 	TJPA	During preliminary engineering phase	TJPA	<p>SHPO, FTA, SHPO, TJPA, JPB, and CCSF will consult to determine how archaeological properties will be identified, whether and how the NRHP eligibility of such properties may be addressed, and whether and how the Project's effects, if any, on those archaeological properties that may be considered historic properties may be taken into account. Invite Caltrans to participate in this consultation.</p> <p style="text-align: right;">The consultation will take into account the designated documents.</p>

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<p>CH 16 – If the consulting parties agree that a treatment plan for archaeological properties should be prepared, prepare a Treatment Plan for archaeological resources that provides for the identification, evaluation, and treatment of archaeological properties that may be affected by the Project and that conform to the requirements above of item CH13 1) and take into account the information contained in items CH13 2) and CH13 3) and conform to any other standards, documentation, or guidance that the consulting parties may specify.</p> <p>If the consulting parties agree that the Treatment Plan will address historic archaeological properties as well as prehistoric archaeological properties, ensure that appropriately qualified historians prepare a historic context(s) that will be used by an interdisciplinary team consisting at a minimum of historians and historic archaeologist.</p> <p>The historic context will, at a minimum:</p> <ol style="list-style-type: none"> 1) identify significant research themes and topics that relate to the historic period(s) addressed by the historic context(s) 2) determine what types of historic archaeological properties, if any, that may usefully and significantly contribute to research themes and topics deemed by the historic context(s) study to be important 3) identify the specific components and constituents (features, artifacts, etc., if any, of historic archaeological property types that can factually and directly, contribute data important to our understanding of significant historic research themes and topics 4) determine the amount (sample size, etc.) of archaeological excavation and related activity that is needed to provide the range and type of factual data that will contribute to our understanding of significant historic research themes and topics 	TJPA	During preliminary engineering	TJPA	<p>TJPA will assure completion of comprehensive treatment plan consistent with the content required in the MOA, if the consulting parties agree that a treatment plan for archaeological properties is to be prepared.</p> <p>TJPA shall transmit this plan to the signatories of the MOA.</p> <p>TJPA will ensure that appropriately qualified historians prepare a historic context(s) that includes the specified information for use by an interdisciplinary team consisting at a minimum of historians and historic archaeologist, if the consulting parties agree that the Treatment Plan will address historic archaeological properties as well as prehistoric archaeological properties.</p>

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<p>Submit the draft Treatment Plan to the other consulting parties for review and comment. The consulting parties have 45 days from receipt of the draft Treatment Plan to comment in writing to FTA and TJPA. Failure of the consulting parties to respond within this time frame shall not preclude FTA and TJPA from finalizing the draft Treatment Plan to their satisfaction.</p> <p>Before finalizing the draft Treatment Plan, FTA and TJPA to provide the consulting parties with written documentation indicating whether and how the draft Treatment Plan will be modified.</p> <p>Unless any consulting party objects to this documentation in writing to FTA and TJPA within 15 days following receipt, finalize the draft Treatment Plan as deemed appropriate by FTA and TJPA, and proceed to implement the final Treatment Plan.</p>	TJPA	During preliminary engineering phase	TJPA and FTA	<p>TJPA will submit the draft Treatment Plan to the consulting parties for review and comment.</p> <p>Before finalizing the draft Treatment Plan, FTA and TJPA will provide the consulting parties whether and how the draft Treatment Plan will be modified.</p> <p>TJPA will ensure that the consulting parties have 15 days following receipt of notification of the modifications to comment in writing about the proposed modifications.</p> <p>Unless consulting party objects, FTA and TJPA will finalize the draft Treatment Plan as they deem appropriate, and TJPA and FTA will implement the final Treatment Plan.</p>
<p>If FTA and TJPA propose to modify the final Treatment Plan, they will notify the consulting parties concurrently in writing about the proposed modifications. The consulting parties will have 15 days from receipt of notification to comment in writing to FTA and TJPA. Failure of the consulting parties to respond within this time frame shall not preclude FTA and TJPA from modifying the final Treatment Plan to their satisfaction.</p> <p>Before modifying the final Treatment Plan, FTA and TJPA will provide the consulting parties with written documentation indicating whether and how the final Treatment Plan will be modified. Unless any consulting party objects to this documentation in writing to FTA and TJPA within 15 days following receipt, modify the final Treatment Plan as appropriate, and proceed to implement the modified final Treatment Plan.</p>	TJPA	During preliminary engineering phase	TJPA and FTA	<p>FTA and TJPA will provide the consulting parties whether and how the final Treatment Plan will be modified.</p> <p>TJPA will ensure that the consulting parties have 15 days following receipt of notification of the modifications to comment in writing about the proposed modifications.</p> <p>Unless consulting party objects, FTA and TJPA will modify the final Treatment Plan as they deem appropriate, and TJPA and FTA will proceed to implement the modified final Treatment Plan.</p>

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<p>CH 17 – 1) Within two years after FTA, in consultation with TJPA, has determined that all fieldwork required by the Treatment Plan has been completed, prepare a draft technical report that documents the results of implementing the Treatment Plan and distributes this draft technical report to the other MOA signatories for review. The reviewing parties will be afforded 60 days following receipt of the draft technical report to submit any written comments to FTA and TJPA. Failure of the reviewing parties to respond within this time frame shall not preclude FTA from authorizing TJPA to revise the draft technical report as FTA and TJPA deem appropriate.</p> <p>FTA will provide the reviewing parties with a written documentation indicating modifications in accordance with any reviewing party comments. Unless the reviewing parties object to this documentation in writing to FTA and TJPA within 30 days following receipt, modify the draft technical report as FTA and TJPA deem appropriate. Thereafter, issue the technical report in final form and distribute this document in accordance with paragraph CH15 2).</p> <p>2) Distribute copies of the final technical report documenting the results of the Treatment Plan implementation to the other signatory parties, to any consulting Native American Tribe if prehistoric, protohistoric or ethnographic period archaeological properties were located and addressed under the Treatment Plan, and to the appropriate California Historical Resources Information Survey (CHRIS) Regional Information Center, subject to the terms of Stipulation IV. E (CH19).</p> <p>3) Prepare a written draft document that communicates in lay terms the results of Treatment Plan implementation to members of the interested public. Distribute this written draft document for review and comment concurrently with and in the same manner as that prescribed for the draft written technical report prescribed by paragraph C.1. of this stipulation. If the draft document prescribed hereunder is a publication such as a report or</p>	<p>TJPA</p>	<p>Within two years of completed fieldwork</p>	<p>TJPA and FTA</p>	<p>TJPA will prepare a draft technical report that documents the results of implementing the Treatment Plan and distribute this draft technical report to the other MOA signatories for review.</p> <p>FTA to authorize TJPA to revise draft as deemed appropriate by FTA and TJPA.</p> <p>FTA will provide the reviewing parties with a written documentation indicating modifications in accordance with any reviewing party comments.</p> <p>Unless any reviewing party objects, FTA and TJA to issue technical report in final form and distribute in accordance with paragraph CH15 2).</p> <p>TJPA will distribute copies of the final technical report documenting the results of Treatment Plan implementation to other signatory parties, to any consulting Native American Tribe, as applicable, and to the appropriate CHRIS Regional Information Center.</p> <p>TJPA will prepare a written draft document that communicates in lay terms the results of Treatment Plan implementation to members of interested public.</p>

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brochure, then distribute such publication to the other signatory parties, to any consulting Native American Tribe as applicable, and to any other entity that the signatory parties and, as applicable, any consulting Native American Tribe, through consultation as appropriate, subject to the terms of Stipulation IV.E (CH 19).				
4) Prepare a written annual report describing the status of its efforts to comply with the terms of Stipulations II – IV, inclusive, of this MOA. Prepare the annual report following the end of each fiscal year (July 1 to June 30) that this MOA is in effect and distributed it to all MOA signatories by July 30 of each year until FTA and the SHPO through consultation determine that the requirements of stipulations II – IV, inclusive of this MOA have been satisfactorily completed.	TJPA	During preliminary engineering, final design, and construction	TJPA	TJPA will prepare an annual report describing its efforts to comply with the terms of stipulations II-IV.
CH 18 – If the consulting parties agree that a plan for treatment of archaeological properties will not be prepared, then address any archaeological properties discovered during implementation of any aspect of the Project pursuant to 36 CFR 800.13(b)(3).	TJPA	During construction phase	TJPA	If treatment plan not prepared, TJPA will address any archaeological properties discovered during implementation of any aspect of the Project pursuant to 36 CFR 800.13(b)(3).
CH 19 – The signatories to the MOA acknowledge that historic properties covered by this MOA are subject to the provisions of Section 304 of the National Historic Preservation Act of 1966, as amended, and Section 6254.10 of the California Government Code (Public Records Act), relating to the disclosure of archaeological site information and, having so acknowledged, will ensure that all actions and documentation prescribed by this Agreement are consistent with Section 304 of the National Historic Preservation Act of 1966, as amended, and Section 6254.10 of the California Government Code.	TJPA	During preliminary engineering phase	TJPA	TJPA will acknowledge that historic properties covered by the MOA are subject to the provisions specified in the MOA, relating to the disclosure of archaeological site information. TJPA will ensure that actions and documentation are consistent with same.

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<p>CH 20 – The parties to the MOA agree that Native American burials and related items discovered during implementation of the terms of the MOA and of the Project will be treated in accordance with the requirements of Section 7050.5(b) of the California Health and Safety Code. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions of Section 5097.98(a)-(d) of the California Public Resources Code. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>	TJPA	Prior to, during, and following construction	TJPA	<p>TJPA agree that Native American burials and related items discovered during implementation of the terms of the MOA and of the Project will be treated in accordance with the requirements specified. If, pursuant to Section 7050.5(c) of the California Health and Safety Code, the county coroner/medical examiner determines that the human remains are, or may be of Native American origin, then the discovery shall be treated in accordance with the provisions specified. TJPA will ensure that to the extent permitted by applicable law and regulation, the views of any consulting Native American Tribe and the Most Likely Descendant(s) are taken into consideration when decisions are made about the disposition of other Native American archaeological materials and records.</p>
Hazardous Materials/Waste – Operations				
<p>HW0 1 – Construct and operate any Caltrain fueling facility in compliance with local, state and Federal regulations regarding handling and storage of hazardous materials. (Caltrain Joint Powers Board (JPB)/TJPA)</p>	Caltrain Joint Powers Board (JPB)	During construction and operations	TJPA	<p>Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements.</p>

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HWO 2 – Equip diesel fuel pumps with emergency shut-off valves and, in compliance with U.S. EPA requirements, fuel Underground Storage Tanks (USTs) would be equipped with leak detection and monitoring systems.	JPB	During operations	TJPA	Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements
HWO 3 – Employ the use of secondary containment systems for any aboveground storage tanks.	JPB	During operations	TJPA	Secondary containment to be included in facility design and construction and maintained during operations
HWO 4 – Store cleaning solvents in 55-gallon drums, or other appropriate containers, within a bermed area to provide secondary containment.	JPB	During operations	TJPA	Inspect operations, and comply with all permitting and reporting requirements
HWO 5 – Slope paved surfaces within the fueling facility and the solvent storage area to a sump where any spilled liquids could be recovered for proper disposal.	JPB	During construction and operations	TJPA	Sloped paved surfaces and sump to be included in facility design
HWO 6 – Follow California OSHA and local standards for fire protection and prevention for the handling and storage of fuels and solvents.	JPB	During operations	TJPA	Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Inspect operations, and comply with all permitting and reporting requirements

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HWO 7 – Prepare a Hazardous Materials Management/Business Plan and file with the CCSF Department of Public Health.	JPB	During final design	TJPA	JPB to prepare and TJPA to file Hazardous Materials Management/Business Plan with CCSF Department of Public Health (DPH)
Hazardous Materials/Waste – Construction				
HMC 1 – Follow California OSHA and local standards for fire protection and prevention. Handling and storage of fuels and other flammable materials during construction will conform to these requirements, which include appropriate storage of flammable liquids and prohibition of open flames within 50 feet of flammable storage areas.	TJPA	During construction	TJPA	Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations.
HMC 2 – Perform detailed investigations of the potential presence of contaminants in soil and groundwater prior to construction, using conventional drilling, sampling, and chemical testing methods. Based on the chemical test results, a mitigation plan will be developed to establish guidelines for the disposal of contaminated soil and discharge of contaminated dewatering effluent, and to generate data to address potential human health and safety issues that may arise as a result of contact with contaminated soil or groundwater during construction. The investigation and mitigation plan will follow the requirements of the City and County of San Francisco’s Article 22A in the appropriate areas along the alignment.	TJPA	During construction	TJPA	Review design and contract documents to ensure compliance with all applicable regulations. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.

With construction projects of this nature and magnitude, there are typically two different management strategies that can be employed to address contaminated soil handling and disposal issues. Contaminated soil can be excavated and stockpiled at a centralized location and subsequently sampled and analyzed for disposal profiling purposes in accordance with the requirements of the candidate disposal landfill. Alternatively, soil profiling for

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disposal purposes can be done in-situ so when soil is excavated it is loaded directly on to trucks and hauled to the appropriate landfill facility for disposal based on the in-situ profiling results. A project of this nature could also combine both strategies.				
HMC 3 – Cover with plastic sheeting soils removed during excavation and grading activities that remain at a centralized location for an extended period of time to prevent the generation of fugitive dust emissions that migrate offsite.	TJPA	During construction	TJPA	Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations.
HMC 4 – Use a licensed waste hauler, applying appropriate manifests or bill of lading procedures, as required to haul soil for disposal at a landfill or recycling facility.	TJPA	During construction	TJPA	Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations.
HMC 5 – Use chemical test results for groundwater samples along the alignment to obtain a Batch Discharge Permit under Article 4.1 of the San Francisco Department of Public Works as well as to evaluate requirements for pretreatment prior to discharge to the sanitary sewer. Effluent produced during the dewatering of excavations will be collected in onsite storage tanks and periodically tested, as required under discharge permit requirements, for potential contamination to confirm the need for any treatment prior to discharge.	TJPA	During construction	TJPA	Review design and contract documents to ensure compliance. Obtain all applicable permits. Inspect construction to ensure compliance with contract documents and regulations. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW.

If required, treatment may include:

- Settling to allow particulate matter (total suspended solids) to settle out of the effluent in order to reduce the sediment load as well as reduce elevated metal and other contaminant concentrations that may be associated with suspended

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<p>sediments; and/or</p> <p>o Construction of a small-scale batch waste water treatment system to remove dissolved contaminants (mainly organic constituents such as petroleum hydrocarbons [gas, diesel, and oils], BTEX, and VOCs) from the dewatering effluent prior to discharge to the sanitary sewer. A treatment system would also likely employ the use of filtration to remove suspended solids.</p>				
<p>HMC 6 – Develop a detailed mitigation plan for the handling of potentially contaminated soil and groundwater prior to starting project construction.</p>	TJPA	During final design	TJPA	Review detailed mitigation plan, include provisions in contract documents and inspect construction to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW. Obtain all applicable permits
<p>HMC 7 – Design dewatering systems to minimize downward migration of contaminants that can result from lowering the water table if necessary based on environmental conditions. As necessary, shallow soils with detected contamination would be dewatered first using wells screened only in those soils. Dewatering of deeper soils would then be performed using wells screened only in the zone to be dewatered. Dewatering wells would be installed using drilling methods that prohibit shallow contaminated soils from being carried deeper into the boreholes.</p>	TJPA	During final design and construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH and DPW
<p>HMC 8 – Require that workers performing activities on site that may involve contact with contaminated soil or groundwater have appropriate health and safety training in accordance with 29 CFR 1910.120.</p> <p>A Worker Health and Safety Plan (HSP) will be developed for the project and monitored for the implementation of the plan on a day-to-day basis by a Certified Industrial Hygienist (CIH). The</p>	TJPA	During construction	TJPA	Provide health-and-safety training prior to start of and at timely intervals during construction. Include requirements in contract documents and monitor construction activities to ensure compliance.

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<p>HSP will include provisions for:</p> <ul style="list-style-type: none"> • Conducting preliminary site investigations and analysis of potential job hazards; • Personnel protective equipment; • Safe work practices; • Site control; • Exposure monitoring; • Decontamination procedures; and • Emergency response actions. <p>The HSP will specify mitigation of potential worker and public exposure to airborne contaminant migration by incorporating dust suppression techniques in construction procedures. The plan will also specify mitigation of worker and environmental exposure to contaminant migration via surface water runoff pathways by implementation of comprehensive measures to control drainage from excavations and saturated materials excavated during construction.</p>				
<p>HMC 9 – Review existing asbestos surveys, abatement reports, and supplemental asbestos surveys, as warranted. Perform an asbestos survey for buildings to be demolished, as required. Asbestos-containing building materials (ACM) will require abatement prior to building demolition. Removal and disposal of ACM will be performed in accordance with applicable local, state, and federal regulations.</p>	TJPA	During preliminary engineering, final design and construction phases	TJPA	Determine extent of ACM throughout project site. Perform abatement work prior to demolition. Include all regulatory requirements in contract documents and inspect construction to ensure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH. Obtain all applicable permits.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
HMC 10 – Perform a lead-based paint survey for buildings to be demolished to determine areas where lead-based paint is present and the possible need for abatement prior to demolition.	TJPA	During preliminary engineering prior to building demolitions	TJPA	Determine extent of lead contamination throughout project site. Perform abatement work prior to demolition if necessary. Include all regulatory requirements in contract documents and inspect construction to insure compliance. Where applicable, coordinate with CCSF departments with jurisdiction over activities, such as DPH. Obtain all applicable permits.
Pedestrians				
<p>Ped 1 – Use future construction or redevelopment as opportunities to increase building set-backs thereby increasing sidewalk widths. Particular areas where such widening is most needed include:</p> <ul style="list-style-type: none"> • The southeast corner of Fremont and Mission streets, • The northeast corner of First and Mission streets, • The north side of Mission Street between First and Fremont, and • Sidewalks south of Howard Street along Folsom, First, Fremont and Beale that are less than 10 feet wide. 	Agency and CCSF	During future project reviews in Transbay Terminal area	Agency and CCSF	TJPA will forward guidance to Agency, CCSF Planning Department and DPW.
Ped 2 – Eliminate or reduce sidewalk street furniture such as newspaper boxes and magazine racks in the immediate Transbay Terminal area on corners.	Agency and CCSF	Prior to opening of new Transbay Terminal	Agency and CCSF	TJPA will forward guidance to Agency, CCSF Planning Department and DPW.
Ped 3 – Retime traffic light signalization. This could improve pedestrian levels of service at each of the intersections studies that fall into LOS F.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Ped 4 – Provide crosswalk signalization at intersections where they do not exist already, such as Folsom and Beale streets.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 5 – Provide cross-walk count-down signals at intersections and cross-walks immediately surrounding the new Transbay Terminal.	CCSF	Prior to opening of new Transbay Terminal	CCSF	TJPA will forward guidance to CCSF DPT.
Ped 6 – Ensure that Transbay Terminal design increases corner and sidewalk widths at the four intersections immediately surrounding the Transbay Terminal.	TJPA and CCSF, DPW	During Transbay Terminal design phase	TJPA	TJPA and CCSF DPW, where applicable, to include sidewalk width expansion during preliminary and final design of new Transbay Terminal
Ped 7 – Provide lights within crosswalks to warn when pedestrians are present in the crosswalk, such as at the cross-walk associated with the mid-block bus loading area.	TJPA	Prior to opening of new Transbay Terminal	TJPA	TJPA to work with CCSF DPT to install cross-walk warnings
Pre-Construction Activities				
PC 1 – Complete a pre-construction building structural survey to determine the integrity of existing buildings adjacent to and over the proposed Caltrain Downtown Extension. Use this survey to finalize detailed construction techniques along the alignment and as the baseline for monitoring construction impacts during and following construction.	TJPA	Prior to preliminary engineering, final design and construction	TJPA	TJPA to perform building surveys during preliminary engineering. TJPA to include measures to protect existing buildings in final design and construction documents. TJPA to review design submittals, contract documents and construction activities to ensure implementation

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>PC 2 – Contact and interview individual businesses along the Caltrain Downtown Extension alignment to gather information and develop an understanding of how these businesses carry out their work. This survey will identify business usage, delivery/shipping patterns, and critical times of the day or year for business activities. Use this information to assist in: (a) the identification of possible techniques during construction to maintain critical business activities, (b) analyze alternative access routes for customers and deliveries to businesses, (c) develop traffic control and detour plans, and (d) finalize construction practices. (TJPA)</p>	TJPA	During preliminary engineering, final design and construction	TJPA	<p>TJPA to perform business activity survey during preliminary engineering. TJPA to include measures to maintain business activities and access in final design and construction documents.</p> <p>TJPA to review design submittals, contract documents and construction activities to ensure implementation.</p>
<p>PC 3 – Complete detailed geotechnical investigation, including additional sampling (drilling and core samples) and analyses of subsurface soil/rock conditions. Use this information to design the excavation and its support system to be used in the retained cut, cut-and-cover, and tunnel portions of the Caltrain Downtown Extension.</p>	TJPA	During preliminary engineering and final design	TJPA	<p>TJPA to obtain necessary permits from CCSF prior to performing drilling. TJPA to perform detailed geotechnical investigation during preliminary engineering.</p> <p>TJPA to review design submittals, contract documents and construction activities to ensure proper utilization of information obtained during investigation.</p>
<p>PC 4 – Establish community construction information/outreach program to provide on-going dialogue between the TJPA and the affected community regarding construction impacts and possible mitigation/solutions. Include dedicated personnel for an outreach office in the construction area to deal with construction coordination.</p>	TJPA	During construction	TJPA	<p>TJPA to establish program during final design prior to construction.</p>

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>PC 5 – Establish site and field offices located along the Caltrain Downtown Extension alignment. Field office staff, in conjunction with other staff, will:</p> <ul style="list-style-type: none"> • Provide the community and businesses with a physical location where information pertaining to construction can be exchanged, • Enable TJPA and JPB to better understand community/business needs during the construction period, • Allow TJPA and JPB to participate in local events in an effort to promote public awareness of the project, • Manage construction-related matters pertaining to the public, • Notify property owners, residences, and businesses of major construction activities (e.g., utility relocation/disruption and milestones, re-routing of delivery trucks), • Provide literature to the public and press, • Promote and provide presentations on the project via a Speakers Bureau, • Respond to phone inquires, • Coordinate business outreach programs, • Schedule promotional displays, and • Participate in community committees. 	TJPA and JPB	During construction	TJPA	TJPA to establish program during final design and continue during construction.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
<p>PC 6 – Implement an information phone line to provide community members and businesses the opportunity to express their views regarding construction. Review calls received and, as appropriate, forward the message to the necessary party for action (e.g., utility company, fire department, the Resident Engineer in charge of construction operations). Information available from the telephone line will include current project schedule, dates for upcoming community meetings, notice of construction impacts, individual problem solving, construction complaints and general information. Phone service would be provided in English, Cantonese, and Spanish and would be operated on a 24-hour basis.</p>	TJPA	During construction		TJPA to establish informational “Hot Line” during final design and continue during construction.
<p>PC 7 – Develop traffic management plans. Traffic management plans to maintain access to all businesses will be prepared for areas affected by surface or cut-and-cover construction. In addition, daily cleaning of work areas would be performed by contractors for the duration of the construction period. Provisions would be contained in construction contracts to require the maintenance of driveway access to businesses to the extent feasible.</p>	TJPA	During preliminary engineering, final design and construction	TJPA	TJPA to forward traffic management plans to CCSF DPT for review and approval. Include all requirements in construction documents and inspect implementation during construction.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
General Construction Measures				
GC 1 – Disseminate information to community in a timely manner regarding anticipated construction activities.	TJPA	During construction	TJPA	TJPA to initiate program during final design and continue during construction.
GC 2 – Provide signage. Work with establishments affected by construction activities to develop appropriate signage for display that directs both pedestrian and vehicular traffic to businesses via alternate routes.	TJPA	Prior to and during construction	TJPA	TJPA to initiate signage program during final design and monitor contractors' installation during construction.
GC 3 – Install level deck. Install decking at the cut-and-cover sections to be flush with the existing street or sidewalk levels.	TJPA	During construction	TJPA	TJPA to design flush decking during preliminary and final design, include in construction documents and ensure installation during construction.
GC 4 – Provide for efficient sidewalk design and maintenance. Wherever feasible, maintain sidewalks at the existing width during construction. Where a sidewalk must be temporarily narrowed during construction (e.g., deck installation), restore it to its original width during the majority of construction period. (In some places, this may require placing the temporary sidewalk on the deck.) Each sidewalk design should be of good quality and approved by the Resident Engineer prior to construction. Handicapped access will be maintained during construction where feasible.	TJPA	During preliminary engineering and construction	TJPA	TJPA to work with CCSF DPW on design of sidewalk plans during preliminary and final design and ensure installation during construction.
GC 5 – Provide construction site fencing of good quality, capable of supporting the accidental application of the weight of an adult without collapse or major deformation. Where covered walkways or other solid surface fencing is installed, establish a program to allow for art work (e.g., by local students) on the surface(s).	TJPA	During design and construction	TJPA	TJPA to work with CCSF DPW, incorporate requirements in construction documents and inspect installation during construction

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
Air Emissions – Construction				
AC 1 – Assure that, as part of the contract provisions, the project contractor is required to implement the measures below at all project construction sites.	TJPA	During development of contract documents	TJPA	Include requirement in contract documents.
AC 2 – Water all active construction areas at least twice daily. Ordinance 175-91, passed by the San Francisco Board of Supervisors on May 6, 1991, requires that non-potable water be used for dust control activities; therefore, the project contractor would be required to obtain reclaimed water from the City’s Clean Water Program or other appropriate sources.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 3 – Cover all trucks hauling soil, sand, and other loose materials or require all trucks to maintain at least two feet of freeboard.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 4 – Pave, apply water three times daily, or apply (non-toxic) soil stabilizers on all unpaved access roads, parking areas and staging areas at construction sites.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 5 – Sweep daily (with water sweepers) all paved access roads, parking areas and staging areas at construction sites.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 6 – Sweep streets daily (with water sweepers) if visible soil material is carried onto adjacent public streets.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 7 – Install sandbags or other erosion control measures to prevent silt runoff to public roadways.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 8 – Replant vegetation in disturbed areas as quickly as possible.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
AC 9 – Minimize use of on-site diesel construction equipment, particularly unnecessary idling.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 10 – Shut off construction equipment to reduce idling when not in direct use.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 11 – Where feasible, replace diesel equipment with electrically powered machinery.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 12 – Locate diesel engines, motors, or equipment as far away as possible from existing residential areas.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance
AC 13 – Properly tune and maintain all diesel power equipment.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 14 – Suspend grading operations during first and second stage smog alerts, and during high winds, i.e., greater than 25 miles per hour.	TJPA	During and following construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
AC 15 – Upon completion of the construction phase, buildings with visible signs of dirt and debris from the construction site shall be power washed and/or painted (given that permission is obtained from the property owner to gain access to and wash the property with no fee charged by the owner).	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.
Visual/Aesthetics - Construction				
VA 1 – Assure that construction crews working at night direct any artificial lighting onto the work site in order to minimize “spill over” light or glare effects on adjacent areas.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.

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MITIGATION MEASURE	Responsibility for Implementation	Mitigation Schedule	Monitoring Responsibility	Monitoring Actions/Schedule
VA 2 – Assure that contractors make all efforts possible to minimize specific aesthetic and visual effects of construction identified by neighborhood businesses and residents.	TJPA	During construction	TJPA	Include requirements in contract documents and monitor construction activities to ensure compliance.

ATTACHMENT 10

Successor Agency Equal Opportunity Program

Included in this Attachment 10:

- A. Small Business Enterprise Agreement
- B. Nondiscrimination in Contracts and Benefits
- C. Minimum Compensation Policy
- D. Healthcare Accountability Policy
- E. Construction Workforce Agreement
- F. First Source Hiring Agreement
- G. Prevailing Wages

ATTACHMENT 10-A

Small Business Enterprise Agreement

The company or entity executing this Small Business Enterprise Agreement, by and through its duly authorized representative, hereby agrees to use good faith efforts to comply with all of the following:

I. **PURPOSE.** The purpose of entering into this Small Business Enterprise Program agreement (“SBE Program”) is to establish a set of Small Business Enterprise (“SBE”) participation goals and good faith efforts designed to ensure that monies are spent in a manner which provides SBEs with an opportunity to compete for and participate in contracts by or at the behest of the Successor Agency to the San Francisco Redevelopment Agency (“Agency”) and/or the Agency-Assisted Contractor. A genuine effort will be made to give First Consideration to Project Area SBEs and San Francisco-based SBEs before looking outside of San Francisco.

II. **APPLICATION.** The SBE Program applies to all Contractors and their subcontractors seeking work on Agency-Assisted Projects on or after November 17, 2004 and any Amendment to a Pre-existing Contract.

III. **GOALS.** The Agency’s SBE Participation Goals are:

CONSTRUCTION	50%
PROFESSIONAL SERVICES	50%
SUPPLIERS	50%

IV. **TRAINEE HIRING GOAL.** In addition to the goals set forth above in Section III, there is a trainee hiring goal for all design professionals (architects, engineers, planners, and environmental consultants) on contracts or subcontracts over \$100,000. The trainee hiring goal requires architects, engineers and other design professionals only to hire qualified San Francisco residents as trainees. The trainee hiring goal is based upon the total amount of the design professional’s contract as follows:

<u>Trainees</u>	<u>Design Professional Fees</u>
0	\$ 0 – \$99,000
1	\$ 100,000 – \$249,999
2	\$ 250,000 – \$499,999
3	\$ 500,000 – \$999,999
4	\$1,000,000 – \$1,499,999
5	\$1,500,000 – \$1,999,999
6	\$2,000,000 - \$4,999,999
7	\$5,000,000 - \$7,999,999
8	\$8,000,000 – or more

A. **Procedures For Trainee Hires**

A. **Compliance with the Trainee Hiring Goal**

Design professionals will be deemed in compliance with this Agreement by meeting or exceeding the trainee hiring goal or by take the following steps in good faith towards compliance.

B. **Execution and Incorporation of this Agreement to Sub-agreements**

The Agency-Assisted Contractor shall execute this Agreement and shall incorporate by reference or attach this Agreement to its contract(s) with the architects, engineers and other design professionals. Thus, each design professional (regardless of tier) will be obligated to comply with the terms of this Agreement. The Agency-Assisted Contractor and/or the design professionals shall retain the executed Agreements and make them available to the Agency Compliance Officer upon request.

C. **Contact Educational Institutions**

Each design professional shall call the City and County of San Francisco Office of Economic and Workforce Development (OEWD) or educational institution(s) and request referrals for the required trainee positions. The request will indicate generally: (1) the number of trainees sought; (2) the required skills set (keeping in mind that these are trainee positions); (3) a brief description of job duties; (4) the duration of the trainee period; and (5) any other information that would be helpful or necessary for the educational institution or OEWD to make the referral. The minimum duration of assignment is part-time for one semester. However, design professionals are strongly encouraged to offer longer trainee employment periods to allow a more meaningful learning experience. (For example, a half-time or full-time assignment over the summer.) Although the initial contact shall be made by phone, the educational institution(s) or OEWD may require the design professionals to send a confirming letter or complete its form(s). Each design professional is required to timely provide all of the information requested by the OEWD or educational institution(s) in order to get the referrals.

D. Response from Educational Institutions

Each educational institution may have a different way of referring applicants, such as: sending resumes directly to the design professional; having the applicant contact the design professional by phone; require design professionals to conduct on-campus interviews; or some other method. The timing and method of the response will normally be discussed with the design professional during the initial phone request. The design professional is required to follow the process set by the educational institution(s) in order to get the referrals.

E. Action by Design Professionals When Referrals Available

The design professional shall interview each applicant prior to making the decision to hire or not to hire. The design professional shall make the final determination whether the applicant is qualified for the trainee position and the ultimate hiring decision. The Agency strongly encourages the design professional to hire a qualified San Francisco resident referred by the educational institution(s). The design professional shall notify the educational institution in writing of the hiring decision.

F. Action by Design Professionals When Referrals Unavailable

If after contacting two or more educational institutions the design professional is informed that no San Francisco residents are currently available, then the design professional should wait thirty (30) days and contact the educational institutions a second time to inquire whether qualified San Francisco residents are currently available for hire as trainees. If no qualified San Francisco residents are currently available after the second request, then the design professional has fulfilled its obligation under this Agreement, provided that the design professional has acted in good faith. The design professional must retain its file on all of the steps it took to comply with this Section IV and submit a copy of its file to the Agency Compliance Officer upon request.

G. Action by Design Professional When No Response From Educational Institutions

If a design professional has not received a response to its request for referrals from any of the educational institutions within five (5) business days after the design professional has fully complied with the procedures, if any, set by the educational institution(s) for obtaining referrals, then the design professional should immediately advise the Agency Compliance Officer by phone, fax or email. The Agency Compliance Officer or his/her designee shall cause the educational institution(s) to respond to the design professional within five (5) business days of the Agency Compliance Officer being notified. If the design professional still has not received a response from the educational institution(s) after this additional five (5) business day period has run, then the design professional has fulfilled its obligation under this Section IV, provided that the design professional has acted in good faith. Each design professional must retain its file on all of the steps it took to comply with this Agreement and submit a copy of its file to the Agency Compliance Officer upon request.

H. Termination of Trainee for Cause

If at any time during the Term, it becomes necessary to terminate for cause a trainee who was hired under this Agreement and the design professional has not met the minimum duration requirements under this policy, then the design professional shall hire a new trainee by following the process set forth above.

B. Reporting Requirements For Trainee Hires

1. Reporting

Upon completion of the Term of the Agreement or the term of the design professional's contract with the Agency-Assisted Contractor, whichever is less, the design professional (i.e. Employer) shall fax or email a report to the Agency Compliance Officer stating in detail: (1) the names of the San Francisco resident(s) interviewed for trainee positions; (2) the date(s) of each interview; (3) the reasons for not hiring the San Francisco resident(s) interviewed; (4) the name, address, gender and racial/ethnic background of the successful candidate for the trainee position; and (5) the number of San Francisco residents hired as trainees.

2. Report on Terminations

In the event a San Francisco resident hired pursuant to this Agreement is terminated for cause, the responsible design professional shall within five (5) days fax or email a termination report to the Agency Compliance Officer stating in detail: (1) the name of the trainee(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); and (4) whether the design professional replaced the trainee(s).

V. TERM. The obligations of the Agency-Assisted Contractor and/or Contractor(s) with respect to SBE Program shall remain in effect until completion of all work to be performed by the Agency-Assisted Contractor in connection with the original construction of the site and any tenant improvements on the site performed by or at the behest of the Agency-Assisted Contractor unless another term is specified in the Agency-Assisted Contract or Contract.

VI. FIRST CONSIDERATION. First consideration will be given by the Agency or Agency-Assisted Contractor in awarding contracts in the following order: (1) Project Area SBEs, (2) San Francisco-based SBEs (outside an Agency Project or Survey Area, but within San Francisco), and (3) Non-San Francisco-based SBEs. Non-San Francisco-based SBEs should be used to satisfy participation goals only if Project Area SBEs or San Francisco-based SBEs are not available, qualified, or if their bids or fees are significantly higher than those of non-San Francisco-based SBEs.

VII. CERTIFICATION. The Agency no longer certifies SBEs but instead relies on the information provided in other public entities' business certifications to establish eligibility for the Agency's program. Only businesses certified by the Agency as SBEs whose certification has not expired and economically disadvantaged businesses that meet the Agency's SBE Certification Criteria will be counted toward meeting the participation goals. The SBE Certification Criteria are set forth in the Policy.

VIII. INCORPORATION. Each contract between the Agency, Agency-Assisted Contractor or Contractor on the one hand, and any subcontractor on the other hand, shall physically incorporate as an attachment or exhibit and make binding on the parties to that contract, a true and correct copy of this SBE Agreement.

IX. DEFINITIONS. Capitalized terms not otherwise specifically defined in this SBE Agreement have the meaning set forth in the Agency's SBE Policy adopted on November 16, 2004 and amended on July 21, 2009 ("**Policy**") or as defined in the Agency-Assisted Contract or Contract. In the event of a conflict in the meaning of a defined term, the SBE Policy shall govern over the Agency-Assisted Contract or Contract which in turn shall govern over this SBE Agreement.

Affiliates means an affiliation with another business concern is based on the power to control, whether exercised or not. Such factors as common ownership, common management and identity of interest (often found in members of the same family), among others, are indicators of affiliation. Power to control exists when a party or parties have 50 percent or more ownership. It may also exist with considerably less than 50 percent ownership by contractual arrangement or when one or more parties own a large share compared to other parties. Affiliated business concerns need not be in the same line of business. The calculation of a concern's size includes the employees or receipts of all affiliates.

Agency-Assisted Contract means, as applicable, the Development and Disposition Agreement ("**DDA**"), Land Disposition Agreement ("**LDA**"), Lease, Loan and Grant Agreements, personal services contracts and other similar contracts, and Operations Agreement that the Agency executed with for-profit or non-profit entities.

Agency-Assisted Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed an Agency-Assisted Contract.

Amendment to a Pre-existing Contract means a material change to the terms of any contract, the term of which has not expired on or before the date that this Small Business Enterprise Policy (“SBE Policy”) takes effect, but shall not include amendments to decrease the scope of work or decrease the amount to be paid under a contract.

Annual Receipts means “total income” (or in the case of a sole proprietorship, “gross income”) plus “cost of goods sold” as these terms are defined and reported on Internal Revenue Service tax return forms. The term does not include net capital gains or losses; taxes collected for and remitted to a taxing authority if included in gross or total income, such as sales or other taxes collected from customers and excluding taxes levied on the concern or its employees; proceeds from transactions between a concern and its domestic or foreign affiliates; and amounts collected for another by a travel agent, real estate agent, advertising agent, conference management service provider, freight forwarder or customs broker. For size determination purposes, the only exclusions from receipts are those specifically provided for in this paragraph. All other items, such as subcontractor costs, reimbursements for purchases a contractor makes at a customer's request, and employee-based costs such as payroll taxes, may not be excluded from receipts. Receipts are averaged over a concern's latest three (3) completed fiscal years to determine its average annual receipts. If a concern has not been in business for three (3) years, the average weekly revenue for the number of weeks the concern has been in business is multiplied by 52 to determine its average annual receipts.

Arbitration Party means all persons and entities who attend the arbitration hearing pursuant to Section XIII, as well as those persons and entities who are subject to a default award provided that all of the requirements in Section XIII.L. have been met.

Commercially Useful Function means that the business is directly responsible for providing the materials, equipment, supplies or services in the City and County of San Francisco (“City”) as required by the solicitation or request for quotes, bids or proposals. Businesses that engage in the business of providing brokerage, referral or temporary employment services shall not be deemed to perform a “commercially useful function” unless the brokerage, referral or temporary employment services are required and sought by the Agency.

Contract means any agreement between the Agency and a person(s), firm, partnership, corporation, or combination thereof, to provide or procure labor, supplies or services to, for, or on behalf of the Agency.

Contractor means any person(s), firm, partnership, corporation, or combination thereof, who is negotiating or has executed a Contract.

Non-San Francisco-based Small Business Enterprise means a SBE that has fixed offices located outside the geographical boundaries of the City.

Office” or “Offices means a fixed and established place(s) where work is performed of a clerical, administrative, professional or production nature directly pertinent to the business being certified. A temporary location or movable property or one that was established to oversee a project such as a construction project office does not qualify as an “office” under this SBE Policy. Work space provided in exchange for services (in lieu of monetary rent) does not constitute an “office.” The office is not required to be the headquarters for the business but it must be capable of providing all the services to operate the business for which SBE certification is sought. An arrangement for the right to use office space on an “as needed” basis where there is no office exclusively reserved for the business does not qualify as an office. The prospective SBE must submit a rental agreement for the office space, rent receipt or cancelled checks for rent payments. If the office space is owned by the prospective SBE, the business must submit property tax or a deed documenting ownership of the office.

Project Area Small Business Enterprise means a business that meets the above-definition of Small Business Enterprise and that: (a) has fixed offices located within the geographical boundaries of a Redevelopment Project or Survey Area where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a

Project Area or Survey Area business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in a Project Area or Survey Area for at least six months preceding its application for certification as a SBE; and (e) has a Project Area or Survey Area office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers of residential addresses alone shall not suffice to establish a firm's location in a Project Area or Survey Area.

Project Area means an area of San Francisco that meets the requirements under Community Redevelopment Law, Health and Safety Code Section 33320.1. These areas currently include the Bayview Industrial Triangle, Bayview Hunters Point (Area B), Federal Office Building, Hunters Point Shipyard, Mission Bay (North), Mission Bay (South), Rincon Point/South Beach, South of Market, Transbay Terminal, Yerba Buena Center and Visitacion Valley.

San Francisco-based Small Business Enterprise means a SBE that: (a) has fixed offices located within the geographical boundaries of the City where a commercially useful function is performed; (b) is listed in the Permits and License Tax Paid File with a San Francisco business street address; (c) possesses a current Business Tax Registration Certificate at the time of the application for certification as a SBE; (d) has been located and doing business in the City for at least six months preceding its application for certification as a SBE; and (e) has a San Francisco office in which business is transacted that is appropriately equipped for the type of business for which the enterprise seeks certification as a SBE. Post office box numbers or residential addresses alone shall not suffice to establish a firm's status as local.

Small Business Enterprise (SBE) means an economically disadvantaged business that: is an independent and continuing business for profit; performs a commercially useful function; is owned and controlled by persons residing in the United States or its territories; has average gross annual receipts in the three years immediately preceding its application for certification as a SBE that do not exceed the following limits: (a) construction--\$14,000,000; (b) professional or personal services--\$2,000,000 and (c) suppliers--\$7,000,000; and is (or is in the process of being) certified by the Agency as a SBE and meets the other certification criteria described in the SBE application.

In order to determine whether or not a firm meets the above economic size definitions, the Agency will use the firm's three most recent business tax returns (i.e., 1040 with Schedule C for Sole Proprietorships, 1065s with K-1s for Partnerships, and 1120 for Corporations). Once a business reaches the 3-year average size threshold for the applicable industry the business ceases to be economically disadvantaged, it is not an eligible SBE and it will not be counted towards meeting SBE contracting requirements (or goals).

Survey Area means an area of San Francisco that meets the requirements of the Community Redevelopment Law, Health and Safety Code Section 33310. These areas currently include the Bayview Hunters Point Redevelopment Survey Area C.

X. GOOD FAITH EFFORTS TO MEET SBE GOALS Compliance with the following steps will be the basis for determining if the Agency-Assisted Contractor and/or Consultant has made good faith efforts to meet the goals for SBEs:

A. Outreach. Not less than 30 days prior to the opening of bids or the selection of contractors, the Agency-Assisted Contractor or Contractor shall:

1. **Advertise.** Advertise for SBEs interested in competing for the contract, in general circulation media, trade association publications, including timely use of the ***Bid and Contract Opportunities*** newsletter published by the City and County of San Francisco Purchasing Department and media focused specifically on SBE businesses such as the ***Small Business Exchange***, of the opportunity to submit bids or proposals and to attend a pre-bid meeting to learn about contracting opportunities.

2. **Request List of SBEs.** Request from the Agency's Contract Compliance Department a list of all known SBEs in the pertinent field(s), particularly those in the Project and Survey Areas and provide written notice to all of them of the opportunity to bid for contracts and to attend a pre-bid or pre-solicitation meeting to learn about contracting opportunities.

B. Pre-Solicitation Meeting. For construction contracts estimated to cost \$5,000 or more, hold a pre-bid meeting for all interested contractors not less than 15 days prior to the opening of bids or the selection of contractors for the purpose answering questions about the selection process and the specifications and requirements. Representatives of the Contract Compliance Department will also participate.

C. Follow-up. Follow up initial solicitations of interest by contacting the SBEs to determine with certainty whether the enterprises are interested in performing specific items involved in work.

D. Subdivide Work. Divide, to the greatest extent feasible, the contract work into small units to facilitate SBE participation, including, where feasible, offering items of the contract work which the Contractor would normally perform itself.

E. Provide Timely and Complete Information. The Agency-Assisted Contractor or Contractor shall provide SBEs with complete, adequate and ongoing information about the plans, specifications and requirements of construction work, service work and material supply work. This paragraph does not require the Agency-Assisted Contractor or Contractor to give SBEs any information not provided to other contractors. This paragraph does require the Agency Assisted Contractor and Contractor to answer carefully and completely all reasonable questions asked by SBEs and to undertake every good faith effort to ensure that SBEs understand the nature and the scope of the work.

F. Good Faith Negotiations. Negotiate with SBEs in good faith and demonstrate that SBEs were not rejected as unqualified without sound reasons based on a thorough investigation of their capacities.

G. Bid Shopping Prohibited. Prohibit the shopping of the bids. Where the Agency-Assisted Contractor or Contractor learns that bid shopping has occurred, it shall treat such bid shopping as a material breach of contract.

H. Other Assistance. Assist SBEs in their efforts to obtain bonds, lines of credit and insurance. (Note that the Agency has a Surety Bond Program that may assist SBEs in obtaining necessary bonding.) The Agency-Assisted Contractor or Contractor(s) shall require no more stringent bond or insurance standards of SBEs than required of other business enterprises.

I. Delivery Scheduling. Establish delivery schedules which encourage participation of SBEs.

J. Utilize SBEs as Lower Tier Subcontractors. The Agency-Assisted Contractor and its Contractor(s) shall encourage and assist higher tier subcontractors in undertaking good faith efforts to utilize SBEs as lower tier subcontractors.

K. Maximize Outreach Resources. Use the services of SBE associations, federal, state and local SBE assistance offices and other organizations that provide assistance in the recruitment and placement of SBEs, including the Small Business Administration and the Business Development Agency of the Department of Commerce. However, only SBEs certified by the Agency shall count towards meeting the participation goal.

L. Replacement of SBE. If during the term of this SBE Agreement, it becomes necessary to replace any subcontractor or supplier, the Agency's Contract Compliance Specialist should be notified prior to replacement due to the failure or inability of the subcontractor or supplier to perform the required services or timely delivery the required supplies, then First Consideration should be given to a certified SBE, if available, as a replacement.

XI. ADDITIONAL PROVISIONS

A. No Retaliation. No employee shall be discharged or in any other manner discriminated against by the Agency-Assisted Contractor or Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to enforcement of this Agreement.

B. No Discrimination. There shall be no discrimination against or segregation of any person, or group of persons, on account of race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) in the performance of an Agency-Assisted Contract or Contract. The Agency-Assisted Contractor or Contractor will ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, creed, national origin or ancestry, sex, gender identity, age, marital or domestic partner status, sexual orientation or disability (including HIV or AIDS status) or other protected class status. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship; and provision of any services or accommodations.

C. Compliance with Prompt Payment Statute. Construction contracts and subcontracts awarded for \$5,000 or more shall contain the following provision:

“Amounts for work performed by a subcontractor shall be paid within seven (7) days of receipt of funds by the contractor, pursuant to California Business and Professions Code Section 7108.5 *et seq.* Failure to include this provision in a subcontractor or failure to comply with this provision shall constitute an event of default which would permit the Agency to exercise any and all remedies available to it under contract, at law or in equity.”

In addition to and not in contradiction to the Prompt Payment Statute (California Business and Professions Code Section 7108.5 *et seq.*), if a dispute arises which would allow a Contractor to withhold payment to a subcontractor due to a dispute, the Contractor shall only withhold that amount which directly relates to the dispute and shall promptly pay the remaining undisputed amount, if any.

D. Submission Of Electronic Certified Payrolls. For any Agency-Assisted Contract which requires the submission of certified payroll reports, the requirements of Section VII of the Agency’s Small Business Enterprise Policy shall apply. Please see the Small Business Enterprise Policy for more details.

XII. PROCEDURES

A. Notice to Agency. The Agency-Assisted Contractor or Contractor(s) shall provide the Agency with the following information within 10 days of awarding a contract or selecting subconsultant:

1. the nature of the contract, e.g. type and scope of work to be performed;
2. the dollar amount of the contract;
3. the name, address, license number, gender and ethnicity of the person to whom the contract was awarded; And
4. SBE status of each subcontractor or subconsultant.

B. Affidavit. If the Agency-Assisted Contractor or Contractor(s) contend that the contract has been awarded to a SBE, the Agency-Assisted Contractor or Contractor(s) shall, at the same time also submit to the Agency a SBE Application for Certification and its accompanying Affidavit completed by the SBE owner. However, a SBE that was previously certified by the Agency shall submit only the short SBE Eligibility Statement.

C. Good Faith Documentation. If the 50% SBE Participation Goals are not met in each category (Construction, Professional Services and Suppliers), the Agency-Assisted Contractor or Contractor(s) shall meet and confer with the Agency at a date and time set by the Agency. If the issue of the Agency-Assisted Contractor’s or Contractor’s good faith efforts is not resolved at this meeting, the Agency-Assisted Contractor or Contractor shall submit to the Agency within five (5) days, a declaration under penalty of perjury containing the following documentation with respect to the good faith efforts (“**Submission**”):

1. A report showing the responses, rejections, proposals and bids (including the amount of the bid) received from SBEs, including the date each response, proposal or bid was received. This report shall indicate the action taken by the Agency-Assisted Contractor or Contractor(s) in response to each proposal or bid received from SBEs, including the reasons(s) for any rejections.

2. A report showing the date that the bid was received, the amount bid by and the amount to be paid (if different) to the non-SBE contractor that was selected. If the non-SBE contractor who was selected submitted more than one bid, the amount of each bid and the date that each bid was received shall be shown in the report. If the bidder asserts that there were reasons other than the respective amounts bid for not awarding the contract to an SBE, the report shall also contain an explanation of these reasons.

3. Documentation of advertising for and contacts with SBEs, contractor associations or development centers, or any other agency which disseminates bid and contract information to small business enterprises.
4. Copies of initial and follow-up correspondence with SBEs, contractor associations and other agencies, which assist SBEs.
5. A description of the assistance provided SBE firms relative to obtaining and explaining plans, specifications and contract requirements.
6. A description of the assistance provided to SBEs with respect to bonding, lines of credit, etc.
7. A description of efforts to negotiate or a statement of the reasons for not negotiating with SBEs.
8. A description of any divisions of work undertaken to facilitate SBE participation.
9. Documentation of efforts undertaken to encourage subcontractors to obtain small business enterprise participation at a lower tier.
10. A report which shows for each private project and each public project (without a SBE program) undertaken by the bidder in the preceding 12 months, the total dollar amount of the contract and the percentage of the contract dollars awarded to SBEs and the percentage of contract dollars awarded to non-SBEs.
11. Documentation of any other efforts undertaken to encourage participation by small business enterprises.

D. Presumption of Good Faith Efforts. If the Agency-Assisted Contractor or Contractor(s) achieves the Participation Goals, it will not be required to submit Good Faith Effort documentation.

E. Waiver. Any of the SBE requirements may be waived if the Agency determines that a specific requirement is not relevant to the particular situation at issue, that SBEs were not available, or that SBEs were charging an unreasonable price.

F. SBE Determination. The Agency shall exercise its reasonable judgment in determining whether a business, whose name is submitted by the Agency-Assisted Contractor or Contractor(s) as a SBE, is owned and controlled by a SBE. A firm's appearance in any of the Agency's current directories will be considered by the Agency as prima facie evidence that the firm is a SBE. Where the Agency-Assisted Contractor or Contractor(s) makes a submission the Agency shall make a determination, as to whether or not a business which the Agency-Assisted Contractor or Contractor(s) claims is a SBE is in fact owned and controlled by San Francisco-based SBEs. If the Agency determines that the business is not a SBE, the Agency shall give the Agency-Assisted Contractor or Contractor a Notice of Non-Qualification and provide the Agency-Assisted Contractor or Contractor with a reasonable period (not to exceed 20 days) in which to meet with the Agency and if necessary make a Submission, concerning its good faith efforts. If the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to Section XIII.

G. Agency Investigation. Where the Agency-Assisted Contractor or Contractor makes a Submission and, as a result, the Agency has cause to believe that the Agency-Assisted Contractor or Contractor has failed to undertake good faith efforts, the Agency shall conduct an investigation, and after affording the Agency-Assisted Contractor or Contractor notice and an opportunity to be heard, shall recommend such remedies and sanctions as it deems necessary to correct any alleged violation(s). The Agency shall give the Agency-Assisted Contractor or Contractor a written Notice of Non-Compliance setting forth its findings and recommendations. If the Agency-Assisted Contractor or Contractor disagrees with the findings and recommendations of the Agency as set forth in the Notice of Non-Compliance, the Agency-Assisted Contractor or Contractor may request arbitration pursuant to this SBE Agreement.

XIII. ARBITRATION OF DISPUTES.

A. Arbitration by AAA. Any dispute regarding this SBE Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of

San Francisco.

B. Demand for Arbitration. Where the Agency-Assisted Contractor or Contractor disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Agency-Assisted Contractor or Contractor shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying any entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Agency-Assisted Contractor and Contractor fail to file a timely Demand for Arbitration, the Agency-Assisted Contractor and Contractor shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.

C. Parties' Participation. The Agency and all persons or entities who have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, provided however, that the Agency-Assisted Contractor or Contractor made an initial timely Demand for Arbitration pursuant to Section XIII.B. above.

D. Agency Request to AAA. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.

E. Selection of Arbitrator. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.

F. Setting of Arbitration Hearing. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.

G. Discovery. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

H. Burden of Proof. The burden of proof with respect to SBE status and/or Good Faith Efforts shall be on the Agency-Assisted Contractor and/or Contractor. The burden of proof as to all other alleged breaches by the Agency-Assisted Contractor and/or Contractor shall be on the Agency.

I. California Law Applies. Except where expressly stated to the contrary in this SBE Agreement, California law, including the California Arbitration Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. Arbitration Remedies and Sanctions. The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.

2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Agency-Assisted Contract or this SBE Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Agency-Assisted Contract or this SBE Agreement, other than those minor modifications or extensions necessary to enable compliance with this SBE Agreement.

3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the SBE Program requirements in the Agency-Assisted Contract or this SBE Agreement. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.

4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this SBE Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. Arbitrator's Decision. The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. Default Award; No Requirement to Seek an Order Compelling Arbitration. The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

M. Arbitrator Lacks Power to Modify. Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agency-Assisted Contract, this SBE Agreement or any other agreement between the Agency, the Agency-Assisted Contractor or Contractor or to negotiate new agreements or provisions between the parties.

N. Jurisdiction/Entry of Judgment. The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.

O. Exculpatory Clause. Agency-Assisted Contractor or Contractor (regardless of tier) expressly waive any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Agency-Assisted Contractor or Contractor (regardless of tier) acknowledge and agree that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this SBE Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.

P. Severability. The provisions of this SBE Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this SBE Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this SBE Agreement or the validity of their application to other persons or circumstances.

Q. Arbitration Notice: BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Agency-Assisted Contractor

XIV. AGREEMENT EXECUTION

I, hereby certify that I have authority to execute this SBE Agreement on behalf of the business, organization or entity listed below and that it will use good faith efforts to comply with the Agency's 50% SBE Participation Goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Signature

Date

Print Your Name

Title

Company Name and Phone Number

ATTACHMENT 10B

Nondiscrimination in Contracts and Benefits
Instructions

A. What is the Nondiscrimination in Contracts Policy?

The Successor Agency to the San Francisco Redevelopment Agency's Nondiscrimination in Contracts Policy (Policy) requires companies or organizations providing products or services to, or leasing a real property from, the Successor Agency to agree not to discriminate against groups who are protected from discrimination under the Policy, and to include a similar provision in subcontracts and other agreements. Those provisions are the subjects of this form. The Policy is posted on the Web at: www.sfocii.org.

If you do not comply with the Policy, the Successor Agency cannot do business with you, except under certain very limited circumstances.

B. What Successor Agency contracts are covered by the Policy?

- Contracts or purchase orders where the Successor Agency purchases products, services or construction with contractors/vendors whose total amount of business with the Successor Agency exceeds a cumulative amount of \$5,000 in a 12-month period.
- Leases of property owned by the Successor Agency for a term of 30 days or more. In these cases, the Successor Agency is the landlord. The Policy also applies to leases for a term of 30 days or more where the Successor Agency is the tenant.

C. What are the groups protected from discrimination under the Policy?

You may not discriminate against:

- your employees
- an applicant for employment
- any employee of the Successor Agency or the City and County of San Francisco
- a member of the public having contact with you.

D. What are prohibited types of discrimination?

You may not discriminate against the specified groups for the following reasons (see Question 1a on the declaration form).

- | | |
|----------------------|---------------------------|
| • Race | • color |
| • creed | • religion |
| • ancestry | • national origin |
| • age | • sex |
| • sexual orientation | • gender identity |
| • marital status | • domestic partner status |
| • disability | • AIDS/HIV status |

In the provision of benefits, you also may not discriminate between employees with spouses and employees with domestic partners, or between the spouses and domestic partners of employees, subject to the conditions listed in F.2 below.

E. How are subcontracts affected?

For any subcontract, sublease, or other subordinate agreement you enter into which is related to a contract you have with the Successor Agency, you must include a nondiscrimination provision (See Question 1b on the Declaration Form). The subcontracting provision need not include nondiscrimination in benefits as part of the nondiscrimination requirements. If you're unsure whether a contract qualifies as a subcontract, contact the Successor Agency division administering your contract with the Successor Agency. "Subcontract" also includes any subcontract of your subcontractor for performance of 10% or more of the subcontract.

F. Nondiscrimination in benefits for spouses and domestic partners

1. Who are domestic partners?

If your employee and another person are currently registered as domestic partners with a state, county or city that authorizes such registration, then those two people are domestic partners. It doesn't matter where the domestic partners now live or whether they are a same-sex couple or an opposite sex couple. A company/organization may also institute its own domestic partnership registry (contact the Successor Agency for more information).

2. What is nondiscrimination in benefits?

You must provide the same benefits to employees with spouses and employees with domestic partners, and to spouses and domestic partners of employees, subject to the following qualifications (See Question 2c on the Declaration Form).

OP/DDA

Transbay Block 5

Attachment 10B – Nondiscrimination in Contracts & Benefits Assessor's Block 3718, Lot 012, Portions of Lot 025 and 027

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- If your cost of providing a benefit for an employee with a domestic partner exceeds that of providing it for an employee with a spouse, or vice versa, you may require the employee to pay the excess cost.
- If you are unable to provide the same benefits, despite taking all reasonable measures to do so, you must provide the employee with a cash equivalent. This qualification is intended to address situations where your benefits provider will not provide equal benefits and you are unable to find an alternative source or state or federal law prohibit the provision of equal benefits. (See Question 2d on the Declaration form).
- The Policy does not require any benefits be offered to spouses or domestic partners. It does require, however, that whatever benefits are offered to spouses be offered equally to domestic partners, and vice versa.

3. Examples of benefits

The law is intended to apply to all benefits offered to employees with spouses and employees with domestic partners. A sample list appears in Question 2c on the Declaration Form.

G. Form required

Complete the Declaration Form to tell the Successor Agency whether you comply with the Policy. All parties to a Joint Venture must submit separate Declarations.

Please submit an original of the Declaration Form and keep a copy for your records. If an Successor Agency division should ask you to complete the form again, you may submit a copy of the form you originally submitted (if the information has not changed), unless you are advised otherwise.

H. Attachments

If you provide equal benefits, as indicated by your answers to Question 2c on the Declaration form, **YOU MUST ATTACH DOCUMENTATION TO THIS FORM**, unless such documentation does not exist. See item 3, "Documentation for Nondiscrimination in Benefits." If documentation does not exist, attach an explanation (e.g., some of your policies are unwritten).

I. If your answers change

If, after you submit the Declaration, your company/organization's nondiscrimination policy or benefits change such that the information you provided to the Successor Agency is no longer accurate, you must advise the Successor Agency promptly by submitting a new Declaration.

Nondiscrimination in Contracts and Benefits – Declaration Form

Section A

Is your company/organization currently certified by the City and County of San Francisco in compliance with Administrative Code 12B Equal Benefits Ordinance and will your company/organization ensure nondiscrimination in contracts and benefits pursuant to 12B on Office of Community Investment and Infrastructure (OCII) contracts? If yes, please indicate below, skip Section B, and execute the Declaration in Section C. If no, please skip this Section A and complete Sections B and C below.

- My company/organization is certified and compliant with the 12B Equal Benefits Ordinance of the City and County of San Francisco and there has been no change in our 12B Declaration since certification. My company/organization agrees to ensure nondiscrimination in contracts and benefits pursuant to 12B on OCII contracts. (Please check box to affirm, if applicable)

Section B

1. Nondiscrimination—Protected Classes

- a. Is it your company/organization's policy that you will not discriminate against your employees, applicants for employment, employees of the Office of Community Investment and Infrastructure (successor to the San Francisco Redevelopment Agency) (Agency), or City and County of San Francisco (City), or members of the public for the following reasons:

- | | | |
|---------------------------|------------------------------|-----------------------------|
| • Race | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • color | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Creed | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Religion | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • ancestry | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • national origin | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Age | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sex | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • sexual orientation | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • gender identity | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • marital status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • domestic partner status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • Disability | <input type="checkbox"/> Yes | <input type="checkbox"/> No |
| • AIDS or HIV status | <input type="checkbox"/> Yes | <input type="checkbox"/> No |

- b. Do you agree to insert a similar nondiscrimination provision in any subcontract you enter into for the performance of a substantial portion of the contract that you have with the Agency or the City?
- Yes No

If you answered "no" to any part of Question 1a or 1b, the Agency or the City cannot do business with you.

2. Nondiscrimination—Equal Benefits (Question 2 does not apply to subcontracts or subcontractors)

- a. Do you provide, or offer access to, any benefits to employees with spouses or to spouses of employees?
- Yes No
- b. Do you provide, or offer access to, any benefits to employees with domestic partners (Partners) or to domestic partners of employees?
- Yes No

If you answered "no" to both Questions 2a and 2b, skip 2c and 2d, and sign, date and return this form. If you answered "yes" to Question 2a or 2b, continue to 2c.

- c. If "yes," please indicate which ones. This list is not intended to be exhaustive. Please list any other benefits you provide (even if the employer does not pay for them).

Benefit	Yes, for Spouses	Yes, for Partners	No
• Medical (health, dental, vision)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Pension	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Bereavement	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Family leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Parental leave	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Employee assistance programs	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Relocation and travel	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Company discounts, facilities, events	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Credit union	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Child care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
• Other _____	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d. If you answered "yes" to Question 2a or 2b, and in 2c indicated that you do not provide equal benefits, you may still comply with the Policy if you have taken all reasonable measures to end discrimination in benefits, have been unable to do so, and now provide employees with a cash equivalent.

- (1) Have you taken all reasonable measures? Yes No
- (2) Do you provide a cash equivalent? Yes No

3. Documentation for Nondiscrimination in Benefits (Questions 2c and 2d only)

If you answered "yes" to any part of Question 2c or Question 2d, you must attach to this form those provisions of insurance policies, personnel policies, or other documents you have which verify your compliance with Question 2c or Question 2d. Please include the policy sections that list the benefits for which you indicated "yes" in Question 2c. If documentation does not exist, attach an explanation, e.g., some of your personnel policies are unwritten. If you answered "yes" to Question 2d(1) complete and attach form SFRA/CC-103, "Nondiscrimination in Benefits—Reasonable Measures Affidavit," which is available from the Agency. You need not document your "yes" answer to Question 1a or Question 1b.

Section C

I declare (or certify) under penalty of perjury that the foregoing is true and correct, and that I am authorized to bind this entity contractually.

Executed this _____ day of _____, 20____, at _____, _____
(City) (State)

Name of Company/Organization: _____

Doing Business As (DBA): _____

Also Known As (AKA): _____

General Address: _____

Remittance Address (if different from above): _____

Name of Signatory: _____

Title: _____

(Please Print)

Signature: _____

Phone Number: _____ Federal Tax Identification Number: _____

Approximate number of employees in the U.S.: _____ Vendor Number: _____
(if known)

- Check here if your address has changed.
- Check here if your organization is a non-profit.
- Check here if your organization is a governmental entity.

ATTACHMENT 10C

Minimum Compensation Policy Declaration

What the Policy does. The Redevelopment Agency of the City and County of San Francisco adopted the Minimum Compensation Policy (MCP), which became effective on September 25, 2001; the Successor Agency to the Redevelopment Agency ("Agency") continues to enforce the MCP. The MCP requires contractors and subcontractors to provide the following to their employees covered by the MCP on Agency contracts and subcontracts for services: For Commercial Business MCP the wage rate is \$13.02. For Nonprofit MCP the wage rate is \$11.05; 12 days paid vacation per year (or cash equivalent); 10 days off without pay per year.

The Agency may require contractors to submit reports on the number of employees affected by the MCP.

Effect on Agency contracting. For contracts and amendments signed on or after September 25, 2001, the MCP will have the following effect:

- in each contract, the contractor will agree to abide by the MCP and to provide its employees the minimum benefits the MCP requires, and to require its subcontractors subject to the MCP to do the same.
if a contractor does not provide the MCP minimum benefits, the Agency can award a contract to that contractor only if the contract is exempt under the MCP, or if the contract has received a waiver from the Agency.

What this form does. If you can assure the Agency now that, beginning with the first Agency contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the MCP to your covered employees, and will ensure that your subcontractors also subject to the MCP do the same, this will help the Agency's contracting process. The Agency realizes that it may not be possible to make this assurance now.

If you cannot make this assurance now, please do not return this form.

For more information, the complete text of the MCP is available from the Agency's Contract Compliance Department by calling (415) 749-2400.

Routing. Return this form to: Contract Compliance Department, Successor to the San Francisco Redevelopment Agency, 1 South Van Ness, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first Agency contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the MCP to our covered employees, and will ensure that our subcontractors also subject to the MCP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

ATTACHMENT 10D

Health Care Accountability Policy (HCAP) Declaration

What the Policy does. The San Francisco Redevelopment Agency adopted the San Francisco Health Care Accountability Policy (the "HCAP"), which became effective on September 25, 2001; the Office of Community Investment and Infrastructure ("OCII") (as Successor Agency to the Redevelopment Agency) continues to enforce the HCAP. The HCAP requires contractors and subcontractors that provide services to OCII, contractors and subcontractors that enter into leases with OCII, and parties providing services to tenants and sub-tenants on OCII property to choose between offering health plan benefits to their employees or making payments to OCII or directly to their employees.

Specifically, contractors can either: (1) offer the employee minimum standard health plan benefits approved by the OCII Commission; (2) pay OCII \$4.25 per hour for each hour the employee works on the covered contract or subcontract or on property covered by a lease (but not to exceed \$170 in any week) and OCII will appropriate the money for staffing and other resources to provide medical care for the uninsured; or (3) participate in a health benefits program developed by OCII.

The OCII may require contractors to submit reports on the number of employees affected by the HCAP.

Effect on OCII contracting. For contracts and amendments signed on or after September 25, 2001, the HCAP will have the following effect:

- in each contract, the contractor will agree to abide by the HCAP and to provide its employees the minimum benefits the HCAP requires, and to require its subcontractors to do the same.
- if a contractor does not provide the HCAP's minimum benefits, OCII can award a contract to that contractor **only if** the contract is exempt under the HCAP, or if the contract has received a waiver from OCII.

What this form does. Your signed declaration will help OCII's contracting practice. Sign this form if you can assure OCII that, beginning with the first OCII's contract or amendment you receive after September 25, 2001 and until further notice, you will provide the minimum benefit levels specified in the HCAP to your covered employees, and will ensure that your subcontractors also subject to the HCAP do the same.

If you cannot make this assurance now, please do not return this form.

For more information, please see the complete text of the HCAP, available from the OCII's Contract Compliance Department at: (415) 749-2400.

Routing. Return this form to: Contact Compliance Department, Office of Community Investment and Infrastructure (Successor to the San Francisco Redevelopment Agency), 1 South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103.

Declaration

Effective with the first OCII contract or amendment this company receives on or after September 25, 2001, this company will provide the minimum benefit levels specified in the HCAP to our covered employees, and will ensure that our subcontractors also subject to the HCAP do the same, until further notice. This company will give such notice as soon as possible.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Signature

Date

Print Name

Company Name

Phone

ATTACHMENT 10E

Construction Workforce Agreement

I. **PURPOSE.** This Agreement is entered into between the Office of Community Investment and Infrastructure as Successor Agency to the San Francisco Redevelopment Agency ("OCII" or "Agency"), and _____ (hereinafter "Owner") for the purposes of ensuring participation of San Francisco residents and equal employment opportunities. . OCII may enter into an agreement with the Workforce Development Division of the San Francisco Office of Economic and Workforce Development ("OEWD") to implement and monitor compliance with the Construction Workforce Agreement (the "Agreement").

II. **DEFINITIONS.**

The following definitions apply to this Agreement.

- A. "CityBuild" means the construction employment program of the Workforce Development Division of the San Francisco Office of Economic and Workforce Development (OEWD).
- B. "Contract" means any agreement in excess of \$10,000 between the Owner, its Contractors and a person to provide or procure labor, materials or services for the construction of the Owner Improvements, including a purchase order that requires installation of materials.
- C. "Contractor" means the Owner's general contractor, all prime contractors and all subcontractors (regardless of tier) having a Contract or subcontract in excess of \$10,000 and who employ persons in a Trade for construction of the Owner Improvements.
- D. "Owner Improvements" means improvements constructed in the Transbay Area by the Owner.
- E. "Project Area Resident" means a San Francisco Resident who resides in a redevelopment area under the management of OCII.
- F. "San Francisco Resident" in the case of a new hire shall mean an individual who has lived in San Francisco for at least one week prior to submitting his/her initial application for employment to work on the Owner Improvements. In the case of a person employed by the Owner or its Contractor or Consultant prior to assignment to the Owner Improvements, this term shall mean a person who has lived in San Francisco for at least six months prior to the date he/she applied for a transfer to a position at the Owner Improvements or the date he/she was assigned to work on the Owner Improvements, whichever is earlier; or a person who establishes, to the satisfaction of the Agency, that he/she lived in San Francisco prior to applying for or being considered for a position with the Owner, Contractor or Consultant.

III. **WORK FORCE GOALS.**

The Owner agrees and will require each Contractor and all subcontractors to use good faith efforts to employ 50 percent of its construction workforce hires by trade and by hours from qualified San Francisco Residents with first consideration given to Project Area Residents.

Owner and Contractors will be deemed in compliance with this Agreement and the Policy by meeting or exceeding the goal or by demonstrating good faith efforts toward compliance.

IV. GOOD FAITH EFFORTS.

A. Submission of Labor Force Projections and Other Data

The Contractor shall submit, to the extent available, labor force projections to the OCII Compliance Officer, or its agent, within two (2) weeks of contract award.

B. Submit Subcontractor Information Form

The Contractor shall submit to the Compliance Officer, or its agent, the Subcontractor Information Forms, twenty-four (24) hours prior to the preconstruction meeting. The Subcontractor Information Forms are available from the Compliance Officer upon request.

C. Preconstruction Meeting

The Contractor shall hold a preconstruction meeting which shall be attended by the Compliance Officer, CityBuild, all prime contractor(s) and all subcontractor(s). The preconstruction meeting shall be scheduled between two (2) days and thirty (30) days prior to the start of construction at a time and place convenient to all attendees. The purpose of the meeting is to discuss: the hiring goals, workforce composition, worker referral process, certified payroll reporting, procedure for termination and replacement of workers covered by this Agreement and to explore any anticipated problems in complying with the Agreement. All questions regarding how this Agreement applies to the Owner, Contractor, subcontractors and consultants should be answered at this meeting. Failure to hold or attend at least one (1) preconstruction meeting will be a breach of the Policy and this Agreement that may result in the Agency ordering a suspension of work until the breach has been cured. Suspension under this provision is not subject to arbitration.

D. Submit Construction Worker Request Form

For the Term of the Agreement, each time the Owner or Contractor seeks to hire workers for the construction or rehabilitation of improvements, they must first submit, by fax, email or hand delivery, an executed construction worker request form to CityBuild. Preferably this request will be submitted at least two (2) business days before the workers are needed. However, requests with less than two (2) business days notice will be accepted. The construction worker request form will indicate generally: the number of workers needed, duration needed, required skills or trade and date/time to report. The construction worker request form is available from the Compliance Officer upon request.

E. Response from CityBuild

CityBuild shall respond, in writing, via fax, email or hand delivery to each request for construction workers. The response shall state that CityBuild was able to satisfy the request in full, in part or was unable to satisfy the request. CityBuild shall look to their own referral lists, as well as confer with CBOs in an attempt to find qualified Project Area Residents and San Francisco Residents. If CityBuild is able to satisfy the request in full or in part, it shall direct the qualified Project Area Resident(s) or San Francisco Resident(s) to report to the Contractor on the date and time indicated in the request. If CityBuild is unable to satisfy the request, then CityBuild shall send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

F. Action by Contractor When Referrals Available

The Owner or Contractor whose request has been satisfied in full or in part shall make the final determination of whether the Project Area Residents or San Francisco Residents are qualified for the positions and the ultimate hiring decision. The Agency strongly encourages the Contractor to hire the qualified Project Area Residents or San Francisco Residents referred by CityBuild. However, if the Contractor finds the Project Area Residents or San Francisco Residents are not qualified, then the Contractor shall send the Project Area Residents or San Francisco Residents back to CityBuild. Before the close of business on the same day, the Contractor shall fax or email a statement addressed to CityBuild stating in detail the reason(s) the Project Area Residents or San Francisco Residents were not qualified or the reason(s) for not hiring the Project Area Residents or San Francisco Residents. CityBuild shall, within one (1) business day of receipt of the fax or email, send new qualified Project Area Residents or San Francisco Residents that meet the legitimate qualifications set by the Contractor or alternatively, send a fax or email stating that no qualified Project Area Residents or San Francisco Residents are currently available.

G. Action by Contractor When Referrals Unavailable

If a Contractor receives a response from CityBuild stating that no qualified Project Area Residents or San Francisco Residents are currently available, then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any additional new construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request.

H. Action by Contractor When No Response From CityBuild

If a Contractor has not received a response to its construction worker request from CityBuild within two (2) business days, then the Contractor should immediately advise the Compliance Officer by phone, fax or email. The Compliance Officer or his/her designee shall cause a response to be sent to the Contractor within two (2) business days of being notified. If the Contractor does not receive a response from CityBuild within four (4) business days (the original two (2) business days plus the additional two (2) business days), then the Contractor may hire the number of construction workers requested from CityBuild, using its own recruiting methods, giving first consideration to Project Area Residents and then San Francisco Residents. Any construction workforce hires (including the replacement of any terminated workers) must comply with this Policy, unless the Contractor has already met or exceeded the goal. The Contractor must keep a copy of the response it receives from CityBuild as proof of compliance and submit a copy of each response received to the Compliance Officer upon request. This Policy is intended to provide qualified Project Area and San Francisco Residents with employment opportunities without causing undue delay in hiring needed construction workers.

I. Action by Contractor When No Response From Union

The Contractor should immediately advise the Compliance Officer by phone, fax or email when the Contractor has sent a qualified Project Area Resident or San Francisco Resident to a union hall for referral in accordance with a collective bargaining agreement and the union did not refer the qualified Project Area or San Francisco Resident back for employment or when the union referral process impedes the Contractor's ability to meet

its obligations under this Policy. Nothing in this Policy shall be interpreted to interfere with or prohibit existing labor agreements or collective bargaining agreements.

J. Hiring Apprentices

A Contractor may meet part of the Construction Workforce Goal by hiring apprentices. However, hiring an apprentice does not satisfy or waive the trainee hiring obligation, if any, for design professionals. Unless otherwise permitted by law, apprentices must be trained pursuant to training programs approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training or the California Department of Industrial Relations, Division of Apprenticeship Standards. Credit towards compliance will only be given for paid apprentices actually working on the project. No credit is available for apprentices while receiving class room training. Under no circumstances shall the ratio of apprentices to journeymen in a particular trade or craft exceed 1:5.

K. Termination and Replacement of Referrals

If at any time it becomes necessary to terminate for cause a construction worker who was hired under this Policy, the Contractor shall notify CityBuild in writing via fax or email and submit a report of termination pursuant to Section (B)(4). If the Contractor intends to fill the vacant position, then the Contractor shall follow the process set forth in this Policy beginning at Section (A)(6).

V. **REPORTING REQUIREMENTS.**

A. Submission of Certified Payroll Reports

Each Contractor subject to this Policy shall submit to the Agency a certified payroll report for the preceding work week on each of its employees. The Owner is ultimately responsible for the submission of these reports by the Contractors. The certified payroll report is due to the Agency by noon each Wednesday. To facilitate compliance, the Agency uses an online Project Reporting System (PRS) for submission of certified payroll reports. This system is available at no cost to the Contractor. Training and educational materials for PRS are available at no cost online and through the Compliance Officer. Contractors are required to report certified payroll using PRS. However, a waiver may be granted to any Contractors who do not have a computer or online access.

B. Additional Information

In order to prevent unlawful discrimination in the selection, hiring and termination of employees on the basis of race, ethnicity, gender or any other basis prohibited by law and to identify and correct such unlawful practices, the Agency will monitor and collect information on the ethnicity and gender of each construction worker and apprentice. If an identifiable pattern of apparent discrimination is revealed by this additional information, it will be treated as a breach of this Policy and may be addressed as set forth in the arbitration provisions included in Agency contracts.

C. Report on Terminations

In the event a Project Area Resident or San Francisco Resident hired pursuant to this Policy is terminated for cause, the responsible Contractor shall within two (2) days fax or email a termination report to CityBuild with a copy to the Compliance Officer stating in detail: (1) the name of the worker(s) terminated; (2) his/her job title and duties; (3) the reasons and circumstances leading to the termination(s); (4) whether the Contractor replaced the construction worker(s); and (5) whether the replacement worker(s) were Project Area Resident(s) or San Francisco Resident(s).

D. Inspection of Records

The Owner and each Contractor shall make the records required under this Agreement available for inspection or copying by authorized representatives of the Agency and its designated Compliance Officer, and shall permit such representatives to interview construction workers and apprentices during working hours on the job.

E. Failure to Submit Reports

If a Contractor fails or refuses to provide the reports as required it will be treated as a breach of this Agreement and the Policy, and may be addressed under arbitration provisions pursuant to Article VII (Arbitration of Disputes) of this Agreement.

F. Submission of Good Faith Effort Documentation

If the Owner's or Contractor's good faith efforts are at issue, the Contractor shall provide the Agency or its designated Compliance Officer with the documentation of its efforts to comply with this Policy and the Agreement. The Owner or Contractor must maintain a current file of the names, addresses and telephone numbers of each Project Area Resident or San Francisco Resident applicant referral (whether a self-referral or a referral from a union, CBO or CityBuild referral) and what action was taken with respect to each such individual.

G. Coding Certified Payrolls

Each Contractor shall include, on the weekly payroll submissions, the proper job classification (as approved by the California Department of Industrial Relations), apprentice's craft (if applicable), skill level, protected class status, and domicile of each construction worker.

VI. RECORDKEEPING REQUIREMENTS.

Contractor shall comply with the requirements of California Labor Code Section 1776, as amended, regarding the keeping, filing and furnishing of certified copies of payroll records of wages paid to its employees and to the employees of its subcontractors of all tiers.

In addition, each Contractor shall keep, or cause to be kept, for a period of four years from the date of substantial completion of Owner Improvements, certified payroll and basic records, including time cards, tax forms, and superintendent and foreman daily logs, for all workers within each trade performing work on the Owner Improvements. Such records shall include the name, address and social security number of each worker who worked on the covered project, his or her classification, a general description of the work each worker performed each day, the apprentice or journey-level status of each worker, daily and weekly number of hours worked, the self-identified race, gender, and ethnicity of each worker, whether or not the worker was a local resident or disadvantaged worker, and the referral source or method through which the Contractor hired or retained that worker for work on the Owner Improvements (e.g., core workforce, name call, union hiring hall, City-designated referral source, or recruitment or hiring method). Contractor may verify that a worker is a local resident through the worker's possession of a valid SF City ID Card or other government-issued identification. OCII may require additional records to be kept with regard to Contractor's compliance with this Agreement. All records described in this section shall at all times be open to inspection and examination by the duly authorized officers and agents of OCII, including representatives of the OEWD.

VII. ARBITRATION OF DISPUTES.

- A. **Arbitration** by **AAA**. Any dispute regarding this Construction Work Force Agreement shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further revisions thereof. The arbitration shall take place in the City and County of San Francisco.
- B. **Demand for Arbitration**. Where the Owner disagrees with the Agency's Notice of Non-Qualification or Notice of Non-Compliance, **the Owner shall have seven (7) business days, in which to file a Demand for Arbitration**, unless otherwise stipulated by the parties. The Demand for Arbitration shall contain at a minimum: (1) a cover letter demanding arbitration under this provision and identifying entities believed to be involved in the dispute; (2) a copy of the Notice of Non-Qualification or Notice of Non-Compliance; and (3) any written response to the Notice of Non-Qualification or Notice of Non-Compliance. If the Owner fails to file a timely Demand for Arbitration, the Owner shall be deemed to have accepted and to be bound by the finding of Non-Qualification or the findings and recommendations contained in the Notice of Non-Compliance.
- C. **Parties' Participation**. The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made an Arbitration Party. Any such person or entity not made an Arbitration Party in the Demand for Arbitration may intervene as an Arbitration Party and in turn may name any other such person or entity as an Arbitration Party, **provided however**, that the Owner made an initial timely Demand for Arbitration pursuant to Section VII.B. above.
- D. **Agency Request to AAA**. Within seven (7) business days after service of a Demand for Arbitration, the Agency shall transmit to AAA a copy of the Demand for Arbitration, the Notice of Non-Qualification or Notice of Non-Compliance, and any written response thereto from the affected party. Such material shall be made part of the arbitration record.
- E. **Selection of Arbitrator**. One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators from AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the Arbitration Parties fail to agree on an arbitrator within seven (7) days from the receipt of the panel, AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within ninety (90) days from the arbitrator's fulfillment of the disclosure requirements set forth in California Code of Civil Procedure Section 1281.9.
- F. **Setting of Arbitration Hearing**. A hearing shall be held within ninety (90) days of the date of the filing of the Request, unless otherwise agreed by the parties. The arbitrator shall set the date, time and place for the arbitration hearing(s) within the prescribed time periods by giving notice by hand delivery or first class mail to each Arbitration Party.
- G. **Discovery**. In arbitration proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.
- H. **Burden of Proof**. The burden of proof with respect to Construction Work Force compliance and/or Good Faith Efforts shall be on the Owner. The burden of proof as to all other alleged breaches by the Owner shall be on the Agency.
- I. **California Law Applies**. Except where expressly stated to the contrary in this Construction Work Force Agreement, California law, including the California Arbitration

Act, Code of Civil Procedure §§ 1280 through 1294.2, shall govern all arbitration proceedings.

J. **Arbitration Remedies and Sanctions.** The arbitrator may impose only the remedies and sanctions set forth below:

1. Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the non-compliance and/or to bring any non-compliant Arbitration Party into compliance.
2. Require any Arbitration Party to refrain from entering into new contracts related to work covered by the Owner or this Construction Work Force Agreement, or from granting extensions or other modifications to existing contracts related to services covered by the Owner or this Construction Work Force Agreement, other than those minor modifications or extensions necessary to enable compliance with this Construction Work Force Agreement.
3. Direct any Arbitration Party to cancel, terminate, suspend or cause to be cancelled, terminated or suspended, any contract or portion(s) thereof for failure of any party to the arbitration to comply with any of the Agency's Work Force policy requirements. Contracts may be continued upon the condition that a program for future compliance is approved by the Agency.
4. If any Arbitration Party is found to be in willful breach of its obligations hereunder, the arbitrator may impose a monetary sanction not to exceed Fifty Thousand Dollars (\$50,000.00) or ten percent (10%) of the base amount of the breaching party's contract, whichever is less, for each such willful breach; provided that, in determining the amount of any monetary sanction to be assessed, the arbitrator shall consider the financial capacity of the breaching party. No monetary sanction shall be imposed pursuant to this paragraph for the first willful breach of this Construction Work Force Agreement unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. Monetary sanctions may be imposed for subsequent willful breaches by any Arbitration Party whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.
5. Direct any Arbitration Party to produce and provide to the Agency any records, data or reports which are necessary to determine if a violation has occurred and/or to monitor the performance of any Arbitration Party.

K. **Arbitrator's Decision.** The arbitrator shall make his or her award within twenty (20) days after the date that the hearing is completed; provided that where a temporary restraining order is sought, the arbitrator shall make his or her award not later than twenty-four (24) hours after the hearing on the motion. The arbitrator shall send the decision by certified or registered mail to each Arbitration Party.

L. **Default Award; No Requirement to Seek an Order Compelling Arbitration.** The arbitrator may enter a default award against any person or entity who fails to appear at the hearing, provided that: (1) said person or entity received actual notice of the hearing; and (2) the complaining party has a proof of service for the absent person or entity. In order

to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

- M. **Arbitrator Lacks Power to Modify.** Except as otherwise provided, the arbitrator shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of this Construction Work Force Agreement or any other agreement between the Agency and Owner or to negotiate new agreements or provisions between the parties.
- N. **Jurisdiction/Entry of Judgment.** The inquiry of the arbitrator shall be restricted to the particular controversy which gave rise to the Demand for Arbitration. A decision of the arbitrator issued hereunder shall be final and binding upon all Arbitration Parties. The non-prevailing Arbitration Party(ies) shall pay the arbitrator's fees and related costs of arbitration (or reimburse the Arbitration Parties that advanced such arbitration fees and costs). Each Arbitration Party shall pay its own attorneys' fees, provided, however, that attorneys' fees may be awarded to the prevailing party if the arbitrator finds that the arbitration action was instituted, litigated, or defended in bad faith. Judgment upon the arbitrator's decision may be entered in any court of competent jurisdiction.
- O. **Exculpatory Clause.** Owner expressly waives any and all claims against the Agency for damages, direct or indirect, including, without limitation, claims relative to the commencement, continuance and completion of construction and/or providing professional and consulting services ("the Work"). Owner acknowledges and agrees that the procedures set forth herein for dealing with alleged breaches or failure to comply with the obligations and requirements of this Construction Work Force Agreement are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids and proposals for the planning, design and construction of the improvements and in determining the times for commencement and completion of the planning, design and construction and/or for providing consulting, professional or personal services.
- P. **Severability.** The provisions of this Construction Work Force Agreement are declared to be separate and severable. The invalidity of any clause, sentence, paragraph, subdivision, section or portion of this Construction Work Force Agreement or the invalidity of the application thereof to any person or circumstance shall not affect the validity of the remainder of this Construction Work Force Agreement or the validity of their application to other persons or circumstances.
- Q. **Arbitration Notice:** BY INITIALING IN THE SPACE BELOW YOU ARE AGREEING TO HAVE ANY DISPUTE ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION DECIDED BY NEUTRAL ARBITRATION AS PROVIDED BY CALIFORNIA LAW AND YOU ARE GIVING UP ANY RIGHTS YOU MIGHT POSSESS TO HAVE THE DISPUTE LITIGATED IN COURT OR JURY TRIAL. BY INITIALING IN THE SPACE BELOW YOU ARE GIVING UP YOUR JUDICIAL RIGHTS TO DISCOVERY AND APPEAL, UNLESS SUCH RIGHTS ARE SPECIFICALLY INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION. IF YOU REFUSE TO SUBMIT TO ARBITRATION AFTER AGREEING TO THIS PROVISION, YOU MAY BE COMPELLED TO ARBITRATE UNDER THE AUTHORITY OF THE CALIFORNIA CODE OF CIVIL PROCEDURE. YOUR AGREEMENT TO THIS ARBITRATION PROVISION IS VOLUNTARY.

WE HAVE READ AND UNDERSTAND THE FOREGOING AND AGREE TO SUBMIT DISPUTES ARISING OUT OF THE MATTERS INCLUDED IN THE "ARBITRATION OF DISPUTES" PROVISION TO NEUTRAL ARBITRATION.

Agency

Owner

I, hereby certify that I have authority to execute this Construction Work Force Agreement on behalf of the Owner listed below and that Owner agrees to diligently exercise good faith efforts to comply with this Agreement to meet or exceed the construction work force participation goals. I declare under penalty of perjury under the laws of the State of California that the above statement is true and correct.

Signature

Date

Print Your Name

Title

Company Name

Phone Number

ATTACHMENT 10F

First Source Hiring Agreement

This First Source Hiring Agreement (“Agreement”) is entered into as of _____, by and between the Office of Community Investment and Infrastructure (“OCII”) on behalf of the City and County of San Francisco (the “City”) through its First Source Hiring Administration (“FSHA”) and MA West, LLC (“Developer” or “Project Sponsor”).

WHEREAS, Developer proposes to construct _____ the Project, described in the OP/DDA as including, among other things, an approximately 847,426 gross-square-foot office building, including mechanical and parking, or approximately 742,460 rentable square feet and ground floor retail space of approximately 7,600 square feet, at the Site; and

WHEREAS, the Transbay Redevelopment Plan requires OCII to implement programs “that meet or exceed City policies regarding workforce development...particularly for economically-disadvantaged San Francisco residents.” Redevelopment Plan, Section 4.1.3 at page 20; and

WHEREAS, the City has several workforce programs requiring commercial development to provide permanent job opportunities for economically-disadvantaged local residents, including the First Source Hiring Program, S.F. Administrative Code Ch. 83; and

WHEREAS, this Agreement is based on the standards of Chapter 83 of the San Francisco Administrative Code except that OCII, in determining compliance with these standards will assume the role of the Planning Department and delegate implementation to the Office of Economic and Workforce Development-CityBuild (“OEWD” of “CityBuild”); and

WHEREAS, the Developer will be required to enter into, with OEWD, a First Source Hiring Agreement for Business, Commercial, Operation and Lease Occupancy of the Building, based on the form of agreement attached to this Agreement and will attach First Source Exhibit B and B-1 to all leasing agreements and all tenant contracts required to occupy the building space and notify OEWD upon execution of such leasing agreements and occupancy contacts; and

WHEREAS, OEWD will inform tenants of their responsibilities to work with the workforce system for entry-level hiring opportunities through the submission of an Exhibit B-1 Employer Project of Entry-Level Positions Form. The Developer will notify OEWD when a tenant’s contract has been terminated within 10 days of such termination; and

Therefore, the parties to this Agreement agree as follows:

- A. Project Sponsor will comply with the requirements of Chapter 83 and upon entering into leases for the commercial space at the Project will include in that contract a provision requiring Lessee of the commercial space to comply with Chapter 83 of the Administrative Code. Project Sponsor shall cause its Lessee(s), if applicable pursuant

to Chapter 83, to enter into a First Source Hiring Agreement between Lessee and FSHA in a form similar to the City's Exhibit B attached hereto.

- B. Any lessee(s) or operator(s) of commercial space within the Project shall have the same obligations under this Agreement as the Project Sponsor.
- C. CityBuild shall represent the First Source Hiring Administration and will provide referrals of qualified economically disadvantaged individuals for permanent jobs located within the commercial space of the Project. Project Sponsor shall cooperate with CityBuild and follow its procedures and processes to ensure compliance with Chapter 83 of the Administrative Code. Project Sponsor shall also require its tenants to cooperate with CityBuild.
- D. FSHA shall advise Project Sponsor, in writing, of any alleged breach on the part of the Project's tenant(s) with regard to participation in the First Source Hiring Program at the Project prior to seeking an assessment of liquidated damages pursuant to Section 83.12 of the Administrative Code.
- E. As stated in Section 83.10(d) of the Administrative Code, if Project Sponsor fulfills its obligations as set forth in Chapter 83, it shall not be held responsible for the failure of a commercial tenant to comply with the requirements of Chapter 83.
- F. This Agreement is an approved "First Source Hiring Agreement" as referenced in Section 83.11 of the Administrative Code. The parties agree that this Agreement shall be recorded and that it may be executed in counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument.
- G. Except as set forth in Section E, above: (1) this Agreement shall be binding on and inure to the benefit of all successors and assigns of Project Sponsor having an interest in the Project and (2) Project Sponsor shall require that its obligations under this Agreement shall be assumed in writing by its successors and assigns. Upon Project Sponsor's sale, assignment or transfer of title to the Project, it shall be relieved of all further obligations or liabilities under this Agreement.

Signature: _____ Date: _____
Name of Authorized Signer: _____ Email: _____
Company: _____ Phone: _____
Address: _____
Project Sponsor: _____
Contact: _____ Phone: _____
Address: _____ Email: _____

Attachment 10F
Exhibit B: First Source Hiring Agreement
For Business, Commercial, Operation and Lease Occupancy of the Building

This First Source Hiring Agreement (this “Agreement”), is made as of _____, by and between _____ (the “Lessee”), and the First Source Hiring Administration, (the “FSHA”), collectively the “Parties”:

RECITALS

WHEREAS, Lessee has plans to occupy the building at [Address] “Premises” which required a First Source Hiring Agreement between the project sponsor and FSHA due to the issuance of building permit for 25,000 square feet or more of floor space or constructed ten or more residential units; and,

WHEREAS, the project sponsor was required to provide notice in leases, subleases and other occupancy contracts for use of the Premises (“Contract”);and

WHEREAS, as a material part of the consideration given by Lessee under contract, Lessee has agreed to execute this Agreement and participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) as established by the City and County of San Francisco pursuant to Chapter 83 of the San Francisco Administrative Code;

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Parties covenant and agree as follows:

1. DEFINITIONS

For purposes of this Agreement, initially capitalized terms shall be defined as follows:

- a. **Entry Level Position:** Any non-managerial position that requires no education above a high school diploma or certified equivalency, and less than two (2) years training or specific preparation, and shall include temporary, permanent, trainee and intern positions.
- b. **Workforce System:** The First Source Hiring Administrator established by the City and County of San Francisco and managed by the Office of Economic and Workforce Development (OEWD).
- c. **Referral:** A member of the Workforce System who has been identified by OEWD as having the appropriate training, background and skill sets for a Lessee specified Entry Level Position.

Lessee: Tenant, business operator and any other occupant of the building requiring a First Source Hiring Agreement as defined in SF Administrative Code Chapter 83. Lessee shall include every person tenant, subtenant, or any other entity occupying the building for the intent of doing business in the City and County of San Francisco and

possessing a Business Registration Certificate with the Office of Treasurer.

2. OEWD WORKFORCE SYSTEM PARTICIPATION

- a. Lessee shall notify OEWD's Business Team of every available Entry Level Position and provide OEWD 10 business days to recruit and refer qualified candidates prior to advertising such position to the general public. Lessee shall provide feedback including but not limited to job seekers interviewed, including name, position title, starting salary and employment start date of those individuals hired by the Lessee no later than 10 business days after date of interview or hire. Lessee will also provide feedback on reasons as to why referrals were not hired. Lessee shall have the sole discretion to interview any Referral by OEWD and will inform OEWD's Business Team why specific persons referred were not interviewed. Hiring decisions shall be entirely at the discretion of Lessee.
- b. This Agreement shall be in full force and effect throughout the Lessee's occupancy of the building.

3. GOOD FAITH EFFORT TO COMPLY WITH ITS OBLIGATIONS HEREUNDER

Lessee will make good faith efforts to comply with its obligations under this Agreement. Determination of good faith efforts shall be based on all of the following:

- a. Lessee will execute this Agreement and attachment *Exhibit B-1* upon entering into leases for the commercial space of the building. Lessee will also accurately complete and submit *Exhibit B-1* annually to reflect employment conditions.
- b. Lessee agrees to register with OEWD's Referral Tracking System, upon execution of this Agreement.
- c. Lessee shall notify OEWD's Business Services Team of all available Entry Level Positions 10 business days prior to posting with the general public. The Lessee must identify a single point of contact responsible for communicating Entry-Level Positions and take active steps to ensure continuous communication with OEWD's Business Services Team
- d. Lessee accurately completes and submits Exhibit B-1, the "First Source Employer's Projection of Entry-Level Positions" form to OEWD's Business Services Team upon execution of this Agreement.
- e. Lessee fills at least 50% of open Entry Level Positions with First Source referrals. Specific hiring decisions shall be the sole discretion of the Lessee.
- f. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce training agreements or to interfere with consent decrees, collective bargaining agreements, or existing employment contracts. In the event of a conflict between this Agreement and an existing agreement, the terms of the existing agreement shall supersede this Agreement.

Lessee's failure to meet the criteria set forth in Section 3 (a.b.c.d.e.) does not impute "bad faith" and shall trigger a review of the referral process and compliance with this Agreement. Failure and noncompliance with this Agreement will result in penalties as defined in SF Administrative Code Chapter 83, Lessee agrees to review SF

Administrative Code Chapter 83, and execution of the Agreement denotes that Lessee agrees to its terms and conditions.

4. NOTICE

All notices to be given under this Agreement shall be in writing and sent via mail or email as follows:

ATTN: Business Services, Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Email: Business.Services@sfgov.org

5. This Agreement contains the entire agreement between the parties and shall not be modified in any manner except by an instrument in writing executed by the parties or their respective successors. If any term or provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement shall not be affected. If Agreement is executed in one or more counterparts, each shall be deemed an original and all, taken together, shall constitute one and the same instrument. Agreement shall inure to the benefit of and shall be binding upon the parties to this Agreement and their respective heirs, successors and assigns. If there is more than one person comprising Seller, their obligations shall be joint and several. Section titles and captions contained in this Agreement are inserted as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any of its provisions. This Agreement shall be governed and construed by laws of the State of California.

IN WITNESS WHEREOF, the following have executed this Agreement as of the date set forth above.

Date: _____ Signature: _____
Name of Authorized Signer: _____
Company: _____
Address: _____
Phone: _____
Email: _____



EXHIBIT B-1 WORKFORCE PROJECTIONS
FOR BUSINESS, COMMERCIAL, OPERATION AND LEASE OCCUPANCY

Business Name: _____ **Phone:** _____
Main Contact: _____ **Email:** _____

Signature of authorized representative* **Date**

**By signing this form, the lessee agrees to participate in the Workforce System managed by the Office of Economic and Workforce Development (OEWD) and comply with the provisions of Exhibit B First Source Hiring Agreement pursuant to San Francisco Administrative Code Chapter 83.*

Instructions:

- Upon entering into leases for the commercial space of the building, the Lessee must submit to OEWD, a signed Exhibit B and Exhibit B-1. Lessee will also complete and submit an Exhibit B-1 annually to reflect employment conditions.
- The employer must notify the First Source Hiring Program (Contact Info below) if an **Entry Level Position** becomes available.

Section 1: Select your Industry

- | | | |
|--|---|--|
| <input type="checkbox"/> Auto Repair | <input type="checkbox"/> Entertainment | <input type="checkbox"/> Personal Services |
| <input type="checkbox"/> Business Services | <input type="checkbox"/> Elder Care | <input type="checkbox"/> Professionals |
| <input type="checkbox"/> Consulting | <input type="checkbox"/> Financial Services | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Healthcare | <input type="checkbox"/> Retail |
| <input type="checkbox"/> Government Contract | <input type="checkbox"/> Insurance | <input type="checkbox"/> Security |
| <input type="checkbox"/> Education | <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Wholesale |
| <input type="checkbox"/> Food and Drink | <input type="checkbox"/> I don't see my industry (<i>Please Describe</i>) _____ | |

Section 2: Describe Primary Business Activity

Section 3: Provide information on all Entry Level Positions

Entry-Level Position Title	Job Description	Number of New Hires	Projected Hiring Date

Please email, fax, or mail this form SIGNED to:

ATTN: Business Services
Office of Economic and Workforce Development
1 South Van Ness Avenue, 5th Floor, San Francisco, CA 94103
Tel: 415-701-4848
Fax: 415-701-4897
<mailto:Business.Services@sfgov.org>
Website: www.workforcedevelopmentsf.org

ATTACHMENT 10G

Prevailing Wage Provisions

1. **Applicability.** These Prevailing Wage Provisions (hereinafter referred to as "Labor Standards") apply to any and all construction of the Improvements as defined in the Owner Participation Agreement/Disposition and Development Agreement (OP/DDA) between the Developer and the Agency of which this Attachment 10 and these Labor Standards are a part.
2. **All Contracts and Subcontracts shall contain the Labor Standards. Confirmation by Construction Lender.**
 - (a) All specifications relating to the construction of the Improvements shall contain these Labor Standards and the Developer shall have the responsibility to assure that all contracts and subcontracts, regardless of tier, incorporate by reference the specifications containing these Labor Standards. If for any reason said Labor Standards are not included, the Labor Standards shall nevertheless apply. The Developer shall supply the Agency with true copies of each contract relating to the construction of the Improvements showing the specifications that contain these Labor Standards promptly after due and complete execution thereof and before any work under such contract commences. Failure to do shall be a violation of these Labor Standards.
 - (b) Before close of escrow under the OP/DDA and as a condition to close of escrow, the Developer shall also supply a written confirmation to the Agency from any construction lender for the Improvements that such construction lender is aware of these Labor Standards.
3. **Definitions.** The following definitions shall apply for purposes of this Prevailing Wage Provisions:
 - (a) "Contractor" is the Developer if permitted by law to act as a contractor, the general contractor, and any contractor as well as any subcontractor of any tier subcontractor having a contract or subcontract that exceeds \$10,000, and who employs Laborers, Mechanics, working foremen, and security guards to perform the construction on all or any part of the Improvements.
 - (b) "Laborers" and "Mechanics" are all persons providing labor to perform the construction, including working foremen and security guards.
 - (c) "Working foreman" is a person who, in addition to performing supervisory duties, performs the work of a Laborer or Mechanic during at least 20 percent of the workweek.
4. **Prevailing Wage.**
 - (a) All Laborers and Mechanics employed in the construction of the Improvements will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by §11.5) the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment computed at rates not less than those contained

in the General Prevailing Wage Determination (hereinafter referred to as the "Wage Determination") made by the Director of Industrial Relations pursuant to California Labor Code Part 7, Chapter 1, Article 2, sections 1770, 1773 and 1773.1, regardless of any contractual relationship which may be alleged to exist between the Contractor and such Laborers and Mechanics. A copy of the applicable Wage Determination is on file in the offices of the Agency with the Development Services Manager. At the time of escrow closing the Agency shall provide the Developer with a copy of the applicable Wage Determination.

All Laborers and Mechanics shall be paid the appropriate wage rate and fringe benefits for the classification of work actually performed, without regard to skill. Laborers or Mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein provided that the Contractor's payroll records accurately set forth the time spent in each classification in which work is performed.

- (b) Whenever the wage rate prescribed in the Wage Determination for a class of Laborers or Mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit in the manner as stated therein i.e. the vacation plan, the health benefit program, the pension plan and the apprenticeship program, or shall pay an hourly cash equivalent thereof.
- (c) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any Laborer or Mechanic the amount of any costs reasonably anticipated in providing benefits under a plan or program of a type expressly listed in the Wage Determination, provided that the Executive Director of the Agency has found, upon the written request of the Contractor, made through the Developer that the intent of the Labor Standards has been met. Records of such costs shall be maintained in the manner set forth in subsection (a) of §11.8. The Executive Director of the Agency may require the Developer to set aside in a separate interest bearing account with a member of the Federal Deposit Insurance Corporation, assets for the meeting of obligations under the plan or program referred to above in subsection (b) of this §11.4. The interest shall be accumulated and shall be paid as determined by the Agency acting at its sole discretion.
- (d) Regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period.

5. **Permissible Payroll Deductions.** The following payroll deductions are permissible deductions. Any others require the approval of the Agency's Executive Director.

- (a) Any withholding made in compliance with the requirements of Federal, State or local income tax laws, and the Federal social security tax.
- (b) Any repayment of sums previously advanced to the employee as a bona fide prepayment of wages when such prepayment is made without discount or interest. A "bona fide prepayment of wages" is considered to have been made only when cash

or its equivalent has been advanced to the employee in such manner as to give him or her complete freedom of disposition of the advanced funds.

- (c) Any garnishment, unless it is in favor of the Contractor (or any affiliated person or entity), or when collusion or collaboration exists.
- (d) Any contribution on behalf of the employee, to funds established by the Contractor, representatives of employees or both, for the purpose of providing from principal, income or both, medical or hospital care, pensions or annuities on retirement, death benefits, compensation for injuries, illness, accidents, sickness or disability, or for insurance to provide any of the foregoing, or unemployment benefits, vacation pay, savings accounts or similar payments for the benefit of employees, their families and dependents provided, however, that the following standards are met:
 - 1. The deduction is not otherwise prohibited by law; and
 - 2. It is either:
 - a. Voluntarily consented to by the employee in writing and in advance of the period in which the work is to be done and such consent is not a condition either for obtaining or for the continuation of employment, or
 - b. Provided for in a bona fide collective bargaining agreement between the Contractor and representatives of its employees; and
 - 3. No profit or other benefit is otherwise obtained, directly or indirectly, by the Contractor (or any affiliated person or entity) in the form of commission, dividend or otherwise; and
 - 4. The deduction shall serve the convenience and interest of the employee.
- (e) Any authorized purchase of United States Savings Bonds for the employee.
- (f) Any voluntarily authorized repayment of loans from or the purchase of shares in credit unions organized and operated in accordance with Federal and State credit union statutes.
- (g) Any contribution voluntarily authorized by the employee for the American Red Cross, United Way and similar charitable organizations.
- (h) Any payment of regular union initiation fees and membership dues, but not including fines or special assessments, provided that a collective bargaining agreement between the Contractor and representatives of its employees provides for such payment and the deductions are not otherwise prohibited by law.

6. **Apprentices and Trainees.** Apprentices and trainees will be permitted to work at less than the Mechanic's rate for the work they perform when they are employed pursuant to and are individually registered in an apprenticeship or trainee program approved by the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training ("BAT") or with

the California Department of Industrial Relations, Division of Apprenticeship Standards ("DAS") or if a person is employed in his or her first 90 days of probationary employment as an apprentice or trainee in such a program, who is not individually registered in the program, but who has been certified by BAT or DAS to be eligible for probationary employment. Any employee listed on a payroll at an apprentice or trainee wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate for a Mechanic. Every apprentice or trainee must be paid at not less than the rate specified in the registered program for the employee's level of progress, expressed as a percentage of a Mechanic's hourly rate as specified in the Wage Determination. Apprentices or trainees shall be paid fringe benefits in accordance with the provisions of the respective program. If the program does not specify fringe benefits, employees must be paid the full amount of fringe benefits listed in the Wage Determination.

7. **Overtime.** No Contractor contracting for any part of the construction of the Improvements which may require or involve the employment of Laborers or Mechanics shall require or permit any such Laborer or Mechanic in any workweek in which he or she is employed on such construction to work in excess of eight hours in any calendar day or in excess of 40 hours in such workweek unless such Laborer or Mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of eight hours in any calendar day or in excess of 40 hours in such workweek, whichever is greater.

8. **Payrolls and Basic Records.**

- (a) Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of its construction of the Improvements and preserved for a period of one year thereafter for all Laborers and Mechanics it employed in the construction of the Improvements. Such records shall contain the name, address and social security number of each employee, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for fringe benefits or cash equivalents thereof), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the wages of any Laborer or Mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program, the Contractor shall maintain records which show the costs anticipated or the actual costs incurred in providing such benefits and that the plan or program has been communicated in writing to the Laborers or Mechanics affected. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage prescribed in the applicable programs or the Wage Determination.
- (b) 1. The Contractor shall submit to the Agency on each Wednesday at noon a copy of the payrolls for the week preceding the previous week in which any construction of the Improvements was performed. The payrolls submitted shall set out accurately and completely all of the information required by the Agency's Optional Form, an initial supply of which may be obtained from the Agency. The Contractor if a prime contractor or the Developer acting as the Contractor is responsible for the submission of copies of certified payrolls by all subcontractors; otherwise each Contractor shall timely submit such payrolls.

2. Each weekly payroll shall be accompanied by the Statement of Compliance that accompanies the Agency's Optional Form and properly executed by the Contractor or his or her agent, who pays or supervises the payment of the employees.

- (c) The Contractor shall make the records required under this §11.8 available for inspection or copying by authorized representatives of the Agency, and shall permit such representatives to interview employees during working hours on the job. On request the Executive Director of the Agency shall advise the Contractor of the identity of such authorized representatives.

9. Occupational Safety and Health. No Laborer or Mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her safety and health as determined under construction safety and health standards promulgated by Cal-OSHA or if Cal-OSHA is terminated, then by the federal OSHA.

10. Equal Opportunity Program. The utilization of apprentices, trainees, Laborers and Mechanics under this part shall be in conformity with the equal opportunity program set forth in this Attachment 10 of the OP/DDA including the Construction Work Force Agreement and the First Source Hiring Agreement. Any conflicts between the languages contained in these Labor Standards and Attachment 10 shall be resolved in favor of the language set forth in Attachment 10, except that in no event shall less than the prevailing wage be paid.

11. Nondiscrimination Against Employees for Complaints. No Laborer or Mechanic to whom the wage, salary or other Labor Standards of this Agreement are applicable shall be discharged or in any other manner discriminated against by the Contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding under or relating to these Labor Standards.

12. Posting of Notice to Employees. A copy of the Wage Determination referred to in subsection (a) of §11.4 together with a copy of a "Notice to Employees," in the form appearing on the last page of these Labor Standards, shall be given to the Developer at the close of escrow. The Notice to Employees and the Wage Determination shall both be posted and maintained by the Contractor in a prominent place readily accessible to all applicants and employees performing construction of the Improvements before construction commences. If such Notice and Wage Determination is not so posted or maintained, the Agency may do so.

13. Violation and Remedies.

(a) Liability to Employee for Unpaid Wages. The Contractor shall be liable to the employee for unpaid wages, overtime wages and benefits in violation of these Labor Standards.

(b) Stop Work--Contract Terms, Records and Payrolls. If there is a violation of these Labor Standards by reason of the failure of any contract or subcontract for the construction of the Improvements to contain the Labor Standards as required by §11.2 ("Non-Conforming Contract"); or by reason of any failure to submit the payrolls or make records available as required by §11.8 ("Non-Complying Contractor"), the Executive Director of the Agency may, after written notice to the Developer with a copy to the Contractor involved and failure to cure the violation within five working days after the date of such notice, stop the construction work under the Non-Conforming Contract or of the Non-Complying Contractor until the

Non-Conforming Contract or the Non-Complying Contractor comes into compliance.

- (c) Stop Work and Other Violations. For any violation of these Labor Standards the Executive Director of the Agency may give written notice to the Developer, with a copy to the Contractor involved, which notice shall state the claimed violation and the amount of money, if any, involved in the violation. Within five working days from the date of said notice, the Developer shall advise the Agency in writing whether or not the violation is disputed by the Contractor and a statement of reasons in support of such dispute (the "Notice of Dispute"). In addition to the foregoing, the Developer, upon receipt of the notice of claimed violation from the Agency, shall with respect to any amount stated in the Agency notice withhold payment to the Contractor of the amount stated multiplied by 45 working days and shall with the Notice of Dispute, also advise the Agency that the moneys are being or will be withheld. If the Developer fails to timely give a Notice of Dispute to the Agency or to advise of the withhold, then the Executive Director of the Agency may stop the construction of the Improvements under the applicable contract or by the involved Contractor until such Notice of Dispute and written withhold advice has been received.

Upon receipt of the Notice of Dispute and withhold advice, any stop work which the Executive Director has ordered shall be lifted, but the Developer shall continue to withhold the moneys until the dispute has been resolved either by agreement, or failing agreement, by arbitration as is provided in §11.14.

- (d) Withholding Certificates of Completion. The Agency may withhold any or all certificates of completion of the Improvements provided for in this Agreement, for any violations of these Labor Standards until such violation has been cured.
- (e) General Remedies. In addition to all of the rights and remedies herein contained, but subject to arbitration, except as hereinafter provided, the Agency shall have all rights in law or equity to enforce these Labor Standards including, but not limited to, a prohibitory or mandatory injunction. Provided, however, the stop work remedy of the Agency provided above in subsection (b) and (c) is not subject to arbitration.

14. Arbitration of Disputes.

- (a) Any dispute regarding these Labor Standards shall be determined by arbitration through the American Arbitration Association, San Francisco, California office ("AAA") in accordance with the Commercial Rules of the AAA then applicable, but subject to the further provisions thereof.
- (b) The Agency and all persons or entities that have a contractual relationship affected by the dispute shall be made a party to the arbitration. Any such person or entity not made a party in the demand for arbitration may intervene as a party and in turn may name any such person or entity as a party.
- (c) The arbitration shall take place in the City and County of San Francisco.
- (d) Arbitration may be demanded by the Agency, the Developer or the Contractor.

- (e) With the demand for arbitration, there must be enclosed a copy of these Labor Standards, and a copy of the demand must be mailed to the Agency and the Developer, or as appropriate to one or the other if the Developer or the Agency is demanding arbitration. If the demand does not include the Labor Standards they are nevertheless deemed a part of the demand. With the demand if made by the Agency or within a reasonable time thereafter if not made by the Agency, the Agency shall transmit to the AAA a copy of the Wage Determination (referred to in §11.4) and copies of all notices sent or received by the Agency pursuant to §11.13. Such material shall be made part of the arbitration record.
- (f) One arbitrator shall arbitrate the dispute. The arbitrator shall be selected from the panel of arbitrators of the AAA by the parties to the arbitration in accordance with the AAA rules. The parties shall act diligently in this regard. If the parties fail to select an arbitrator, within seven (7) days from the receipt of the panel, the AAA shall appoint the arbitrator. A condition to the selection of any arbitrator shall be that person's agreement to render a decision within 30 days from appointment.
- (g) Any party to the arbitration whether the party participates in the arbitration or not shall be bound by the decision of the arbitrator whose decision shall be final and binding on all of the parties and any and all rights of appeal from the decision are waived except a claim that the arbitrator's decision violates an applicable statute or regulation. The decision of the arbitrator shall be rendered on or before 30 days from appointment. The arbitrator shall schedule hearings as necessary to meet this 30 day decision requirement and the parties to the arbitration, whether they appear or not, shall be bound by such scheduling.
- (h) Any party to the arbitration may take any and all steps permitted by law to enforce the arbitrator's decision and if the arbitrator's decision requires the payment of money the Contractor shall make the required payments and the Developer shall pay the Contractor from money withheld.
- (i) Costs and Expenses. Each party shall bear its own costs and expenses of the arbitration and the costs of the arbitration shall be shared equally among the parties.

15. Non-liability of the Agency. The Developer and each Contractor acknowledge and agree that the procedures hereinafter set forth for dealing with violations of these Labor Standards are reasonable and have been anticipated by the parties in securing financing, in inviting, submitting and receiving bids for the construction of the Improvements, in determining the time for commencement and completion of construction and in proceeding with construction work. Accordingly the Developer, and any Contractor, by proceeding with construction expressly waives and is deemed to have waived any and all claims against the Agency for damages, direct or indirect, arising out of these Labor Standards and their enforcement and including but not limited to claims relative to stop work orders, and the commencement, continuance or completion of construction.

SAN FRANCISCO REDEVELOPMENT AGENCY

NOTICE TO EMPLOYEES

***EQUAL
OPPORTUNITY
NON-DISCRIMI-
NATION***

The contractor must take equal opportunity to provide employment opportunities to minority group persons and women and shall not discriminate on the basis of age, ancestry, color, creed, disability, gender, national origin, race, religion or sexual orientation.

***PREVAILING
WAGE***

You shall not be paid less than the wage rate attached to this Notice for the kind of work you perform.

OVERTIME

You must be paid not less than one and one-half times your basic rate of pay for all hours worked over 8 a day or 40 a week, whichever is greater.

APPRENTICES

Apprentice rates apply only to employees registered under an apprenticeship or trainee program approved by the Bureau of Apprenticeship and Training or the California Division of Apprenticeship Standards.

PROPER PAY

If you do not receive proper pay, write
Office of Community Investment and Infrastructure
1 South Van Ness Avenue, Floor 5
San Francisco, CA 94103
or call Contract Compliance Specialist
George Bridges at 415-749-2546

ATTACHMENT 11

Form of Grant Deed

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

MA West, LLC

Assessor's Block 3718, Portion of Lot 025
Commonly known as Transbay Block 5

Space Above This Line Reserved for Recorder's Use

GRANT DEED

The SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California, herein called "Grantor," acting to carry out a redevelopment plan under the Community Redevelopment Law of California, hereby **GRANTS** to MA West, LLC, a Delaware limited liability company, herein called "Grantee," the following described real property situated in the City and County of San Francisco, State of California, hereinafter referred to as the "Property," which property is particularly described in Exhibit "A" attached hereto and made a part hereof. All capitalized terms used in this Grant Deed are either defined herein or are as defined in the Agreement, as defined below.

SUBJECT, however, to the Owner Participation/Disposition and Development Agreement, between the Grantor and the Grantee, dated _____, 2015, which Agreement for Disposition is recorded concurrently with this Deed and, hereinafter referred to as the "Agreement," and the following conditions, covenants and restrictions:

(1) Grantee covenants and agrees for itself, and its transferees, successors, assigns, and holders to or of the Property or any part thereof, and any occupant or user of the Property or any part thereof, that Grantee, and such successors, assigns, holders, occupants, and users shall:

(i) Not discriminate against or segregate any person or group of persons on account of race, color, creed, religion, ancestry, national origin, sex, marital status, or sexual orientation, age or disability in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Property or any improvements erected or to be erected thereon, or any part thereof, nor shall the Grantee itself or any person claiming under or through it establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, sublessees or vendees in the Property or any improvements erected or to be erected thereon, or any part thereof, and

(ii) Not discriminate against or segregate any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are

defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, or any part thereof, herein conveyed, nor shall the grantee or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the Property herein conveyed. The foregoing covenants shall run with the land.

(2) In the event of a default by the Grantee under Section 8.01 (c) of the Agreement with respect to the failure of Grantee to commence construction on the Site, the Grantor shall have an exclusive right to repurchase the Site from the Grantee (the "Exclusive Right of Repurchase), pursuant to Section 8.03(a) of the Agreement. The Exclusive Right of Repurchase shall terminate upon the Construction Commencement Date, as defined in the Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this instrument in duplicate this _____ day of _____, 2015.

Authorized by Successor Agency Resolution No. _____ - 2015, adopted _____, 2015

GRANTOR:

GRANTEE:

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

MA West, LLC, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Tiffany J. Bohee
Executive Director

By: _____
Its:

APPROVED AS TO FORM:

By: _____
James Morales
General Counsel

EXHIBIT "A"

Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

ATTACHMENT 12

Form of Notice of Exclusive Right of Repurchase

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Transbay Project Team

Assessor's Block 3718, Portion of Lot 025
Commonly known as Transbay Block 5

Space Above This Line Reserved for Recorder's Use

NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE

This NOTICE OF EXCLUSIVE RIGHT OF REPURCHASE is made pursuant to an Owner Participation /Disposition and Development Agreement dated _____, 2015 and recorded on _____, 2015, in the Office of the Recorder of the City and County of San Francisco, as Document No. _____, of the Official Records (the "OP/DDA"), by and between the Successor Agency to the Redevelopment Agency of the City And County of San Francisco, a public body, organized and existing under the laws of the State of California (the "Successor Agency"), commonly known as the Office of Community Investment and Infrastructure ("OCII"), and MA West, LLC, a Delaware limited liability company (the "Owner"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Successor Agency and the Owner hereby serve notice as follows:

WITNESSETH:

WHEREAS, the Owner is the owner of the Property, and has granted the Successor Agency an exclusive right of repurchase pursuant to Section 8.03 (a) of the OP/DDA (the "Exclusive Right of Repurchase"), which entitles the Successor Agency to have an Exclusive Right of Repurchase of the Public Parcel (both as defined in the OP/DDA) from the Owner upon Owner's default under Section 8.01 (c) of the OP/DDA; and

WHEREAS, upon Owner's default under Section 8.01 (c) of the OP/DDA, the Successor Agency shall inform the Owner in writing of such default and exercise its Exclusive Right of Repurchase by immediately recording this Notice of Exclusive Right of Repurchase; and

WHEREAS, the Exclusive Right of Repurchase shall terminate on the Construction Commencement Date (as defined in the OP/DDA).

Nothing contained in this instrument shall modify in any other way any other provision of said OP/DDA nor any other provisions of those documents incorporated in said OP/DDA.

IN WITNESS HEREOF, the Agency and the Owner have executed this Notice of Exclusive Right of Repurchase this ____ day of _____, 2015.

Authorized by Successor Agency Resolution No. ____ - 2015, adopted _____, 2015.

AGENCY:

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

OWNER:

MA West, LLC, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Tiffany J. Bohee
Executive Director

By: _____
Its:

APPROVED AS TO FORM:

By: _____
James Morales
General Counsel

EXHIBIT "A"

Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

ATTACHMENT 13-A

Form of Partial Notice of Termination

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Development Services

Assessor's Block 3718, Lot 12 and Portions of Lot 025
Commonly known as Transbay Block 5

Space Above This Line Reserved for Recorder's Use

PARTIAL NOTICE OF TERMINATION

A. The Successor Agency to the Redevelopment Agency of the City and County of San Francisco ("Successor Agency"), a public body, organized and existing under the laws of the State of California commonly known as the Office of Community Investment and Infrastructure ("OCII") and MA West, LLC, a Delaware limited liability company (the "Owner"), entered into that certain Owner Participation/Disposition and Development Agreement dated as of _____ and recorded on _____, 2015, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. ____-____-____, Reel ____, Image ____ of the Official Records (the "OP/DDA" or "Agreement"), which covered the development of certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property").

B. Pursuant to Section 4.13 of the OP/DDA, the Successor Agency agreed to issue a separate Partial Notice of Termination prior to Completion of the Improvements as defined in the OP/DDA for (i) the Tower Improvements and (ii) each phase of Improvements necessary to complete the Open Space Requirement. With respect to the portion of the Improvements listed in Exhibit "B" attached hereto ("Completed Improvements"), the Successor Agency has conclusively determined that the Completion Date (as defined in the OP/DDA) has occurred with respect to the Completed Improvements in accordance with the requirements of the OP/DDA. Furthermore, the Owner has provided the Successor Agency with a Final Certificate of Occupancy ("FCO") dated _____ and issued by the Department of Building Inspection City and County of San Francisco for the Completed Improvements shown on Exhibit "B". The occurrence of the Completion Date with respect to any individual phase shall be defined as "Completion" of such phase;

C. As stated in the OP/DDA, the Successor Agency's determination regarding such Completion is not directed to, and thus the Successor Agency assumes no responsibility for, engineering or structural matters or compliance with building codes and regulations or applicable local, State or Federal law relating to construction standards.

ACCORDINGLY, as provided in the OP/DDA, and subject to the foregoing provisions hereof, the Successor Agency does hereby acknowledge that the obligations of Owner under the OP/DDA have been fully performed with respect to the Completed Improvements shown on Exhibit "B".

Nothing contained in this instrument shall modify in any way any provisions of the OP/DDA nor any other provision of any documents incorporated in the OP/DDA, as applied to portions of the Property other than the Completed Improvements.

Upon recordation of this Partial Notice of Termination, the provisions of the OP/DDA, with respect to the Property and Completed Improvements, shall be deemed satisfied and the OP/DDA shall be deemed terminated (SAVE AND EXCEPT for the Surviving Provisions as defined in Section 5.08 of the OP/DDA) with respect to the Completed Improvements, and the portions of the OP/DDA other than the Surviving Provisions shall have no further force or effect on the Completed Improvements.

IN WITNESS HEREOF, the Successor Agency and the Owner have executed this Partial Notice of Termination this _____ day of _____, _____.

Authorized by Successor Agency Resolution No. ____ - 2015, adopted _____, 2015.

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

OWNER:
MA West, LLC,
a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Tiffany J. Bohee
Executive Director

By: _____

Its:

APPROVED AS TO FORM:

By: _____
James Morales
General Counsel

EXHIBIT "A"

Property Legal Description

PUBLIC PARCEL

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PRIVATE PARCEL

ASSESSORS PARCEL NUMBER: LOT 012 BLOCK 3718

EXHIBIT "B"

Description of Completed Improvements

ATTACHMENT 13-B

Form of Final Notice of Termination

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Development Services

Assessor's Block 3718, Lot 12 and Portions of Lot 025
Commonly known as Transbay Block 5

Space Above This Line Reserved for Recorder's Use

FINAL NOTICE OF TERMINATION

This FINAL NOTICE OF TERMINATION is made pursuant to an Owner Participation Agreement/Disposition and Development Agreement dated _____ and recorded on _____, 2015, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. ___-_____-__, Reel ____, Image ___ of the Official Records (the "OP/DDA"), by and between the SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO, a public body, organized and existing under the laws of the State of California (the "Successor Agency"), commonly known as the Office of Community Investment and Infrastructure ("OCII"), and MA West, LLC, a Delaware limited liability company (the "Owner"), which covered the development of certain Improvements (as defined in the OP/DDA) on certain real property situated in the City and County of San Francisco (the "City"), State of California, which property is particularly described in Exhibit "A" attached hereto and made a part hereof (the "Property"). The Successor Agency and the Owner hereby serve notice as follows:

WITNESSETH:

WHEREAS, with respect to the above-described real property, the Owner has completed the construction of the Improvements as defined in the OP/DDA; and

WHEREAS, with respect to the above-described real property, per Section 4.13 of the OP/DDA, Owner has provided the Successor Agency with a Final Certificates of Occupancy for the Improvements as issued by the City's Department of Building Inspection; and

WHEREAS, per Section 4.13 of the OP/DDA, the Successor Agency is issuing to Owner, in recordable form, this Final Notice of Termination which confirms that the Successor Agency has conclusively determined that the construction obligations of the Owner as specified in said OP/DDA, have been fully performed and the Improvements completed in accordance therewith; and

WHEREAS, the Successor Agency's issuance of this Final Notice of Termination does not relieve Owner, its successors and assigns, or any other person or entity from any and all City requirements or conditions to occupancy of any Improvements, which City requirements or conditions must be complied with separately; and

WHEREAS, per Section 4.07(b) of the OP/DDA, the Successor Agency's determination regarding said construction obligations is not directed to, and thus the Successor Agency assumes no responsibility for, engineering or structural matters or compliance with City building codes and regulations or applicable state or federal law relating to construction standards; and

WHEREAS, per Section 5.08 of the OP/DDA, the "Surviving Provisions" as defined in such Section 5.08, survive the Successor Agency's issuance of this Final Notice of Termination; and

NOW, THEREFORE, as provided for in Section 4.13 (a) in said OP/DDA, the Successor Agency and the Owner hereby agree to terminate the OP/DDA EXCEPT for the Surviving Provisions, and the remaining portions of said OP/DDA shall have no further force or effect on the Improvements or the Property.

Nothing contained in this instrument shall modify in any other way any other provision of said OP/DDA nor any other provisions of those documents incorporated in said OP/DDA.

IN WITNESS HEREOF, the Successor Agency and the Owner have executed this Final Notice of Termination this ____ day of _____, _____.

Authorized by Successor Agency Resolution No. ____ - 2015, adopted _____, 2015.

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

OWNER:

MA West, LLC, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Tiffany J. Bohee
Executive Director

By: _____

Its:

APPROVED AS TO FORM:

By: _____
James Morales
General Counsel

EXHIBIT "A"

Property Legal Description

PUBLIC PARCEL

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

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BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PRIVATE PARCEL

ASSESSORS PARCEL NUMBER: LOT 012 BLOCK 3718

ATTACHMENT 14

Form of Declaration of Site Restrictions

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Successor Agency to the Redevelopment Agency of the City and County of San Francisco

WHEN RECORDED, MAIL TO:

Successor Agency to the Redevelopment Agency of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, CA 94103
Attention: Development Services

Assessor's Block 3718, Lot 12 and Portions of Lot 025
Commonly known as Transbay Block 5

Space Above This Line Reserved for Recorder's Use

DECLARATION OF SITE RESTRICTIONS

The following are the Conditions, Covenants and Restrictions affecting Property (as hereinafter defined) of MA West, a Delaware limited liability company, the owner of that certain property commonly known as Transbay Block 5. Block 5 is an about 28,935-square-foot parcel on the corner of Howard and Beale Streets within the Transbay Redevelopment Project Area in the City and County of San Francisco, State of California.

THIS DECLARATION OF SITE RESTRICTIONS ("Declaration") is made as of the ____ day of _____, 2015, by the undersigned, hereinafter called the "Owner."

WITNESSETH:

WHEREAS, the Owner owns Lot 012 (the "Private Parcel") and a portion of Lot 025 (the "Public Parcel") in Assessor Block 3718 (together, the "Property") in that certain Redevelopment Area in the City and County of San Francisco, State of California, covered by the Redevelopment Plan for the Transbay Redevelopment Project Area, filed in the Office of the Recorder of the City and County of San Francisco, State of California, as Document No. 2006I224836, filed on August 4, 2006, hereinafter referred to as the "Plan" or the "Redevelopment Plan;" and

WHEREAS, the Owner and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco, a public body, organized and existing under the laws of the State of California ("Successor Agency"), commonly known as the Office of Community Investment and Infrastructure ("OCII"), entered into that certain Owner Participation/Disposition and Development Agreement dated as of ____ and recorded on _____, 2015, in the Office of the Recorder of the City and County of San Francisco, as Instrument/File No. ____ - ____ - ___, Reel ____, Image ____ of the Official Records (the "OP/DDA" or "Agreement"), for the transfer of fee title of a portion of Assessor's Block 3718, Lot 025 and the development of a commercial project and related open space improvements on Lot 012, a portion of Lot 025, and a portion of Lot 027 in Assessor's Block 3718. The Agreement is incorporated by

reference in this Declaration as though fully set forth in this Declaration. Definitions and rules of interpretation set forth in the Agreement apply to this Declaration.

WHEREAS, the California Community Redevelopment Law requires that adequate safeguards be imposed so that the work of redevelopment will be carried out pursuant to the Redevelopment Plan, and provides for the retention of controls and the establishment of restrictions and covenants running with land sold or leased for private use; and

WHEREAS, for the purpose of providing adequate safeguards that the work of redevelopment will be carried out pursuant to the Redevelopment Plan and to ensure the best use and the most appropriate development and improvement of the property described in the Redevelopment Plan; to protect the owners of building sites against such improper use of surrounding building sites as will depreciate the value of their property; to guard against the erection thereon of poorly designed or proportioned structures; to ensure the highest and best development of said property; to encourage and secure the erection of attractive structures thereon, with appropriate locations on building sites; to prevent haphazard and inharmonious improvement of building sites; to secure and maintain proper setbacks from streets and adequate free space between structures; and, in general, to provide adequately for a high type and quality of improvement on said property, and thereby to enhance the value of investments made by purchasers of building sites therein, the Owner is desirous of subjecting the real property hereinafter described to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of said property and for each owner thereof and shall inure to the benefit of said property and for each owner thereof and pass with said property and each and every parcel thereof and shall apply to and bind the successors in interest and any owner thereof.

NOW, THEREFORE, the Owner hereby declares that the real property described and referred to in Clause 1 hereof, is and shall be held, transferred, sold, and conveyed, subject to the covenants, conditions and restrictions, hereinafter set forth and further described in Exhibit B, "Surviving Provisions of the DDA", attached hereto and made a part hereof:

1. Property Subject to This Declaration

The Property which is, and shall be, held, conveyed, transferred and sold, subject to the covenants, conditions and restrictions with respect to the various portions thereof set forth in the various clauses and subdivisions of this Declaration is located in the City and County of San Francisco, State of California, and is more particularly described as all that certain real property situated in the City and County of San Francisco (the "City"), State of California, and is more particularly described in Exhibit "A" attached hereto and made a part hereof.

2. Incorporation of Redevelopment Plan by Reference

The Redevelopment Plan for the Transbay Redevelopment Project Area, was approved and adopted by the Board of Supervisors of the City and County of San Francisco on June 21, 2005 by Ordinance 124-05, and as amended by Ordinance No. 99-06 adopted on May 9, 2006, and copies of which have been filed in the Office of the Recorder of the City and County of San Francisco, State of California. Each and every term, condition, and provision set forth in said Redevelopment Plan is hereby incorporated by reference in and made a part of this Declaration of Restrictions with the same force and effect as though set forth in full herein.

3. Review of Plans

All preliminary architectural and site plans and the final plans and specifications for the construction of buildings and improvements on the land shall be submitted to the Successor Agency, , for review and approval. Those plans shall be in sufficient detail to enable the Successor Agency to make a

determination as to the compliance of the plans with these restrictions and with the Redevelopment Plan for the Project Area.

4. Maintenance

All buildings and improvements constructed in the Transbay Redevelopment Project Area (“Project Area”) shall be maintained in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

5. Nondiscrimination Provisions

As provided in Section 5.04 of the OP/DDA, as such is provided in Exhibit B attached hereto, there shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Owner or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property subject to this Declaration, or any part thereof, nor shall the Owner itself (or any person or entity claiming under or through it) establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of the Property or any part thereof, nor shall Owner or any occupant or user of the Property or any transferee, successor, assign or holder of any interest in the Property or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Property.

There shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall the Owner or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sublessees, or vendees at the Property. The foregoing covenants shall run with the land. Unless an instrument, describing property in the Project Area, has been recorded agreeing to change said covenants, the covenants contained in Clause 5 hereof shall run in perpetuity.

6. Land Use Restrictions

As provided in Section 5.02 of the OP/DDA, as such is included in Exhibit B attached hereto, the Owner shall devote the Property and the Improvements (as defined in the OP/DDA) only to the uses permitted by the Redevelopment Plan, and this Declaration of Site Restrictions. The Property is zoned “Zone 1: Transbay Downtown Residential” in the Redevelopment Plan. The Owner intends to use the Property for development of the Project (as defined in the OP/DDA and the details of which are contained in the Scope of Development, Attachment 6 to the OP/DDA). The uses contemplated in the Scope of Development are consistent with the Zone 1 requirements of the Redevelopment Plan.

7. As-Is Conveyance

As provided in Section 3.01 (b), (c), and (e) of the OP/DDA, as such is included in Exhibit B attached hereto, the Successor Agency conveyed the Public Parcel in “AS IS” condition and the Owner accepted the Public Parcel in “AS IS” condition. The Owner, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the Public Parcel and shall perform all actions that may be required pursuant to any Environmental Law.

8. Hazardous Materials Indemnification

OP/DDA

Attachment 14 –Declaration of Site Restrictions

Page 3 of 10

Transbay Block 5

Assessor’s Block 3718, Lot 012, Portions of Lot 025 and 027

The Owner shall indemnify the Successor Agency, the City, and the Transbay Joint Powers Authority (“TJPA”) from and against claims relating to the Owner’s violation of any Environmental Law, or any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Property, as provided in Section 3.02 of the OP/DDA, as such is included in Exhibit B attached hereto.

9. Insurance

Pursuant to Section 4.19(c)(iv) of the DDA, as such is included in Exhibit B attached hereto, Owner shall require its architects, engineers, surveyors and other design professionals to maintain professional liability insurance for no less than ten (10) years beyond the Completion of Construction.

10. No Changes Without Approval

Pursuant to Section 5.07 of the DDA, as such is included in Exhibit B attached hereto, neither Owner nor any successor or assign may make or permit any change in the uses of the Property or any Change in the Improvements (as defined in the DDA), unless the express prior written consent for the change in uses or any Change in the Improvements has been requested and obtained from the Successor Agency; and if obtained, upon any terms and conditions the Successor Agency reasonably requires.

11. Indemnification

Owner shall indemnify, defend, and hold harmless the Successor Agency, the City, the TJPA and their respective members, officers, agents and employees as provided in Section 12.01 of the DDA, as such is included in Exhibit B attached hereto.

12. General Provisions

a. Term

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them as of the date this Declaration is executed and, unless a different term is specified herein, during the effective period of the Redevelopment Plan, which remains in effect until June 21, 2035; unless an instrument, describing property in the Project Area, has been recorded agreeing to change said covenants. These covenants shall be deemed automatically extended during the effective period of any extension of the Redevelopment Plan. For the avoidance of doubt, these covenants shall survive the Successor Agency’s recordation of a partial or full Notice of Termination for the Improvements. After the expiration or termination of the Redevelopment Plan, the use and subsequent development or redevelopment of the Property will become subject to the City’s land use ordinances and policies, including but not limited to the City’s Planning Code.

b. Enforcement

In the event of any breach of any of the covenants contained herein, it shall be the duty of the Successor Agency to endeavor immediately to remedy such breach by conference, conciliation and persuasion. In the case of failure so to remedy such breach, or in advance thereof, if in the judgment of the Successor Agency circumstances so warrant, said breach shall be enjoined or abated by appropriate proceedings brought by the Successor Agency.

The Successor Agency, on its own behalf or on behalf of any owner or owners, singly or collectively, or any real property in the Project Area covered by these restrictions, or any such owner or owners may, at any time, prosecute any proceedings in law or in equity in case of any violation or attempt to violate any of the covenants contained herein.

c. Variances

OP/DDA

Attachment 14 –Declaration of Site Restrictions

Page 4 of 10

Transbay Block 5

Assessor’s Block 3718, Lot 012, Portions of Lot 025 and 027

Where, owing to special conditions, a literal enforcement of these restrictions in regard to the physical standards and requirements as referred to in Clause 2 hereof would result in unnecessary hardship, involve practical difficulties, or would constitute an unreasonable limitation beyond the spirit and purposes of these restrictions, the Successor Agency shall have the power upon appeal in specific cases to authorize such variation or modification of the terms of these restrictions as will not be contrary to the public interest and so that the spirit of these restrictions shall be observed and justice done, provided that in no instance will any adjustments be granted that will change the land use of the Redevelopment Plan. Other basic requirements of the Redevelopment Plan shall not be eliminated but adjustments thereof may be permitted, provided such adjustments are consistent with the general purposes and intent of the Redevelopment Plan.

d. Foreclosure and Enforcement of Liens

The provisions of this Declaration do not limit the rights of obligees to foreclose or otherwise enforce any mortgage, deed of trust, or other encumbrance upon the property, or the rights of such obligees to pursue any remedies for the enforcement of any pledge or lien upon the property; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust, or other lien or encumbrance or a sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the property, shall be and shall continue to be, subject to all of the conditions, restrictions, and covenants herein provided for.

e. Amendment

If at any time the Redevelopment Plan is amended in any manner as is now or hereafter permitted by law, this Declaration may be amended accordingly.

f. Dissolution

In the event that the Successor Agency is dissolved or its designation changed by or pursuant to law prior to carrying out the Redevelopment Plan, its powers, duties, rights, and functions under this Declaration shall be transferred pursuant to any applicable provisions of such laws.

g. Separability of Provisions

If any provision of this Declaration of Site Restrictions or the application of such provision to any owner or owners or parcel of land is held invalid, the validity of the remainder of this Declaration of Site Restrictions and the applicability of such provision to any other owner or owners or parcel of land shall not be affected thereby.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the day and year first written above.

OWNER:

MA West, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By _____

Its:

EXHIBIT "A"

Property Legal Description

PUBLIC PARCEL

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PRIVATE PARCEL

ASSESSORS PARCEL NUMBER: LOT 012 BLOCK 3718

EXHIBIT B

Surviving Provisions of the DDA (all sections noted refer to DDA Sections)

3.01 Prior to Conveyance/Public Parcel "As Is"

(b) The Successor Agency shall convey the Public Parcel in its present, "AS IS" condition, free of any liens, encumbrances, or other matters affecting title except for the Approved Title Conditions, and shall not prepare the Public Parcel for any purpose whatsoever prior to conveyance to Developer. So long as the obligations in Section 3.01(a) are met, and there is otherwise no material adverse change in the condition of the Public Parcel after the Effective Date, Developer agrees to accept the Public Parcel in "AS IS" condition at the close of Escrow in the Approved Title Condition.

(c) Developer acknowledges that Successor Agency, City, TJPA, or any employee, representative or agent of Successor Agency, City or TJPA, have not made any representation or warranty, express or implied, with respect to the Public Parcel, and it is agreed that Successor Agency makes no representations, warranties or covenants, express or implied, as to its physical condition; as to the condition of any improvements; as to the suitability or fitness of the land; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the Public Parcel; or as to any other matter whatsoever; it being expressly understood that, subject only to the obligations set forth in 3.01(a), the Public Parcel is being sold in an "AS IS" condition. The provisions of this Section 3.01, as with the other provisions of this Agreement, shall survive the close of Escrow and shall not merge into the Grant Deed delivered to Developer at close of Escrow.

(e) After close of Escrow, Developer, at its sole cost and expense, shall comply with all provisions of Environmental Law applicable to the Public Parcel and all uses, improvements and appurtenances of and to the Public Parcel, and shall perform all investigations, removal, remedial actions, cleanup and abatement, corrective action or other remediation that may be required pursuant to any Environmental Law, and Successor Agency, City, and the TJPA and their respective members, officers, agents and employees, shall have no responsibility or liability with respect thereto.

3.02 Hazardous Materials Indemnification

(a) Developer shall indemnify, defend and hold Successor Agency, the City and the TJPA, and their respective members, officers, agents and employees (individually, "**Indemnified Party**" and collectively, "**Indemnified Parties**") harmless from and against any losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (A) Developer's violation of any Environmental Law, or (B) any Release or threatened Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Public Parcel, occurring after the close of Escrow, except where such violation, Release or threatened Release; or condition was at any time caused by the gross negligence or intentional misconduct of the Indemnified Party seeking indemnification.

(b) For purposes of this Section 3.02, the term "**Hazardous Substance**" shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products,

asbestos, asbestos-containing materials, polychlorinated biphenyls (“PCBs”), PCB-containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Public Parcel.

(c) The term “**Environmental Law**” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right-to-know requirements related to the work being performed under this Agreement.

(d) For purposes of this Section 3.02, the term “**Release**” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

(e) DEVELOPER ACKNOWLEDGES AND AGREES THAT, EXCEPT TO THE EXTENT OTHERWISE EXPRESSLY PROVIDED HEREIN, SUCCESSOR AGENCY IS CONVEYING AND DEVELOPER IS ACCEPTING THE PUBLIC PARCEL ON AN “AS-IS WITH ALL FAULTS” BASIS SUBJECT TO ALL APPLICABLE LAWS, RULES AND ORDINANCES, INCLUDING WITHOUT LIMITATION, ANY ZONING ORDINANCES, OR OTHER REGULATIONS GOVERNING THE USE, OCCUPANCY OR POSSESSION OF THE PUBLIC PARCEL. DEVELOPER REPRESENTS AND WARRANTS THAT DEVELOPER IS RELYING SOLELY ON ITS INDEPENDENT INVESTIGATION AND NOT ON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, FROM SUCCESSOR AGENCY OR ITS AGENTS AS TO ANY MATTERS CONCERNING THE PUBLIC PARCEL, ITS SUITABILITY FOR DEVELOPER’S INTENDED USES OR ANY OF THE PUBLIC PARCEL CONDITIONS. SUCCESSOR AGENCY DOES NOT GUARANTEE THE LEGAL, PHYSICAL, GEOLOGICAL, ENVIRONMENTAL OR OTHER CONDITIONS OF THE PUBLIC PARCEL, NOR DOES IT ASSUME ANY RESPONSIBILITY FOR THE COMPLIANCE OF THE PUBLIC PARCEL OR ITS USE WITH ANY STATUTE, RESOLUTION OR REGULATION. DEVELOPER AGREES THAT NEITHER SUCCESSOR AGENCY NOR ANY OF SUCCESSOR AGENCY’S AGENTS HAVE MADE, AND SUCCESSOR AGENCY DISCLAIMS, ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PUBLIC PARCEL CONDITIONS.

In connection with the foregoing release, Developer expressly waives the benefits of Section 1542 of the California Civil Code, which provides as follows:

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

BY PLACING ITS INITIALS BELOW, DEVELOPER SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE VALIDITY OF THE RELEASES 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.

INITIALS: DEVELOPER: _____

4.19 Insurance Requirements

(c) **Minimum Limits.** Developer must maintain limits no less than:

(iv) **Professional Liability:** Developer shall require the project architects, engineers, surveyors and other design professionals to carry insurance covering such vendors' negligent acts, errors and omissions in amounts not less than \$2,000,000 each occurrence and in the annual aggregate, with such minimum limits to be maintained for no less than ten (10) years beyond the Completion of Construction of the Improvements.

5.02 General Restrictions

The Site and the Improvements shall be devoted only to the uses permitted by (i) the Redevelopment Plan and (ii) the Project Area Declaration of Restrictions for the period during which they are in effect.

5.04 Nondiscrimination

(a) There shall be no discrimination against or segregation of any person or group of persons on account of age, race, color, creed, sex, sexual orientation, gender identity, marital or domestic partner status, disabilities (including AIDS or HIV status), religion, national origin or ancestry by Developer or any occupant or user of the Site in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site, or any part thereof, and Developer itself (or any person or entity claiming under or through it) shall not establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of the Site or any part thereof, nor shall Developer or any occupant or user of the Site or any transferee, successor, assign or holder of any interest in the Site or any person or entity claiming under or through such transferee, successor, assign or holder, establish or permit any such practice or practices of discrimination or segregation, including, without limitation, with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, vendees or others of the Site.

(b) Developer itself (or any person or entity claiming under or through it) further agrees and covenants that there shall be no discrimination against or segregation of, any person or group of persons on account of any basis listed in subdivision (a) or (d) of Section 12955 of the California Government Code, as those bases are defined in Sections 12926, 12926.1, subdivision (m) and paragraph (1) of subdivision (p) of Section 12955, and Section 12955.2 of the California Government Code, in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Site nor shall the Developer or any person claiming under or through him or her, establish or permit any practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees, or vendees in the premises herein conveyed.

(c) Notwithstanding the above, Developer shall not be in default of its obligations under this Section 5.04 where there is a judicial action or arbitration involving a bona fide dispute over whether Developer is engaged in discriminatory practices and Developer promptly acts to satisfy any judgment or award against Developer.

(d) The covenants of this Section 5.04 shall run with the land, and any transferee, successor, assign, or holder of any interest in the Site, or any occupant or user thereof, whether by contract, lease, rental, sublease, license, deed, mortgage or otherwise, and whether or not any written instrument or oral agreement contains the foregoing prohibitions against discrimination, shall be bound

hereby and shall not violate in whole or in part, directly or indirectly, the nondiscrimination requirements set forth above.

5.07 No Changes Without Approval

For the period during which the Redevelopment Plan and Declaration of Restrictions are in effect, neither Developer nor any successor or assign may make or permit any change in the uses permitted on the Site or any Change in the Improvements (as defined below), unless the express prior written consent for the change in uses or any Change in the Improvements has been requested and obtained from the Successor Agency; and if obtained, upon any terms and conditions the Successor Agency reasonably requires. The Successor Agency's approval may be granted or withheld in its reasonable discretion. "**Change in the Improvements**" is defined as any material alteration, modification, addition and/or substitution of or to the Site or the Improvements that affects: (a) the density of development; (b) the extent and nature of the open space on the Site from that certified by the Successor Agency as complete in accordance with this Agreement; (c) the exterior design (to the extent material); (d) the exterior materials (to the extent material); and/or (e) the exterior color (to the extent material). For the purposes of this Section, "**exterior**" also includes the roof of the Improvements.

12.01 Indemnification

Developer shall indemnify, defend, and hold harmless the Indemnified Parties from and against any losses, costs, claims, damages, liabilities and causes of action (including reasonable attorney's fees and court costs) arising out of this Agreement, including with respect to any challenge to the entitlement of the Developer to undertake the program described in the Scope of Development, or in any way connected with the death of or injury to any person or damage to any property occurring on or adjacent to the Site and directly or indirectly caused by any acts done thereon or any acts or omissions of Developer and its agents, employees or contractors; provided, however, that the foregoing indemnity shall not apply to any losses, costs, claims, damages, liabilities or causes of action (including reasonable attorneys' fees and court costs) due primarily to the gross negligence or willful misconduct of the Indemnified Party seeking to be indemnified or its respective agents, employees or contractors. Developer's obligations under this Section 12.01 shall survive Successor Agency's recordation of the Final Notice of Termination as to any acts or omissions occurring prior to such recordation.

ATTACHMENT 15

Form of Agreement and Quitclaim Deed Re Reserved Rights

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Transbay Joint Powers Authority
c/o William J. White
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Document Transfer Tax \$0
(Rev & Tax Code § 11922; SF Bus. & Tax. Code 1105)

(Space above this line reserved for Recorder's use only)

AGREEMENT AND QUITCLAIM DEED RE RESERVED RIGHTS

(250 Howard Street, _____)

RECITALS

A. On September ____, 2015, MA WEST LLC, a Delaware limited liability company, (“MA West”) purchased the property known as 250 Howard Street (“Tower Parcel”), more particularly described in Exhibit 1 hereto, pursuant to that Owner Participation /Disposition and Development Agreement recorded on _____ as _____.

B. The TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Sections 6500 et seq. (“TJPA”), is the owner of, *inter alia*, that certain parcel of land commonly known as Parcel N2, more particularly described in Exhibit 2 hereto, and is the former owner of the Tower Parcel.

C. The Tower Parcel and Parcel N2 comprise a portion of those certain parcels known as Parcel N and Parcel N’ previously conveyed from the State of California, acting by and through its Director of Transportation (“Caltrans”), to the City and County of California (“City”), and subsequently from the City to the TJPA.

D. In 1956, Caltrans granted a parcel of land abutting Parcel N’ to Southern Pacific Company, a Delaware Corporation, by that certain deed recorded April 10, 1956 in Volume 6822 at Page 120, Official Records of the City and County of San Francisco (“Director’s Deed”). The Director’s Deed reserved from the grant certain easements and other rights (“Reserved Rights”).

E. By this Agreement and Quitclaim Deed, the parties intend to vest in the TJPA, as Successor to Caltrans’ ownership of Parcel N and Parcel N’, and as current owner of Parcel N2,

any and all of the Reserved Rights that may presently exist, to establish the TJPA as the sole holder of those rights, and grant to the TJPA the sole and exclusive right to exercise the rights, regardless of whether such rights may be appurtenant, in part, to the Tower Parcel.

THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, MA WEST hereby releases, remises and quitclaims to the TJPA all of its right, title and interest in the Reserved Rights.

MA WEST further agrees, as owner of the Tower Parcel, to assign to the TJPA, for the sole and exclusive use and benefit of the TJPA, as owner of Parcel N2, any and all rights to exercise the Reserved Rights that are appurtenant to the Tower Parcel, which agreement shall be binding on all future owners of the Tower Parcel.

The TJPA accepts the right, title and interest conveyed and assigned hereby.

MA WEST:

By: _____

TJPA:

By: _____

State of California)
County of San Francisco)

On _____ before me, _____, personally appeared

_____ personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

State of California)
County of San Francisco)

On _____ before me, _____, personally appeared

_____ personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

Legal Description of Parcel N1

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

Legal Description of Parcel N2

[TO BE INSERTED]

ATTACHMENT 16

Form of Agreement Re Temporary License for Use of Parcel M3

THIS AGREEMENT RE TEMPORARY LICENSE FOR USE OF PARCEL M3 (“**Agreement**”) is made and entered into as of the ____ day of _____, 2015, by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“**TJPA**”) and MA WEST LLC (“**MA WEST**”), a Delaware limited liability company and joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company. The TJPA and MA WEST 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.**” The Parties agree as follows:

RECITALS

A. MA WEST and the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (“**Successor Agency**”) entered into an Owner Participation Agreement/Disposition and Development Agreement (“**DDA**”) on ____ for the sale and development of a portion of the parcel known as Transbay Block 5 for the development of an office tower project (“**Block 5 Project**”).

B. On September ___, 2015, pursuant to the DDA, the 2005 Transbay Redevelopment Project Implementation Agreement between the TJPA and the predecessor to the Successor Agency, and the 2008 Option Agreement for the Purchase and Sale of Real Property between the TJPA, the predecessor to the Successor Agency, and the City and County of San Francisco, as amended, MA WEST purchased from the TJPA the parcel known as Parcel N1. The proceeds from the sale of Parcel N1 and from the future net tax increment from the Block 5 project are pledged to help pay the cost of the TJPA’s Transbay Transit Center project.

C. MA WEST separately acquired an adjoining parcel on the corner of Beale Street and Howard Street (“**Private Parcel**”) for purposes of assemblage with Parcel N1. The Private Parcel contains an art deco pavilion used for the past several years as a hot dog stand (“**Pavilion**”). Development of the Block 5 Project requires that the Pavilion be removed from the Private Parcel. The DDA requires that MA WEST be responsible for the relocation and installation of the Pavilion in a public open space or park site, subject to certain terms and conditions. A permanent site for the relocation of the Pavilion has not yet been identified. To facilitate the timely development of the Block 5 Project and the relocation of the Pavilion, the DDA required as a condition of closing that the Developer have entered into this Agreement with the TJPA for the temporary storage of the Pavilion on the property commonly known as Parcel M3, as more specifically described in Exhibit A (“**Parcel M3**”).

D. The TJPA and MA WEST now desire to enter into this Agreement to permit MA WEST to temporarily use a portion of Parcel M3 for storage of the Pavilion.

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

1. PREMISES.

The term "Premises" shall mean Parcel M3.

2. TERM.

The term of the License granted by this Agreement ("Term") shall commence on September __, 2015, and shall expire on the earlier of (a) 60 days after the date the Pavilion is removed from the Premises, and (2) December 31, 2020. The TJPA may extend the Term in its sole and absolute discretion by written notice.

3. TEMPORARY LICENSE TO USE PREMISES FOR PAVILION STORAGE.

Upon commencement of the Term, the TJPA shall make available, and MA WEST shall have the temporary right to use, a designated portion of the Premises for temporary storage of the Pavilion and the related uses permitted or required under this Agreement ("License"). The TJPA shall have the sole and absolute discretion to designate the specific portion of Premises that may be used for said storage. The TJPA shall provide MA WEST reasonable access to the Premises for purposes of the installation, maintenance, and removal of the Pavilion, and restoration of the Premises, by MA WEST as required by this Agreement, provided that MA WEST provides reasonable prior notice to the TJPA of its intent to access the Premises, and that such access will not unreasonably interfere with the TJPA's use of its adjoining property and of the portions of the Premises not occupied by the Pavilion. The License does not include a right to use any portion of the Premises except as expressly provided in this Agreement.

4. SURRENDER

No later than 60 days prior to the expiration of the Term, MA WEST shall complete the removal of the Pavilion from the Premises. Before the Term expires, MA WEST shall restore the Premises to its condition prior to the start of the Term.

5. MA WEST RESPONSIBILITY FOR PAVILION.

MA WEST shall be solely responsible for transporting, installing, maintaining, and removing the Pavilion, and all costs and expenses associated therewith. Prior to moving the Pavilion to the Premises, MA WEST shall obtain, at its sole cost and expense, all permits or other approvals required to install and store the Pavilion on the Premises. MA WEST shall be solely responsible for ensuring compliance with all required permits and other approvals, and all requirements in the DDA or related project approvals pertaining to Pavilion, including without

limitation any requirement to prepare an assessment, report or plan in connection with the Pavilion and to comply therewith; to provide for the ongoing preservation of the Pavilion and its features; to seismically secure the structure, including without limitation any requirement to place the Pavilion on a foundation, install base isolators, and the like; and any obligation to find a permanent location for the Pavilion. MA WEST shall ensure the Pavilion is installed and maintained in manner that will protect public health and safety. The TJPA may require that MA WEST provide and maintain at MA WEST's expense fencing and/or screening for the Pavilion, of a type and design approved by the TJPA in its reasonable discretion, to ensure safety and aesthetic quality. MA WEST shall perform routine maintenance of the Pavilion and the portion of the Premises used by MA WEST, shall ensure they remain at all times in an orderly, clean, safe, and sanitary condition, and shall provide all required utility and security systems for the Pavilion, at its expense. MA WEST shall be solely responsible for the costs of removing and relocating the Pavilion and restoring the Premises to its prior condition. Ownership of the Pavilion shall remain with MA WEST at all times, and the TJPA shall have no responsibility whatsoever for maintaining, preserving, relocating, or otherwise in connection with the Pavilion. If the TJPA incurs any expenses in connection with the License, including without limitation any expenses related to site preparation, moving, relocating, or replacing existing fencing, pavement, or planters, MA WEST shall promptly reimburse the TJPA for those expenses.

6. CONDITION OF PREMISES.

(a) MA WEST accepts the Premises in the condition existing as of the date of the start of the Term, subject to all applicable zoning, municipal, county, state, and federal laws, ordinance, and regulations governing and regulating the use of the Premises, and accepts this Agreement subject thereto and to all matters disclosed thereby. MA WEST acknowledges that neither the TJPA nor any agent of the TJPA has made any representation or warranty with respect to the condition of the Premises or the suitability thereof for MA WEST's proposed use, nor has the TJPA agreed to undertake any modification, alteration, or improvement to the Premises.

(b) The taking of possession of the Premises by MA WEST shall in itself constitute acknowledgement that the Premises are in good and tenable condition, and MA WEST agrees to accept the Premises in its presently existing condition "as is."

(c) MA WEST hereby expressly waives the right to make repairs at the expense of the TJPA Agency and waives the benefit of the provisions of Sections 1941 and 1942 of the California Civil Code or any successor thereto. MA WEST shall take all steps necessary to protect the Premises from damage incident to use of the Premises by MA WEST and its employees, agents, contractors, affiliates, tenants, and invitees, without expense to the TJPA. MA WEST shall repair, at its own cost and expense and in accordance with the TJPA's standards, any damage to any property owned by the TJPA caused by MA WEST or any of its employees, agents, contractors, affiliates, tenants, or invitees.

(d) MA WEST shall not use the Premises or permit anything to be done on or about the Premises which will in any way conflict with any law, statute, zoning restriction, ordinance,

or governmental rule or regulation or requirements of duly constituted public authorities now in force or which may hereafter be in force, relating to or affecting the condition, use, or occupancy of the Premises. MA WEST shall not commit or suffer to be committed any waste in or upon the Premises.

(e) MA WEST shall not encumber the Premises in any manner whatsoever.

(f) In the event MA WEST fails to perform MA WEST's obligations under this Agreement, the TJPA shall give MA WEST notice to do such acts as are reasonably required to so maintain the Premises. If within five (5) days after the TJPA Agency sends written notice to MA WEST, MA WEST fails to do the work and diligently proceed in good faith to prosecute it to completion, the TJPA shall have the right, but not the obligation, to do such acts and expend such funds at the expense of MA WEST as are reasonably required to perform such work. Any amount so expended by the TJPA shall be paid by MA WEST promptly after demand, plus interest from the date of completion of such work to date of payment. The TJPA shall have no liability to MA WEST for any damage, inconvenience, or interference with the use of the Premises by MA WEST as a result of performing any such work.

7. INSURANCE AND INDEMNIFICATION.

(a) MA WEST shall defend, indemnify, and hold harmless the TJPA from any and all claims, loss and liability, including attorneys' and expert fees and litigation costs, on account of any damages, injuries, claims and demands arising out of: (i) condition, use, or occupation of the Premises by MA WEST and/or its employees, agents, contractors, affiliates, tenants, and invitees; (ii) the acts or omissions of MA WEST, and/or its employees, agents, contractors, affiliates, tenants, and invitees in the performance of this Agreement; and (iii) anything else done or permitted to be done in or about the Premises during the Term, including any construction or alteration of the Premises; except to the extent that any such claims, loss, or liability arise out of the active negligence of or willful misconduct of the TJPA.

(b) MA WEST shall obtain and keep in force during the Term (i) commercial general liability insurance, including property damage, against liability for personal injury, bodily injury, fire, death and damage to property occurring in or about the Premises in the amount of Two Million Dollars (\$2,000,000) each occurrence combined single limit for injuries to or death of one or more persons in any one occurrence; and (ii) casualty insurance for damages or loss to property, including, but not limited to, vehicles parked or driving on the Premises, in the amount of One Million Dollars (\$1,000,000). The limits of such insurance shall not limit the liability of MA WEST. All policies shall be written as primary policies, not contributing with and not in excess of coverage which the TJPA may carry. Said policies shall name the TJPA as additional insured/loss payee and shall insure against the contingent liabilities, if any, of the TJPA and the officers, agents, and employees of the TJPA and shall obligate the insurance carriers to notify the TJPA, in writing, not less than 30 days prior to the cancellation thereof, or any other change affecting the coverage of the policies. MA WEST shall furnish to the TJPA a Certificate of Insurance acceptable to the TJPA within not more than 5 days following execution of this

Agreement. The TJPA shall retain the right at any time to review the coverage, form, and amount of the insurance required hereby.

(c) MA WEST waives any and all rights of recovery against the TJPA, or against the officers, employees, agents, and representatives of the TJPA, for loss or damage to MA WEST or its property or the property of others under its control to the extent that such loss or damage is insured against under any insurance policy in force at the time of such loss of damages. MA WEST shall give notice to its insurance carrier or carriers that the foregoing waiver of subrogation is contained in its License.

8. TJPA USE AND ACCESS RIGHTS.

The TJPA, through its officers, employees, agents, and representatives, shall have full right and authority to enter in and upon the Premises at any and all times for the purposes of inspecting the Pavilion and the Premises; to use at any and all times that portion of the Premises not designated by the TJPA or occupation by the Pavilion for any purpose; and to use the designated portion of the Premises for the purpose of performing any maintenance activities which MA WEST has failed to perform under this Agreement, or for other purposes that will not substantially interfering with the uses permitted under its License.

9. PERSONAL PROPERTY.

At the termination of this License, MA WEST shall remove all personal property placed on the Premises. The TJPA may, in its sole discretion, declare all personal property not removed by MA WEST at the end of the License term to be abandoned by MA WEST and this property shall, without compensation to MA WEST, become the TJPA's property, free and clear of all claims to or against it by MA WEST or any other person. MA WEST shall be liable to the TJPA for all reasonable costs incurred by the TJPA in effecting the removal of personal property.

10. UTILITIES AND SERVICES.

MA WEST shall pay when due, and shall hold the TJPA harmless from any liability for, all charges for utilities or other services supplied in connection with MA WEST's use of the Premises. The TJPA shall not be liable in damages or otherwise for any failure or interruption of any utility service furnished to the Premises.

11. TAXES.

MA WEST agrees to pay and discharge, or cause to be paid and discharged when due, before the same become delinquent, all applicable taxes imposed as a result of MA WEST's uses of the Premises.

12. ASSIGNMENT/SUBLICENSE

MA WEST may permit its employees, agents, contractors, affiliates, tenants, and invitees to use the Premises under the terms of this License. Otherwise, MA WEST may not assign or sublicense the Premises without the TJPA's prior written consent, which the agencies may grant or withhold in their sole discretion; provided, however, that in the event MA WEST transfers its ownership of Parcel N1 to a new owner, MA WEST may assign the License to the new owner. MA WEST shall notify TJPA of any proposed transfer of ownership in Parcel N1 at least 60 days prior such transfer.

13. DEFAULT.

The occurrence of any of the following shall constitute a material breach and default of this License by MA WEST ("**Default**"):

(a) Any abandonment or vacation of the Premises by MA WEST without the removal of the Pavilion.

(b) Any general assignment or general arrangement for the benefit of creditors; filing by or against MA WEST of a petition to have MA WEST adjudged bankrupt or of a petition for reorganization or arrangement under any law relating to bankruptcy; appointment of a trustee or receiver to take possession of substantially all of MA WEST's assets; or attachment, execution, or other judicial seizure of substantially all of MA WEST's assets.

(c) Any failure by MA WEST to comply with any provision of any applicable law, statute, zoning restriction, ordinance or governmental rule, regulation or requirement.

(d) The failure by MA WEST to observe and perform any other provision of this License to be observed or performed by MA WEST, where such failure continues for five (5) days after written notice thereof by the TJPA to MA WEST, provided, however, that if the nature of such Default is such that it cannot be reasonably cured within such five- (5) day period, MA WEST shall not be deemed to be in Default if MA WEST shall within such period commence such cure and thereafter diligently prosecute the same to completion.

14. REMEDIES.

In the event of any Default or breach by MA WEST, the TJPA may at any time thereafter, without limiting the TJPA in the exercise of any right of remedy at law or in equity which the TJPA may have by reason of such Default or breach, terminate MA WEST's License by any lawful means, in which case this License shall terminate and MA WEST shall surrender possession of the Premises to the TJPA.

In such event, the TJPA shall be entitled to recover from MA WEST all damages incurred by the TJPA by reason of MA WEST's Default. If an action is instituted on this License, MA WEST promises to pay, in addition to the costs and disbursements allowed by law, such sum as a court may adjudge reasonable as attorneys' fees in such action.

In no event shall the TJPA be liable for monetary damages for a breach of this Agreement.

15. DAMAGE BY FIRE, DISASTER, OR OTHER CASUALTY.

In case of damage to the Pavilion or the Premises by fire or other casualty, this License may, at the-option of either MA WEST or TJPA, be terminated.

16. RECORDING.

Neither the TJPA nor MA WEST shall record this Agreement.

17. GENERAL PROVISIONS.

(a) Authority to Bind. The TJPA and MA WEST each represent and warrant to the other that the individual signing this Agreement has the full right, power, and authority to sign on behalf of and bind its entity under this Agreement.

(b) Amendments. This Agreement may be amended or modified only by a written instrument executed by the TJPA and MA WEST.

(c) 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.

(d) Non-waiver. No waiver made by a party with respect to the performance, or manner or time of performance, or any obligation of another party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the party making the waiver or any other obligations of the other party.

(e) Successors and Assigns. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors, heirs, administrators, and assigns.

(f) 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.

(g) Entire Agreement. This Agreement contain or will contain all the representations and 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 related agreements, 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.

(h) Time Is of the Essence. Time is of the essence with respect to each provision of this Agreement.

(i) Counterparts; Facsimile Signature. 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. This Agreement may be executed by facsimile or similar signature.

(j) Notices. A notice or communication under this Agreement by any party to the others shall be sufficiently given or delivered if personally delivered or if dispatched by registered or certified mail, postage prepaid, return receipt requested or reputable overnight courier service and addressed as follows:

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

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Executive Director Maria Ayerdi-Kaplan
Telephone: (415) 597-4620

With a copy to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attn: Andrew W. Schwartz
Telephone: (415) 552-7272

In the case of a notice or communication sent to MA WEST:

The John Buck Company
Attn: Kevin Hites
1 North Wacker Drive

Suite 2400
Chicago IL 60606
Telefacsimile: (312) 993-0857
Telephone: (312) 627-7674

and

Golub Real Estate Corp.
Attn: Lee Golub
625 N. Michigan Avenue
Suite 2000
Chicago, IL 60611
Telefacsimile: (312) 440-0809
Telephone: (312) 440-8701

Notice shall be deemed given when received or delivery is first refused.

IN WITNESS WHEREOF, the TJPA, the Successor Agency, and MA WEST have duly executed and delivered this Agreement as of the date first written above.

TRANSBAY JOINT POWERS AUTHORITY,
a California joint powers agency

By: _____
Maria Ayerdi-Kaplan
Executive Director

APPROVED AS TO FORM:

Shute, Mihaly & Weinberger LLP

William J. White
Counsel for the TJPA

DEVELOPER:

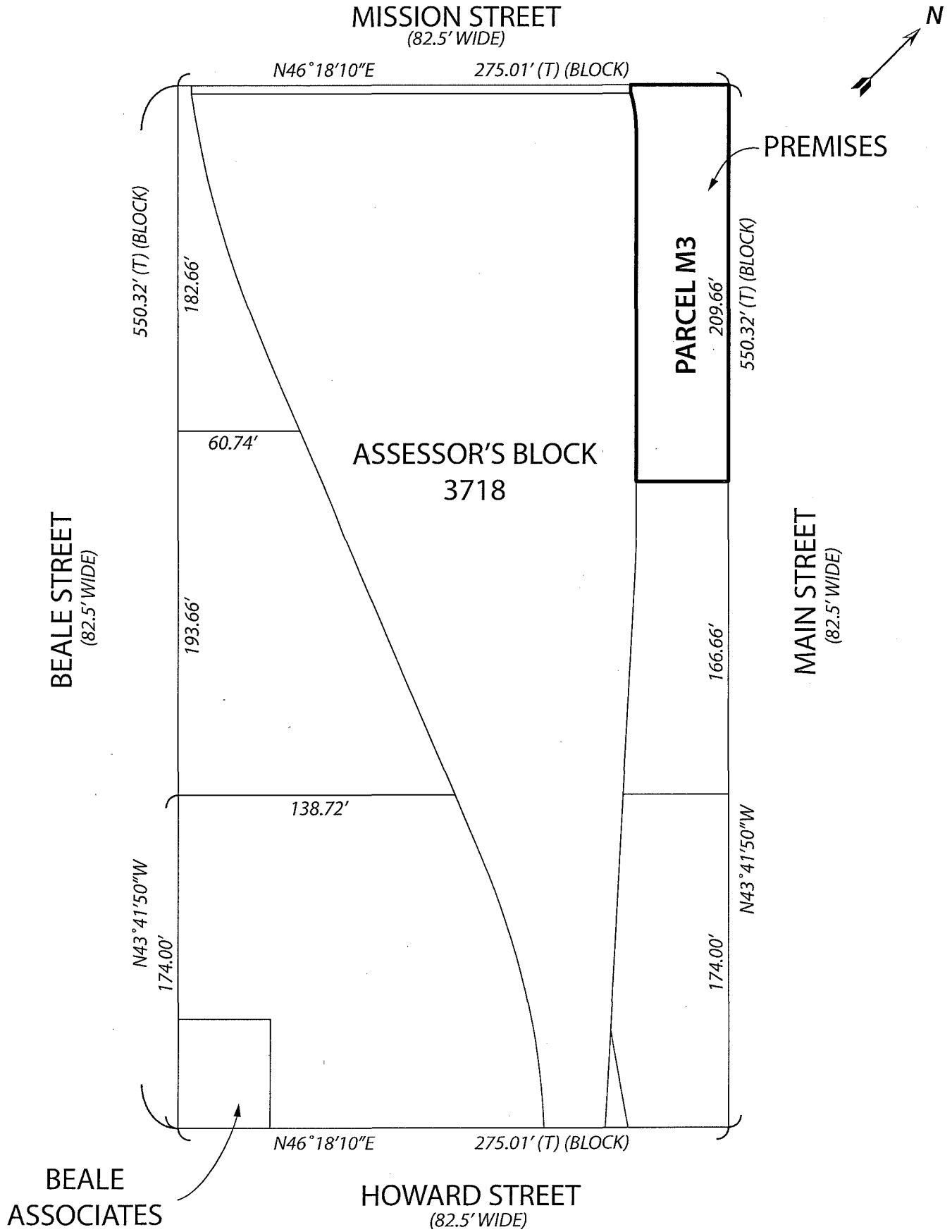
MA WEST, LLC, a Delaware limited liability company, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Managing Member

By: _____

EXHIBIT A

LICENSE AGREEMENT PARCEL



ATTACHMENT 17

Mello Roos Special Tax District Rate and Method of Apportionment

CITY AND COUNTY OF SAN FRANCISCO
COMMUNITY FACILITIES DISTRICT NO. 2014-1
(TRANSBAY TRANSIT CENTER)

AMENDED AND RESTATED RATE AND METHOD OF APPORTIONMENT OF SPECIAL TAX

A Special Tax applicable to each Taxable Parcel in the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center) shall be levied and collected according to the tax liability determined by the Administrator through the application of the appropriate amount or rate for Square Footage within Taxable Buildings, as described below. All Taxable Parcels in the CFD shall be taxed for the purposes, to the extent, and in the manner herein provided, including property subsequently annexed to the CFD unless a separate Rate and Method of Apportionment of Special Tax is adopted for the annexation area.

A. DEFINITIONS

The terms hereinafter set forth have the following meanings:

“Act” means the Mello-Roos Community Facilities Act of 1982, as amended, being Chapter 2.5, (commencing with Section 53311), Division 2 of Title 5 of the California Government Code.

“Administrative Expenses” means any or all of the following: the fees and expenses of any fiscal agent or trustee (including any fees or expenses of its counsel) employed in connection with any Bonds, and the expenses of the City and TJPA carrying out duties with respect to CFD No. 2014-1 and the Bonds, including, but not limited to, levying and collecting the Special Tax, the fees and expenses of legal counsel, charges levied by the City Controller’s Office and/or the City Treasurer and Tax Collector’s Office, costs related to property owner inquiries regarding the Special Tax, costs associated with appeals or requests for interpretation associated with the Special Tax and this RMA, amounts needed to pay rebate to the federal government with respect to the Bonds, costs associated with complying with any continuing disclosure requirements for the Bonds and the Special Tax, costs associated with foreclosure and collection of delinquent Special Taxes, and all other costs and expenses of the City and TJPA in any way related to the establishment or administration of the CFD.

“Administrator” means the Director of the Office of Public Finance who shall be responsible for administering the Special Tax according to this RMA.

“Affordable Housing Project” means a residential or primarily residential project, as determined by the Zoning Authority, within which all Residential Units are Below Market Rate Units. All Land Uses within an Affordable Housing Project are exempt from the Special Tax, as provided in Section G and are subject to the limitations set forth in Section D.4 below.

“Airspace Parcel” means a parcel with an assigned Assessor’s Parcel number that constitutes vertical space of an underlying land parcel.

“Apartment Building” means a residential or mixed-use Building within which none of the Residential Units have been sold to individual homebuyers.

“Assessor’s Parcel” or **“Parcel”** means a lot or parcel, including an Airspace Parcel, shown on an Assessor’s Parcel Map with an assigned Assessor’s Parcel number.

“Assessor’s Parcel Map” means an official map of the County Assessor designating Parcels by Assessor’s Parcel number.

“Authorized Facilities” means those public facilities authorized to be funded by the CFD as set forth in the CFD formation proceedings.

“Base Special Tax” means the Special Tax per square foot that is used to calculate the Maximum Special Tax that applies to a Taxable Parcel pursuant to Sections C.1 and C.2 of this RMA. The Base Special Tax shall also be used to determine the Maximum Special Tax for any Net New Square Footage added to a Taxable Building in the CFD in future Fiscal Years.

“Below Market Rate Units” or **“BMR Units”** means all Residential Units within the CFD that have a deed restriction recorded on title of the property that (i) limits the rental price or sales price of the Residential Unit, (ii) limits the appreciation that can be realized by the owner of such unit, or (iii) in any other way restricts the current or future value of the unit.

“Board” means the Board of Supervisors of the City, acting as the legislative body of CFD No. 2014-1.

“Bonds” means bonds or other debt (as defined in the Act), whether in one or more series, issued, incurred, or assumed by the CFD related to the Authorized Facilities.

“Building” means a permanent enclosed structure that is, or is part of, a Conditioned Project.

“Building Height” means the number of Stories in a Taxable Building, which shall be determined based on the highest Story that is occupied by a Land Use. If only a portion of a Building is a Conditioned Project, the Building Height shall be determined based on the highest Story that is occupied by a Land Use regardless of where in the Building the Taxable Parcels are located. If there is any question as to the Building Height of any Taxable Building in the CFD, the Administrator shall coordinate with the Zoning Authority to make the determination.

“Certificate of Exemption” means a certificate issued to the then-current record owner of a Parcel that indicates that some or all of the Square Footage on the Parcel has prepaid the Special Tax obligation or has paid the Special Tax for thirty Fiscal Years and, therefore, such Square Footage shall, in all future Fiscal Years, be exempt from the levy of Special Taxes in the CFD. The Certificate of Exemption shall identify (i) the Assessor’s Parcel number(s) for the Parcel(s)

on which the Square Footage is located, (ii) the amount of Square Footage for which the exemption is being granted, (iii) the first and last Fiscal Year in which the Special Tax had been levied on the Square Footage, and (iv) the date of receipt of a prepayment of the Special Tax obligation, if applicable.

“Certificate of Occupancy” or **“COO”** means the first certificate, including any temporary certificate of occupancy, issued by the City to confirm that a Building or a portion of a Building has met all of the building codes and can be occupied for residential and/or non-residential use. For purposes of this RMA, “Certificate of Occupancy” shall not include any certificate of occupancy that was issued prior to January 1, 2013 for a Building within the CFD; however, any subsequent certificates of occupancy that are issued for new construction or expansion of the Building shall be deemed a Certificate of Occupancy and the associated Parcel(s) shall be categorized as Taxable Parcels if the Building is, or is part of, a Conditioned Project and a Tax Commencement Letter has been provided to the Administrator for the Building.

“CFD” or **“CFD No. 2014-1”** means the City and County of San Francisco Community Facilities District No. 2014-1 (Transbay Transit Center).

“Child Care Square Footage” means, collectively, the Exempt Child Care Square Footage and Taxable Child Care Square Footage within a Taxable Building in the CFD.

“City” means the City and County of San Francisco.

“Conditioned Project” means a Development Project that is required to participate in funding Authorized Facilities through the CFD.

“Converted Apartment Building” means a Taxable Building that had been designated as an Apartment Building within which one or more Residential Units are subsequently sold to a buyer that is not a Landlord.

“Converted For-Sale Unit” means, in any Fiscal Year, an individual Market Rate Unit within a Converted Apartment Building for which an escrow has closed, on or prior to June 30 of the preceding Fiscal Year, in a sale to a buyer that is not a Landlord.

“County” means the City and County of San Francisco.

“CPC” means the Capital Planning Committee of the City and County of San Francisco, or if the Capital Planning Committee no longer exists, “CPC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Development Project” means a residential, non-residential, or mixed-use development that includes one or more Buildings, or portions thereof, that are planned and entitled in a single application to the City.

“Exempt Child Care Square Footage” means Square Footage within a Taxable Building that, at the time of issuance of a COO, is determined by the Zoning Authority to be reserved for one or more licensed child care facilities. If a prepayment is made in association with any Taxable Child Care Square Footage, such Square Footage shall also be deemed Exempt Child Care Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Exempt Parking Square Footage” means the Square Footage of parking within a Taxable Building that, pursuant to Sections 151.1 and 204.5 of the Planning Code, is estimated to be needed to serve Land Uses within a building in the CFD, as determined by the Zoning Authority. If a prepayment is made in association with any Taxable Parking Square Footage, such Square Footage shall also be deemed Exempt Parking Square Footage beginning in the Fiscal Year following receipt of the prepayment.

“Fiscal Year” means the period starting July 1 and ending on the following June 30.

“For-Sale Residential Square Footage” or **“For-Sale Residential Square Foot”** means Square Footage that is or is expected to be part of a For-Sale Unit. The Zoning Authority shall make the determination as to the For-Sale Residential Square Footage within a Taxable Building in the CFD. For-Sale Residential Square Foot means a single square-foot unit of For-Sale Residential Square Footage.

“For-Sale Unit” means (i) in a Taxable Building that is not a Converted Apartment Building: a Market Rate Unit that has been, or is available or expected to be, sold, and (ii) in a Converted Apartment Building, a Converted For-Sale Unit. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Indenture” means the indenture, fiscal agent agreement, resolution, or other instrument pursuant to which CFD No. 2014-1 Bonds are issued, as modified, amended, and/or supplemented from time to time, and any instrument replacing or supplementing the same.

“Initial Annual Adjustment Factor” means, as of July 1 of any Fiscal Year, the Annual Infrastructure Construction Cost Inflation Estimate published by the Office of the City Administrator’s Capital Planning Group and used to calculate the annual adjustment to the City’s development impact fees that took effect as of January 1 of the prior Fiscal Year pursuant to Section 409(b) of the Planning Code, as may be amended from time to time. If changes are made to the office responsible for calculating the annual adjustment, the name of the inflation index, or the date on which the development fee adjustment takes effect, the Administrator shall continue to rely on whatever annual adjustment factor is applied to the City’s development impact fees in order to calculate adjustments to the Base Special Taxes pursuant to Section D.1 below. Notwithstanding the foregoing, the Base Special Taxes shall, in no Fiscal Year, be increased or decreased by more than two percent (2%) of the amount in effect in the prior Fiscal Year.

“Initial Square Footage” means, for any Taxable Building in the CFD, the aggregate Square Footage of all Land Uses within the Building, as determined by the Zoning Authority upon issuance of the COO.

“IPIC” means the Interagency Plan Implementation Committee, or if the Interagency Plan Implementation Committee no longer exists, “IPIC” shall mean the designated staff member(s) within the City and/or TJPA that will recommend issuance of Tax Commencement Authorizations for Conditioned Projects within the CFD.

“Land Use” means residential, office, retail, hotel, parking, or child care use. For purposes of this RMA, the City shall have the final determination of the actual Land Use(s) on any Parcel within the CFD.

“Landlord” means an entity that owns at least twenty percent (20%) of the Rental Units within an Apartment Building or Converted Apartment Building.

“Market Rate Unit” means a Residential Unit that is not a Below Market Rate Unit.

“Maximum Special Tax” means the greatest amount of Special Tax that can be levied on a Taxable Parcel in the CFD in any Fiscal Year, as determined in accordance with Section C below.

“Net New Square Footage” means any Square Footage added to a Taxable Building after the Initial Square Footage in the Building has paid Special Taxes in one or more Fiscal Years.

“Office/Hotel Square Footage” or **“Office/Hotel Square Foot”** means Square Footage that is or is expected to be: (i) Square Footage of office space in which professional, banking, insurance, real estate, administrative, or in-office medical or dental activities are conducted, (ii) Square Footage that will be used by any organization, business, or institution for a Land Use that does not meet the definition of For-Sale Residential Square Footage Rental Residential Square Footage, or Retail Square Footage, including space used for cultural, educational, recreational, religious, or social service facilities, (iii) Taxable Child Care Square Footage, (iv) Square Footage in a residential care facility that is staffed by licensed medical professionals, and (v) any other Square Footage within a Taxable Building that does not fall within the definition provided for other Land Uses in this RMA. Notwithstanding the foregoing, street-level retail bank branches, real estate brokerage offices, and other such ground-level uses that are open to the public shall be categorized as Retail Square Footage pursuant to the Planning Code. Office/Hotel Square Foot means a single square-foot unit of Office/Hotel Square Footage.

For purposes of this RMA, “Office/Hotel Square Footage” shall also include Square Footage that is or is expected to be part of a non-residential structure that constitutes a place of lodging, providing temporary sleeping accommodations and related facilities. All Square Footage that shares an Assessor’s Parcel number within such a non-residential structure, including Square Footage of restaurants, meeting and convention facilities, gift shops, spas, offices, and other related uses shall be categorized as Office/Hotel Square Footage. If there are separate Assessor’s Parcel numbers for these other uses, the Administrator shall apply the Base Special Tax for Retail Square Footage to determine the Maximum Special Tax for Parcels on which a restaurant, gift shop, spa, or other retail use is located or anticipated, and the Base Special Tax for Office/Hotel Square Footage shall be used to determine the Maximum Special Tax for Parcels on

which other uses in the building are located. The Zoning Authority shall make the final determination as to the amount of Office/Hotel Square Footage within a building in the CFD.

“Planning Code” means the Planning Code of the City and County of San Francisco, as may be amended from time to time.

“Proportionately” means that the ratio of the actual Special Tax levied in any Fiscal Year to the Maximum Special Tax authorized to be levied in that Fiscal Year is equal for all Taxable Parcels.

“Rental Residential Square Footage” or **“Rental Residential Square Foot”** means Square Footage that is or is expected to be used for one or more of the following uses: (i) Rental Units, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses, dormitories, housing operated by medical institutions, and single room occupancy units, or (iii) a residential care facility that is not staffed by licensed medical professionals. The Zoning Authority shall make the determination as to the amount of Rental Residential Square Footage within a Taxable Building in the CFD. Rental Residential Square Foot means a single square-foot unit of Rental Residential Square Footage.

“Rental Unit” means (i) all Market Rate Units within an Apartment Building, and (ii) all Market Rate Units within a Converted Apartment Building that have yet to be sold to an individual homeowner or investor. “Rental Unit” shall not include any Residential Unit which has been purchased by a homeowner or investor and subsequently offered for rent to the general public. The Administrator shall make the final determination as to whether a Market Rate Unit is a For-Sale Unit or a Rental Unit.

“Retail Square Footage” or **“Retail Square Foot”** means Square Footage that is or, based on the Certificate of Occupancy, will be Square Footage of a commercial establishment that sells general merchandise, hard goods, food and beverage, personal services, and other items directly to consumers, including but not limited to restaurants, bars, entertainment venues, health clubs, laundromats, dry cleaners, repair shops, storage facilities, and parcel delivery shops. In addition, all Taxable Parking Square Footage in a Building, and all street-level retail bank branches, real estate brokerages, and other such ground-level uses that are open to the public, shall be categorized as Retail Square Footage for purposes of calculating the Maximum Special Tax pursuant to Section C below. The Zoning Authority shall make the final determination as to the amount of Retail Square Footage within a Taxable Building in the CFD. Retail Square Foot means a single square-foot unit of Retail Square Footage.

“Residential Unit” means an individual townhome, condominium, live/work unit, or apartment within a Building in the CFD.

“Residential Use” means (i) any and all Residential Units within a Taxable Building in the CFD, (ii) any type of group or student housing which provides lodging for a week or more and may or may not have individual cooking facilities, including but not limited to boarding houses,

dormitories, housing operated by medical institutions, and single room occupancy units, and (iii) a residential care facility that is not staffed by licensed medical professionals.

“RMA” means this Rate and Method of Apportionment of Special Tax.

“Special Tax” means a special tax levied in any Fiscal Year to pay the Special Tax Requirement.

“Special Tax Requirement” means the amount necessary in any Fiscal Year to: (i) pay principal and interest on Bonds that are due in the calendar year that begins in such Fiscal Year; (ii) pay periodic costs on the Bonds, including but not limited to, credit enhancement, liquidity support and rebate payments on the Bonds, (iii) create and/or replenish reserve funds for the Bonds to the extent such replenishment has not been included in the computation of the Special Tax Requirement in a previous Fiscal Year; (iv) cure any delinquencies in the payment of principal or interest on Bonds which have occurred in the prior Fiscal Year; (v) pay Administrative Expenses; and (vi) pay directly for Authorized Facilities. The amounts referred to in clauses (i) and (ii) of the preceding sentence may be reduced in any Fiscal Year by: (i) interest earnings on or surplus balances in funds and accounts for the Bonds to the extent that such earnings or balances are available to apply against such costs pursuant to the Indenture; (ii) in the sole and absolute discretion of the City, proceeds received by the CFD from the collection of penalties associated with delinquent Special Taxes; and (iii) any other revenues available to pay such costs as determined by the Administrator.

“Square Footage” means, for any Taxable Building in the CFD, the net saleable or leasable square footage of each Land Use on each Taxable Parcel within the Building, as determined by the Zoning Authority. If a building permit is issued to increase the Square Footage on any Taxable Parcel, the Administrator shall, in the first Fiscal Year after the final building permit inspection has been conducted in association with such expansion, work with the Zoning Authority to recalculate (i) the Square Footage of each Land Use on each Taxable Parcel, and (ii) the Maximum Special Tax for each Taxable Parcel based on the increased Square Footage. The final determination of Square Footage for each Land Use on each Taxable Parcel shall be made by the Zoning Authority.

“Story” or **“Stories”** means a portion or portions of a Building, except a mezzanine as defined in the City Building Code, included between the surface of any floor and the surface of the next floor above it, or if there is no floor above it, then the space between the surface of the floor and the ceiling next above it.

“Taxable Building” means, in any Fiscal Year, any Building within the CFD that is, or is part of, a Conditioned Project, and for which a Certificate of Occupancy was issued and a Tax Commencement Authorization was received by the Administrator on or prior to June 30 of the preceding Fiscal Year. If only a portion of the Building is a Conditioned Project, as determined by the Zoning Authority, that portion of the Building shall be treated as a Taxable Building for purposes of this RMA.

“Tax Commencement Authorization” means a written authorization issued by the Administrator upon the recommendations of the IPIC and CPC in order to initiate the levy of the Special Tax on a Conditioned Project that has been issued a COO.

“Taxable Child Care Square Footage” means the amount of Square Footage determined by subtracting the Exempt Child Care Square Footage within a Taxable Building from the total net leasable square footage within a Building that is used for licensed child care facilities, as determined by the Zoning Authority.

“Taxable Parcel” means, within a Taxable Building, any Parcel that is not exempt from the Special Tax pursuant to law or Section G below. If, in any Fiscal Year, a Special Tax is levied on only Net New Square Footage in a Taxable Building, only the Parcel(s) on which the Net New Square Footage is located shall be Taxable Parcel(s) for purposes of calculating and levying the Special Tax pursuant to this RMA.

“Taxable Parking Square Footage” means Square Footage of parking in a Taxable Building that is determined by the Zoning Authority not to be Exempt Parking Square Footage.

“TJPA” means the Transbay Joint Powers Authority.

“Zoning Authority” means either the City Zoning Administrator, the Executive Director of the San Francisco Office of Community Investment and Infrastructure, or an alternate designee from the agency or department responsible for the approvals and entitlements of a project in the CFD. If there is any doubt as to the responsible party, the Administrator shall coordinate with the City Zoning Administrator to determine the appropriate party to serve as the Zoning Authority for purposes of this RMA.

B. DATA FOR CFD ADMINISTRATION

On or after July 1 of each Fiscal Year, the Administrator shall identify the current Assessor’s Parcel numbers for all Taxable Parcels in the CFD. In order to identify Taxable Parcels, the Administrator shall confirm which Buildings in the CFD have been issued both a Tax Commencement Authorization and a COO.

The Administrator shall also work with the Zoning Authority to confirm: (i) the Building Height for each Taxable Building, (ii) the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and Retail Square Footage on each Taxable Parcel, (iii) if applicable, the number of BMR Units and aggregate Square Footage of BMR Units within the Building, (iv) whether any of the Square Footage on a Parcel is subject to a Certificate of Exemption, and (v) the Special Tax Requirement for the Fiscal Year. In each Fiscal Year, the Administrator shall also keep track of how many Fiscal Years the Special Tax has been levied on each Parcel within the CFD. If there is Initial Square Footage and Net New Square Footage on a Parcel, the Administrator shall separately track the duration of the Special Tax levy in order to ensure compliance with Section F below.

In any Fiscal Year, if it is determined by the Administrator that (i) a parcel map or condominium plan for a portion of property in the CFD was recorded after January 1 of the prior Fiscal Year (or any other date after which the Assessor will not incorporate the newly-created parcels into the then current tax roll), and (ii) the Assessor does not yet recognize the newly-created parcels, the Administrator shall calculate the Special Tax that applies separately to each newly-created parcel, then applying the sum of the individual Special Taxes to the Assessor's Parcel that was subdivided by recordation of the parcel map or condominium plan.

C. DETERMINATION OF THE MAXIMUM SPECIAL TAX

1. *Base Special Tax*

Once the Building Height of, and Land Use(s) within, a Taxable Building have been identified, the Base Special Tax to be used for calculation of the Maximum Special Tax for each Taxable Parcel within the Building shall be determined based on reference to the applicable table(s) below:

FOR-SALE RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.71 per For-Sale Residential Square Foot
6 – 10 Stories	\$5.02 per For-Sale Residential Square Foot
11 – 15 Stories	\$6.13 per For-Sale Residential Square Foot
16 – 20 Stories	\$6.40 per For-Sale Residential Square Foot
21 – 25 Stories	\$6.61 per For-Sale Residential Square Foot
26 – 30 Stories	\$6.76 per For-Sale Residential Square Foot
31 – 35 Stories	\$6.88 per For-Sale Residential Square Foot
36 – 40 Stories	\$7.00 per For-Sale Residential Square Foot
41 – 45 Stories	\$7.11 per For Sale Residential Square Foot
46 – 50 Stories	\$7.25 per For-Sale Residential Square Foot
More than 50 Stories	\$7.36 per For-Sale Residential Square Foot

RENTAL RESIDENTIAL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$4.43 per Rental Residential Square Foot
6 – 10 Stories	\$4.60 per Rental Residential Square Foot
11 – 15 Stories	\$4.65 per Rental Residential Square Foot
16 – 20 Stories	\$4.68 per Rental Residential Square Foot
21 – 25 Stories	\$4.73 per Rental Residential Square Foot
26 – 30 Stories	\$4.78 per Rental Residential Square Foot
31 – 35 Stories	\$4.83 per Rental Residential Square Foot
36 – 40 Stories	\$4.87 per Rental Residential Square Foot
41 – 45 Stories	\$4.92 per Rental Residential Square Foot
46 – 50 Stories	\$4.98 per Rental Residential Square Foot
More than 50 Stories	\$5.03 per Rental Residential Square Foot

OFFICE/HOTEL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
1 – 5 Stories	\$3.45 per Office/Hotel Square Foot
6 – 10 Stories	\$3.56 per Office/Hotel Square Foot
11 – 15 Stories	\$4.03 per Office/Hotel Square Foot
16 – 20 Stories	\$4.14 per Office/Hotel Square Foot
21 – 25 Stories	\$4.25 per Office/Hotel Square Foot
26 – 30 Stories	\$4.36 per Office/Hotel Square Foot
31 – 35 Stories	\$4.47 per Office/Hotel Square Foot
36 – 40 Stories	\$4.58 per Office/Hotel Square Foot
41 – 45 Stories	\$4.69 per Office/Hotel Square Foot
46 – 50 Stories	\$4.80 per Office/Hotel Square Foot
More than 50 Stories	\$4.91 per Office/Hotel Square Foot

RETAIL SQUARE FOOTAGE

<i>Building Height</i>	<i>Base Special Tax Fiscal Year 2013-14*</i>
N/A	\$3.18 per Retail Square Foot

* *The Base Special Tax rates shown above for each Land Use shall escalate as set forth in Section D.1 below.*

2. Determining the Maximum Special Tax for Taxable Parcels

Upon issuance of a Tax Commencement Authorization and the first Certificate of Occupancy for a Taxable Building within a Conditioned Project that is not an Affordable Housing Project, the

Administrator shall coordinate with the Zoning Authority to determine the Square Footage of each Land Use on each Taxable Parcel. The Administrator shall then apply the following steps to determine the Maximum Special Tax for the next succeeding Fiscal Year for each Taxable Parcel in the Taxable Building:

- Step 1.* Determine the Building Height for the Taxable Building for which a Certificate of Occupancy was issued.
- Step 2.* Determine the For-Sale Residential Square Footage and/or Rental Residential Square Footage for all Residential Units on each Taxable Parcel, as well as the Office/Hotel Square Footage and Retail Square Footage on each Taxable Parcel.
- Step 3.* ***For each Taxable Parcel that includes only For-Sale Units***, multiply the For-Sale Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 4.* ***For each Taxable Parcel that includes only Rental Units***, multiply the Rental Residential Square Footage by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 5.* ***For each Taxable Parcel that includes only Residential Uses other than Market Rate Units***, net out the Square Footage associated with any BMR Units and multiply the remaining Rental Residential Square Footage (if any) by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 6.* ***For each Taxable Parcel that includes only Office/Hotel Square Footage***, multiply the Office/Hotel Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 7.* ***For each Taxable Parcel that includes only Retail Square Footage***, multiply the Retail Square Footage on the Parcel by the applicable Base Special Tax from Section C.1 to determine the Maximum Special Tax for the Taxable Parcel.
- Step 8.* ***For Taxable Parcels that include multiple Land Uses***, separately determine the For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, and/or Retail Square Footage. Multiply the Square Footage of each Land Use by the applicable Base Special Tax from Section C.1, and sum the individual amounts to determine the aggregate Maximum Special Tax for the Taxable Parcel for the first succeeding Fiscal Year.

D. CHANGES TO THE MAXIMUM SPECIAL TAX

1. *Annual Escalation of Base Special Tax*

The Base Special Tax rates identified in Section C.1 are applicable for fiscal year 2013-14. Beginning July 1, 2014 and each July 1 thereafter, the Base Special Taxes shall be adjusted by the Initial Annual Adjustment Factor. The Base Special Tax rates shall be used to calculate the Maximum Special Tax for each Taxable Parcel in a Taxable Building for the first Fiscal Year in which the Building is a Taxable Building, as set forth in Section C.2 and subject to the limitations set forth in Section D.3.

2. *Adjustment of the Maximum Special Tax*

After a Maximum Special Tax has been assigned to a Parcel for its first Fiscal Year as a Taxable Parcel pursuant to Section C.2 and Section D.1, the Maximum Special Tax shall escalate for subsequent Fiscal Years beginning July 1 of the Fiscal Year after the first Fiscal Year in which the Parcel was a Taxable Parcel, and each July 1 thereafter, by two percent (2%) of the amount in effect in the prior Fiscal Year. In addition to the foregoing, the Maximum Special Tax assigned to a Taxable Parcel shall be increased in any Fiscal Year in which the Administrator determines that Net New Square Footage was added to the Parcel in the prior Fiscal Year.

3. *Converted Apartment Buildings*

If an Apartment Building in the CFD becomes a Converted Apartment Building, the Administrator shall rely on information from the County Assessor, site visits to the sales office, data provided by the entity that is selling Residential Units within the Building, and any other available source of information to track sales of Residential Units. In the first Fiscal Year in which there is a Converted For-Sale Unit within the Building, the Administrator shall determine the applicable Base Maximum Special Tax for For-Sale Residential Units for that Fiscal Year. Such Base Maximum Special Tax shall be used to calculate the Maximum Special Tax for all Converted For-Sale Units in the Building in that Fiscal Year. In addition, this Base Maximum Special Tax, escalated each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year, shall be used to calculate the Maximum Special Tax for all future Converted For-Sale Units within the Building. Solely for purposes of calculating Maximum Special Taxes for Converted For-Sale Units within the Converted Apartment Building, the adjustment of Base Maximum Special Taxes set forth in Section D.1 shall not apply. All Rental Residential Square Footage within the Converted Apartment Building shall continue to be subject to the Maximum Special Tax for Rental Residential Square Footage until such time as the units become Converted For-Sale Units. The Maximum Special Tax for all Taxable Parcels within the Building shall escalate each Fiscal Year by two percent (2%) of the amount in effect in the prior Fiscal Year.

4. *BMR Unit/Market Rate Unit Transfers*

If, in any Fiscal Year, the Administrator determines that a Residential Unit that had previously been designated as a BMR Unit no longer qualifies as such, the Maximum Special Tax on the

new Market Rate Unit shall be established pursuant to Section C.2 and adjusted, as applicable, by Sections D.1 and D.2. If a Market Rate Unit becomes a BMR Unit after it has been taxed in prior Fiscal Years as a Market Rate Unit, the Maximum Special Tax on such Residential Unit shall not be decreased unless: (i) a BMR Unit is simultaneously redesignated as a Market Rate Unit, and (ii) such redesignation results in a Maximum Special Tax on the new Market Rate Unit that is greater than or equal to the Maximum Special Tax that was levied on the Market Rate Unit prior to the swap of units. If, based on the Building Height or Square Footage, there would be a reduction in the Maximum Special Tax due to the swap, the Maximum Special Tax that applied to the former Market Rate Unit will be transferred to the new Market Rate Unit regardless of the Building Height and Square Footage associated with the new Market Rate Unit.

5. *Changes in Land Use on a Taxable Parcel*

If any Square Footage that had been taxed as For-Sale Residential Square Footage, Rental Residential Square Footage, Office/Hotel Square Footage, or Retail Square Footage in a prior Fiscal Year is rezoned or otherwise changes Land Use, the Administrator shall apply the applicable subsection in Section C.2 to calculate what the Maximum Special Tax would be for the Parcel based on the new Land Use(s). If the amount determined is greater than the Maximum Special Tax that applied to the Parcel prior to the Land Use change, the Administrator shall increase the Maximum Special Tax to the amount calculated for the new Land Uses. If the amount determined is less than the Maximum Special Tax that applied prior to the Land Use change, there will be no change to the Maximum Special Tax for the Parcel. Under no circumstances shall the Maximum Special Tax on any Taxable Parcel be reduced, regardless of changes in Land Use or Square Footage on the Parcel, including reductions in Square Footage that may occur due to demolition, fire, water damage, or acts of God. In addition, if a Taxable Building within the CFD that had been subject to the levy of Special Taxes in any prior Fiscal Year becomes all or part of an Affordable Housing Project, the Parcel(s) shall continue to be subject to the Maximum Special Tax that had applied to the Parcel(s) before they became part of the Affordable Housing Project. All Maximum Special Taxes determined pursuant to Section C.2 shall be adjusted, as applicable, by Sections D.1 and D.2.

6. *Prepayments*

If a Parcel makes a prepayment pursuant to Section H below, the Administrator shall issue the owner of the Parcel a Certificate of Exemption for the Square Footage that was used to determine the prepayment amount, and no Special Tax shall be levied on the Parcel in future Fiscal Years unless there is Net New Square Footage added to a Building on the Parcel. Thereafter, a Special Tax calculated based solely on the Net New Square Footage on the Parcel shall be levied for up to thirty Fiscal Years, subject to the limitations set forth in Section F below. Notwithstanding the foregoing, any Special Tax that had been levied against, but not yet collected from, the Parcel is still due and payable, and no Certificate of Exemption shall be issued until such amounts are fully paid. If a prepayment is made in order to exempt Taxable Child Care Square Footage on a Parcel on which there are multiple Land Uses, the Maximum Special Tax for the Parcel shall be recalculated based on the exemption of this Child Care Square Footage which shall, after such prepayment, be designated as Exempt Child Care Square Footage and remain exempt in all Fiscal Years after the prepayment has been received.

E. METHOD OF LEVY OF THE SPECIAL TAX

Each Fiscal Year, the Special Tax shall be levied Proportionately on each Taxable Parcel up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Taxable Parcels is equal to the Special Tax Requirement.

F. COLLECTION OF SPECIAL TAX

The Special Taxes for CFD No. 2014-1 shall be collected in the same manner and at the same time as ordinary ad valorem property taxes, provided, however, that prepayments are permitted as set forth in Section H below and provided further that the City may directly bill the Special Tax, may collect Special Taxes at a different time or in a different manner, and may collect delinquent Special Taxes through foreclosure or other available methods.

The Special Tax shall be levied and collected from the first Fiscal Year in which a Parcel is designated as a Taxable Parcel until the principal and interest on all Bonds have been paid, the City's costs of constructing or acquiring Authorized Facilities from Special Tax proceeds have been paid, and all Administrative Expenses have been paid or reimbursed. Notwithstanding the foregoing, the Special Tax shall not be levied on any Square Footage in the CFD for more than thirty-seven Fiscal Years, except that a Special Tax that was lawfully levied in or before the final Fiscal Year and that remains delinquent may be collected in subsequent Fiscal Years. After a Building or a particular block of Square Footage within a Building (i.e., Initial Square Footage vs. Net New Square Footage) has paid the Special Tax for thirty-seven Fiscal Years, the then-current record owner of the Parcel(s) on which that Square Footage is located shall be issued a Certificate of Exemption for such Square Footage. Notwithstanding the foregoing, the Special Tax shall cease to be levied, and a Release of Special Tax Lien shall be recorded against all Parcels in the CFD that are still subject to the Special Tax, after the Special Tax has been levied in the CFD for eighty-two Fiscal Years.

Pursuant to Section 53321 (d) of the Act, the Special Tax levied against Residential Uses shall under no circumstances increase more than ten percent (10%) as a consequence of delinquency or default by the owner of any other Parcel or Parcels and shall, in no event, exceed the Maximum Special Tax in effect for the Fiscal Year in which the Special Tax is being levied.

G. EXEMPTIONS

Notwithstanding any other provision of this RMA, no Special Tax shall be levied on: (i) Square Footage for which a prepayment has been received and a Certificate of Exemption issued, (ii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iii) Affordable Housing Projects, including all Residential Units, Retail Square Footage, and Office Square Footage within buildings that are part of an Affordable Housing Project, except as otherwise provided in Section D.4, and (iv) Exempt Child Care Square Footage.

H. PREPAYMENT OF SPECIAL TAX

The Special Tax obligation applicable to Square Footage in a building may be fully prepaid as described herein, provided that a prepayment may be made only if (i) the Parcel is a Taxable Parcel, and (ii) there are no delinquent Special Taxes with respect to such Assessor's Parcel at the time of prepayment. Any prepayment made by a Parcel owner must satisfy the Special Tax obligation associated with all Square Footage on the Parcel that is subject to the Special Tax at the time the prepayment is calculated. An owner of an Assessor's Parcel intending to prepay the Special Tax obligation shall provide the City with written notice of intent to prepay. Within 30 days of receipt of such written notice, the City or its designee shall notify such owner of the prepayment amount for the Square Footage on such Assessor's Parcel. Prepayment must be made not less than 75 days prior to any redemption date for Bonds to be redeemed with the proceeds of such prepaid Special Taxes. The Prepayment Amount for a Taxable Parcel shall be calculated as follows:

- Step 1:* Determine the Square Footage of each Land Use on the Parcel.
- Step 2:* Determine how many Fiscal Years the Square Footage on the Parcel has paid the Special Tax, which may be a separate total for Initial Square Footage and Net New Square Footage on the Parcel. If a Special Tax has been levied, but not yet paid, in the Fiscal Year in which the prepayment is being calculated, such Fiscal Year will be counted as a year in which the Special Tax was paid, but a Certificate of Exemption shall not be issued until such Special Taxes are received by the City's Office of the Treasurer and Tax Collector.
- Step 3:* Subtract the number of Fiscal Years for which the Special Tax has been paid (as determined in Step 2) from 37 to determine the remaining number of Fiscal Years for which Special Taxes are due from the Square Footage for which the prepayment is being made. This calculation would result in a different remainder for Initial Square Footage and Net New Square Footage within a building.
- Step 4:* Separately for Initial Square Footage and Net New Square Footage, and separately for each Land Use on the Parcel, multiply the amount of Square Footage by the applicable Maximum Special Tax that would apply to such Square Footage in each of the remaining Fiscal Years, taking into account the 2% escalator set forth in Section D.2, to determine the annual stream of Maximum Special Taxes that could be collected in future Fiscal Years.
- Step 5:* For each Parcel for which a prepayment is being made, sum the annual amounts calculated for each Land Use in Step 4 to determine the annual Maximum Special Tax that could have been levied on the Parcel in each of the remaining Fiscal Years.

Step 6. Calculate the net present value of the future annual Maximum Special Taxes that were determined in Step 5 using, as the discount rate for the net present value calculation, the true interest cost (TIC) on the Bonds as identified by the Office of Public Finance. If there is more than one series of Bonds outstanding at the time of the prepayment calculation, the Administrator shall determine the weighted average TIC based on the Bonds from each series that remain outstanding. The amount determined pursuant to this Step 6 is the required prepayment for each Parcel. Notwithstanding the foregoing, if at any point in time the Administrator determines that the Maximum Special Tax revenue that could be collected from Square Footage that remains subject to the Special Tax after the proposed prepayment is less than 110% of debt service on Bonds that will remain outstanding after defeasance or redemption of Bonds from proceeds of the estimated prepayment, the amount of the prepayment shall be increased until the amount of Bonds defeased or redeemed is sufficient to reduce remaining annual debt service to a point at which 110% debt service coverage is realized.

Once a prepayment has been received by the City, a Certificate of Exemption shall be issued to the owner of the Parcel indicating that all Square Footage that was the subject of such prepayment shall be exempt from Special Taxes.

I. INTERPRETATION OF SPECIAL TAX FORMULA

The City may interpret, clarify, and revise this RMA to correct any inconsistency, vagueness, or ambiguity, by resolution and/or ordinance, as long as such interpretation, clarification, or revision does not materially affect the levy and collection of the Special Taxes and any security for any Bonds.

J. SPECIAL TAX APPEALS

Any taxpayer who wishes to challenge the accuracy of computation of the Special Tax in any Fiscal Year may file an application with the Administrator. The Administrator, in consultation with the City Attorney, shall promptly review the taxpayer's application. If the Administrator concludes that the computation of the Special Tax was not correct, the Administrator shall correct the Special Tax levy and, if applicable in any case, a refund shall be granted. If the Administrator concludes that the computation of the Special Tax was correct, then such determination shall be final and conclusive, and the taxpayer shall have no appeal to the Board from the decision of the Administrator.

The filing of an application or an appeal shall not relieve the taxpayer of the obligation to pay the Special Tax when due.

Nothing in this Section J shall be interpreted to allow a taxpayer to bring a claim that would otherwise be barred by applicable statutes of limitation set forth in the Act or elsewhere in applicable law.

ATTACHMENT 18

Approved Title Conditions

The following matters are the Approved Title Conditions pursuant to Section 2.04(a) of the Agreement:

1. Those specific matters listed below, as shown on the Schedule B Exceptions of that certain Preliminary Report of Title with an effective date of April 17, 2015 at 07:30 AM, prepared by Chicago Title Company.

- A. Property taxes, which are a lien not yet due and payable, including any assessments collected with taxes to be levied for the fiscal year 2015-2016.
- B. The herein described property lies within the boundaries of a Mello Roos Community Facilities District ("CFD"), as follows:

CFD No: 90 1
For: School Facility Repair and Maintenance

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

Chief Financial Officer
San Francisco Unified School District
135 Van Ness Ave. - Room 300
San Francisco, CA 94102
Phone (415) 241-6542

- C. The herein described property lies within the boundaries of a Community Facilities District ("CFD"), as follows:

CFD No: 2014-1
For: Transbay Transit Center
Recorded: January 22, 2015
Recording No.: 2015-K010238-00, of Official Records

This property, along with all other parcels in the CFD, is liable for an annual special tax. This special tax is included with and payable with the general property taxes of the City and County of San Francisco. The tax may not be prepaid.

Further information may be obtained by contacting:

Director of the Office of Public Finance
City and County of San Francisco
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102
Phone (415) 554-5956

Reference is also made to the boundary map of the CFD recorded on July 29, 2014, in Book 001, Page 75 and 76 of the Book of Maps of Assessment and Community Facility Districts if the Office of the Assessors-Records.

- D. The lien of supplemental or escaped assessments of property taxes, if any, made pursuant to the provisions of Chapter 3.5 (commencing with Section 75) or Part 2, Chapter 3, Articles 3 and 4, respectively, of the Revenue and Taxation Code of the State of California as a result of the transfer of title to the vestee named in Schedule A or as a result of changes in ownership or new construction occurring ~~prior to~~ on or after Date of Policy.
- E. The effect, if any, of any appurtenant easements, covenants, conditions and restrictions as contained in the Director's Deed recorded April 10, 1956 in Book 6822, Page 120, Official Records.
- F. The fact that said land is included within a project area of the Redevelopment Agency shown below, and that proceedings for the redevelopment of said project have been instituted under the Redevelopment Law (such redevelopment to proceed only after the adoption of the redevelopment plan) as disclosed by a document.

Redevelopment Agency: Transbay Project Area

Recorded: August 4, 2006, Instrument No. 2006-1224836-00, of Official Records

"Declaration of Restrictions" thereunder, recorded August 4, 2006, Instrument No. 2006-1224839-00, Official Records.

"Statement of Eminent Domain Limitations" thereunder, recorded December 31, 2007, Instrument No. 2007-1512986-00, Official Records.

2. All matters set forth in that certain ALTA Survey prepared by Martin M. Ron Associates and dated June 8, 2015, which is on file at the office of Ruben, Junius & Rose LLP, One Bush Street, Suite 600, San Francisco, CA 94104 and in the office of the Successor Agency to the to the Redevelopment Agency of the City and County of San Francisco, One South Van Ness Avenue, Fifth Floor, San Francisco, CA 94103, and is attached as Exhibit A hereto, with the exception of the following:

Encroachment of improvements onto lands adjacent to the southwest

- a) 0.3' ov @ fence asph.
- b) 0.3' ov @ fence

Encroachment of improvements onto Beale Street

- c) 0.23' ov @ fence

Encroachment of improvements onto Howard Street

- d) 0.04' @ fence

Encroachment of improvements onto lands adjacent to the northwest

- e) wood frame construction trailer
- f) chain link fencing

[items g-i intentionally omitted]

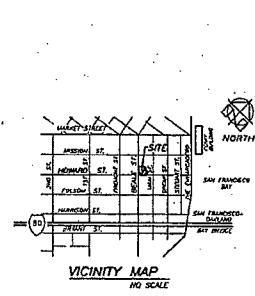
Survey also discloses the following matters

- j) pedestrians are currently using the most westerly corner of the premises for a walkway

[item k intentionally omitted]

3. All matters specifically created and/or permitted by or pursuant to this Agreement on or prior to the Closing Date including, without limitation, pursuant to the recordation of any of the following in the Official Records as set forth in this Agreement: (i) this Agreement, (ii) the Plan Amendment, (iii) the Grant Deed, (iv) the Declaration of Site Restrictions, (v) the Deed Restriction re Taxes, (vi) the Notice of Exclusive Right to Repurchase, and (vii) the TJPA Agreement.

Exhibit A



LEGEND		SYMBOLS		SYMBOLS		SYMBOLS	
(Dashed line)	BOUNDARY OF PROPERTY LINE	(Circle with dot)	WATERMETER COVER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Solid line)	OWNER PROPERTY LINE	(Circle with dot)	ELECTRIC METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	PROPERTY LINE	(Circle with dot)	ELECTRIC COVER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dashed line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN
(Dotted line)	ADJACENT PROPERTY LINE	(Circle with dot)	WATER METER	(Circle with cross)	WOOD SIGN	(Circle with star)	CONCRETE SIGN

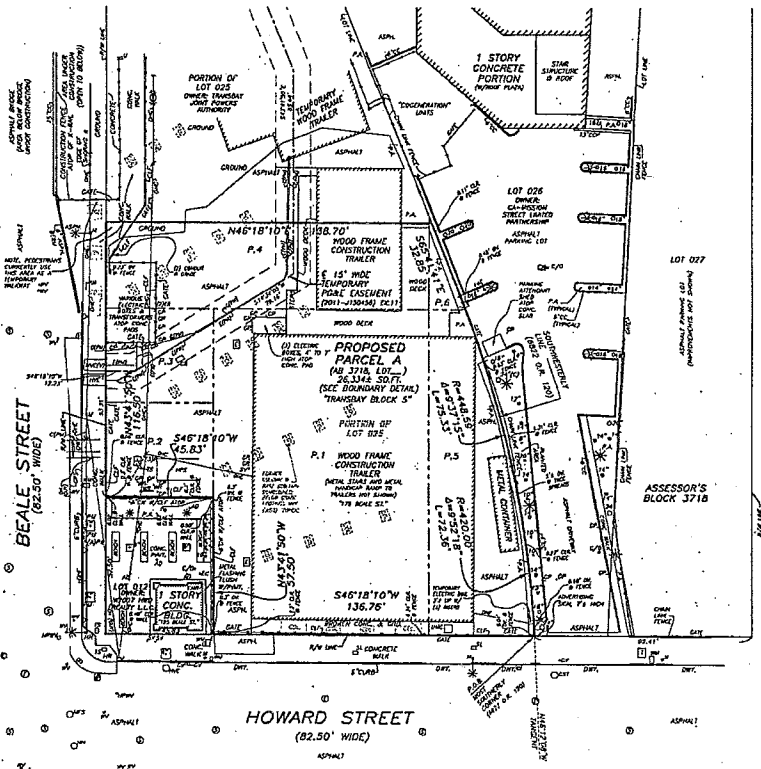
LEGAL DESCRIPTION

All the real property situated in the City and County of San Francisco, County of California, being all of the lands described as follows: TO-WIT: A certain portion of the property described in certain records filed in the office of the County Recorder of the County of San Francisco, to-wit: the lands described as follows: ...

ALSO DESCRIBED AS:

All that real property situated in the City and County of San Francisco, County of California, described as follows: ...

BOUNDARY DETAIL
SHOWING LOCATION OF ENCLAVING PARCELS TO BE MERGED PER PARCEL MAP 8572
SCALE: 1"=60'



SURVEY REFERENCE
CITY OF SAN FRANCISCO PARCEL MAP NO. 1000-100000-10
DATED MARCH 20, 2012, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF SAN FRANCISCO, COUNTY OF CALIFORNIA, BOOK 1000-100000-10, PAGE 100.

BASE OF SURVEY
THE SURVEY WAS MADE FROM THE CORNER OF THE INTERSECTION OF MISSION STREET AND HOWARD STREET.

BASE OF STAIRWAYS
THE STAIRWAYS ARE LOCATED AT THE INTERSECTION OF BEALE STREET AND HOWARD STREET.

GENERAL NOTES
THE SURVEY WAS MADE FROM THE CORNER OF THE INTERSECTION OF MISSION STREET AND HOWARD STREET.

ADDITIONAL NOTES
THE SURVEY WAS MADE FROM THE CORNER OF THE INTERSECTION OF MISSION STREET AND HOWARD STREET.

ADDITIONAL NOTES
THE SURVEY WAS MADE FROM THE CORNER OF THE INTERSECTION OF MISSION STREET AND HOWARD STREET.

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ADDITIONAL NOTES
THE SURVEY WAS MADE FROM THE CORNER OF THE INTERSECTION OF MISSION STREET AND HOWARD STREET.

DRAFT
DATE: 6/15/15

ALTA/ACSM LAND TITLE SURVEY OF TRANSBAY BLOCK 5

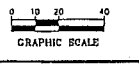
SAN FRANCISCO CALIFORNIA

SCALE: 1"=60'
DATE: 6/15/15
SHEET: 1
OF: 1
JOB NO.: 15-000000-10

MARTIN M. RON ASSOCIATES
880 HANFORD STREET, SUITE 200
SAN FRANCISCO, CALIFORNIA 94107
(415) 449-0800

SURVEYOR: IRL
CHECKED BY: IRL
DATE FILED: 6/15/15

ASSessor's BLOCK 3718



GRAPHIC SCALE

TJPA Agreement

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
(415) 552-7272
Attn: William J. White

(space above line for Recorder's use only)

BLOCK 5 EASEMENT AGREEMENT AND DECLARATION OF COVENANTS

THIS BLOCK 5 EASEMENT AGREEMENT AND DECLARATION OF COVENANTS (“**Agreement**”) is made and entered into as of the ____ day of _____, 2015, by and between the TRANSBAY JOINT POWERS AUTHORITY, a joint powers authority created under California Government Code Sections 6500 et seq. (“**TJPA**”) and MA WEST LLC (“**MA West**” or “**Tower Owner**”), a Delaware limited liability company and joint venture between affiliates of Golub Real Estate Corp. (“**Golub**”), an Illinois corporation, and THE JOHN BUCK COMPANY (“**John Buck**”), a _____ limited liability company. The TJPA and Tower Owner, as owners of real property subject to this Agreement, 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**.” The Parties agree as follows:

RECITALS

A. In furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco (“**Former Agency**”) undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area (“**Project Area**”).

B. The Board of Supervisors of the City and County of San Francisco (“**Board of Supervisors**”), approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005, and by Ordinance No. 99-06, adopted on May 9, 2006 (“**Redevelopment Plan**”). The Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco (“**Official Records**”).

C. On December 13, 2006, and in furtherance of the Redevelopment Plan, the Former Agency caused a Declaration of Restrictions affecting all of the Project Area to be recorded in the Official Records, in Book B-103 of Official Records at page 210, as Document No. P-30087 (“**Project Area Declaration of Restrictions**”).

D. Per the Redevelopment Plan and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (“**Pledge Agreement**”) between the Former Agency, the Transbay Joint Powers Authority (“**TJPA**”), and the City and County of San Francisco (“**City**”), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (“**State**”) has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center (“**TT Center**”). The current or formerly State-owned parcels include the development sites on Blocks 2 through 9, 11, and 12, and Parcels F, M and T.

E. In 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“**Caltrans**”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (“**Cooperative Agreement**”). In 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which requires the successor to the Former Agency (“**Successor Agency**”) to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (as amended, “**Option Agreement**”), which sets forth the process for the transfer of certain of these parcels to the Former Agency to facilitate the sale of the parcels to private developers; in 2015, the TJPA, the City and the Successor Agency entered into a first amendment to the Option Agreement.

F. On April 2, 2014, the Successor Agency, pursuant to the Implementation Agreement, issued a Request for Proposals from development teams to design and develop an office tower and public open space on and adjacent to the property in the Project Area commonly known as Transbay Block 5. MA West was selected by the Successor Agency for exclusive negotiations for the development of Block 5, and on _____, 2015, MA West and Successor Agency entered into an Owner Participation /Disposition and Development Agreement (“**OP/OP/DDA**”) for Block 5.

G. The OP/DDA provides for the conveyance to MA West of that portion of Block 5 referred to in the OP/DDA as “**Parcel N1**” or the “**Public Parcel**.” In addition, MA West acquired fee title to an approximately 2,635-square-foot site on the corner of Howard and Beale Streets comprised of Lot 12 of Assessor’s Block 3718 (“**Private Parcel**”). The OP/DDA provides for the development of a _____-story office tower (“**Block 5 Tower**”) on the assembled Public Parcel and Private Parcel (as assembled, “**Tower Parcel**”), which parcel is described more particularly in Exhibit A. On _____, 2015, the Public Parcel was conveyed from the TJPA to the Successor Agency pursuant to the Option Agreement, and then transferred to MA West, in accordance with the OP/DDA.

H. In accordance with requirements for the Block 5 Tower project set forth in the Redevelopment Plan, Development Controls and Design Guidelines for the Transbay Redevelopment Project (“**Development Controls**”), the Transbay Redevelopment Project Area Streetscape and Open Space Concept Plan (“**Streetscape Plan**”), the OP/DDA and schematic designs (collectively, “**Project Approvals**”) the Tower Owner is required to, inter alia, construct

a portion of an extension of Natoma Street and related improvements (“**Natoma Streetscape Improvements**”), and to provide 15,180 square feet of publically accessible open space off-site (“**Open Space Requirement**”). The OP/DDA acknowledges that the Tower Owner may enter into this Agreement with TJPA to satisfy the Project Approvals by allowing the Tower Owner to complete the Natoma Streetscape Improvements on land owned by the TJPA adjoining the Tower Parcel (“**Natoma Street Parcel**”), which parcel is more particularly described in Exhibit B and to satisfy the Open Space Requirement on the adjacent parcels owned by the TJPA known as “**Parcel M1**” and “**Parcel N3**,” described more particularly in Exhibit C, or on some alternate property (“**Alternate Open Space Parcel**”) in accordance with Section 2(c) of this Agreement (Parcel M1 and Parcel N3, and/or any Alternate Open Space Parcel, collectively as applicable, “**Open Space Parcels**”). Nothing in this Agreement shall be construed as circumscribing or otherwise limiting Tower Owner’s obligations under the Project Approvals.

I. It is the intent of the Parties that the Open Space Requirement will be satisfied through the creation of permanent public open space on the Open Space Parcels. In the event that the Open Space Parcels are not made available within the timeframe required by the OP/DDA, the Tower Owner shall pay an in lieu fee as set forth in the OP/DDA. Except to the extent of the TJPA’s express obligations under this Agreement, Tower Owner shall be solely responsible for compliance with the Open Space Requirement and any other requirements related to open space set forth in the OP/DDA.

J. The OP/DDA requires that the Block 5 Tower be constructed in a manner consistent with the seismic requirements for the TJPA’s proposed extension of the train box for the TT Center (“**Train Box Extension**”) under the Natoma Street Parcel and adjoining property to the north of the Tower Parcel, including the parcels known as “**Parcel N2**” and “**Parcel M2**,” described more particularly in Exhibit D (Parcel N2 and Parcel M2, collectively, “**Train Box Parcel**”), in accordance with this Agreement.

K. The TJPA is presently occupying Parcel M1, Parcel N3, the Train Box Parcel, and the Natoma Street Parcel as a site for office and meeting trailers and construction staging for its contractors in connection with the construction of the TT Center (“**Trailers**”). Accordingly, the occupied portions of those parcels will not be available for open space or street improvements until they are no longer needed by the TJPA for the Trailers. In addition, some or all of Parcel M1, Parcel N3, and the Natoma Street Parcel may be needed by the TJPA in the future for construction staging and related uses in connection with the proposed Train Box Extension. The open space and street improvements and related uses may need to be removed during the period of construction of the Train Box Extension.

L. The TJPA and Tower Owner now desire to enter into this Agreement to establish certain easements and covenants running with the land that will govern the rights and responsibilities of Tower Owner and TJPA, and any successor owners of the Tower Parcel, the Natoma Street Parcel, the Open Space Parcels, and the Train Box Parcel, as set forth more particularly in this Agreement. This Agreement is necessary to implement the Project Approvals, which define the Tower Owner’s obligations.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency

of which are hereby acknowledged, the TJPA and Tower Owner 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) **“City”** means the City and County of San Francisco.

(c) **“Control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the day-to-day management and policies of a Person, whether through the ownership of voting securities or membership interests, by status as a general partner under a limited partnership agreement, by appointment as a manager or managing member under a limited liability company operating agreement, by fund management contract or other similar arrangement, in each case subject to such reasonable limitations or requirements of consent of direct or indirect holders of interests in the applicable entity as are within the range of such limitations or requirements customary for an entity of the same type and composition as the Controlled Person. **“Controlled,” “Controlling Interest”** and **“Controlling”** have correlative meanings. **“Common Control”** means that two Persons are both Controlled by the same other Person or Persons.

(d) **“Costs”** of improvements or construction shall mean all hard and soft costs in connection therewith, including labor, materials, permits, utilities, architectural, engineering, legal, and lane closures.

(e) **“Force Majeure”** shall mean a matter outside of a Party’s reasonable control that has occurred through no fault of such Party including 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. 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; and (ii) a Party’s inability to obtain financing, increases in construction costs, or any changes in market conditions. In the event of the occurrence of a Force Majeure event, the time or times for performance will be extended for the period of the delay, provided that 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.

(f) **“Mortgage”** shall mean any mortgage, deed of trust or other instrument primarily given to secure a loan or other obligation and constituting a lien on all or any portion of any of the Easement Parcels, or any ground lease or master lease with respect to all or any portion of any of the Easement Parcels.

(g) “**Mortgagee**” shall mean any mortgagee or beneficiary under a Mortgage or any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Easement Parcels, and any successor-in-interest to any of the foregoing.

(h) “**Natoma Street Improvements**” shall mean the improvements required to be constructed and installed on the Natoma Street Parcel (as legally described on Exhibit B) pursuant to the Project Approvals and this Agreement in compliance with the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco.

(i) “**Open Space**” shall mean all Open Space Parcels described in this Agreement.

(j) “**Open Space Improvements**” shall mean the improvements required to be constructed or installed on the Open Space Parcels under the Open Space Requirement, as defined in the Project Approvals.

(k) “**Permittees**” shall mean, with respect to the easements and access rights granted pursuant to this Agreement for the benefit of a parcel, the owner of such benefitted parcel, Persons from time to time entitled to the use or occupancy of all or any portion of such benefitted Parcel under any lease, sublease, license, deed or other arrangement, and their respective member agencies, officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires.

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

(m) “**Public**” shall mean members of the public.

(n) “**Temporary Certificate of Occupancy**” as used by the San Francisco Department of Building Inspection allowing for initial partial occupancy of the Block 5 Tower.

2. Open Space Easement.

(a) Tower Owner to Construct Open Space Improvements. Tower Owner, at its sole cost and expense, shall construct and maintain the Open Space Improvements as required by the Project Approvals, subject to the rights and obligations of the TJPA. Subject to the prior review and approval of the TJPA and Successor Agency, the Open Space Improvements shall be constructed in accordance with the Project Approvals, shall be maintained in good and operable condition, and shall meet the standards of the Development Controls and Design Guidelines.

(i) Interim Open Space Improvements. No later than 180 days after the TJPA has given a Notice of Interim Availability, as defined in Section 2(b)(i) below, for any portion of Parcel N3 or Parcel M1, Tower Owner shall complete construction of the open space improvements defined as the “**Interim Open Space Improvements**” in the Open Space Requirement of the OP/DDA, in accordance with the Project Approvals, required for those

portions of the parcels described in the notice. The construction costs incurred by Tower Owner shall be tracked by Tower Owner and reported to TJPA prior to and during construction of the Interim Open Space Improvements.

(ii) Permanent Open Space Improvements. Not later than one year after the TJPA has given a Notice of Final Availability, as defined in Section 2(b)(i) below, of any portion of Parcel N3 or Parcel M1, or of any Alternate Open Space Parcel as provided in Section 2(c), Tower Owner shall complete construction of the open space improvements defined as the “**Permanent Open Space Improvements**” in the Open Space Requirement of the OP/DDA, in accordance with the Project Approvals, or, for improvements on any Alternate Open Space Parcel, in accordance with the plans and specifications approved by the Successor Agency or other permitting authority.

(iii) Tower Owner’s Sole Cost and Expense. Subject to the TJPA’s prior review and design approval, the Tower Owner shall construct the Interim Open Space Improvements and the Permanent Open Space Improvements at its sole Cost, except to the extent provided in Section 2(c)(iii) with respect to improvements on an Alternate Open Space Parcel.

(b) Availability of Open Space Parcels.

(i) Notice of Interim Availability. Following the completion of the construction of the TT Center and the removal of the Trailers, including any above-ground utilities servicing the Trailers, from any portion of Parcel M1 or Parcel N3, and following the TJPA’s determination, in its sole discretion, that the property is no longer needed by TJPA for the interim period prior to the construction of the Train Box Extension, the TJPA shall provide written notice to Tower Owner that the property is available for construction of the Interim Open Space Improvements (“**Notice of Interim Availability**”).

(ii) Notice of Final Availability. The TJPA shall provide Tower Owner written notice of the availability of the Open Space Parcels, or any portion thereof, for construction of the Permanent Open Space Improvements (“**Notice of Final Availability**”) upon occurrence of either of the following:

(1) With respect to Parcel N3 or Parcel M1, or any portion thereof, the TJPA has determined, in its sole discretion, that such parcel or portion thereof is no longer required for the construction of the Train Box Extension or related purposes.

(2) With respect to an Alternate Open Space Parcel, the conditions for issuing a Notice of Final Availability set forth in Section 2(c)(i) have been met.

(iii) In Lieu Fee. In the event TJPA has not provided a Notice of Interim Availability or a Notice of Final Availability for all or any portion of the Open Space Parcels within the timeframe set forth in the OP/DDA, then Tower Owner shall pay the in lieu fee in satisfaction of the applicable portion of the Open Space Requirement as provided in the OP/DDA, and the Open Space Easement shall thereupon be terminated for the applicable portion of the Open Space Parcels. In such case, the Parties shall promptly and in good faith take necessary steps to amend this Agreement to delete the Open Space Easement and related

provisions, or to revise the legal description of the Open Space Parcels to remove any lands for which the in lieu fee was paid, as appropriate, and shall record the amended Agreement. Concurrently with the recordation of the amended Agreement, the Parties shall execute and record a quitclaim deed for all of the lands in which the Open Space Easement is terminated, in substantially the form of Exhibit E. The termination of the Open Space Easement in lands pursuant to this paragraph shall occur upon payment of the in lieu fee notwithstanding whether the Agreement has been amended, the amended Agreement has been recorded, or a quitclaim deed has been executed or recorded.

(c) Alternate Open Space Parcel.

(i) Designation of Alternate Open Space Parcel. At any time while this Agreement is in effect and in its sole discretion, TJPA may elect to designate one or more Alternate Open Space Parcels that TJPA owns or controls to satisfy in part or in full Developer's Open Space Requirement, as defined in the Project Approvals. The TJPA shall notify Tower Owner in writing of its intent to designate an Alternate Open Space Parcel ("**Relocation Notice**"), and shall include in the notice a legal description of the proposed Alternate Open Space Parcel to be added to the Open Space Parcels, along with a description of the portion of Parcel M1 and/or Parcel N3 to be removed from the Open Space Parcels ("**Removed Lands**"). Following receipt of a Relocation Notice, Tower Owner and the TJPA shall cooperate in good faith to prepare a revised open space improvement plan ("**Revised Open Space Plan**") for the proposed Open Space Parcels and to seek approval of the Revised Open Space Plan from the Successor Agency. If the Successor Agency approves the Revised Open Space Plan and determines that the revised plan will fully satisfy Tower Owner's Open Space Requirement, and the TJPA has acquired all rights in the Alternate Open Space Parcel necessary to permit implementation of the revised plan, the TJPA may issue a Notice of Final Availability for the Alternate Open Space Parcel. In no event shall the reasonably projected costs of maintenance and insurance for the Alternate Open Space Parcel materially exceed those for the Removed Lands.

(ii) Amendment of Agreement. If the TJPA issues a Notice of Final Availability for an Alternate Open Space Parcel, the Parties shall promptly and in good faith take necessary steps to amend this Agreement, consistent with Project Approvals, to revise the legal description of the Open Space Parcels to add the Alternate Open Space and to remove the Removed Lands, and shall record the amended Agreement. Concurrently with the recordation of the amended Agreement, the Parties shall execute and record a quitclaim deed for the Removed Lands in substantially the form of Exhibit E. Notwithstanding whether the Agreement has been amended or the amended Agreement recorded, or whether a quitclaim deed has been executed or recorded, the rights and easements established in Section 2(d) shall terminate as to the Removed Lands, and shall be imposed on the Alternate Open Space Parcel, upon the TJPA's issuance of a Notice of Final Availability for the Alternate Open Space Parcel.

(iii) Cost of Alternate Open Space Parcel Improvements. In preparing the Revised Open Space Plan, the Parties shall cooperate in good faith to design improvements for the Alternate Open Space Parcel ("**Alternate Open Space Improvements**") the Cost of which will not materially exceed the total estimated reasonable Costs of constructing the Open

Space Improvements (both Interim and Permanent) on the Removed Lands (“**Total Costs**”), less any Costs for Open Space Improvements already constructed by Tower Owner on the Removed Lands as of the date of the Relocation Notice (“**Incurred Costs**”) (Total Costs minus Incurred Costs hereinafter “**Anticipated Costs**”). If, despite the Parties’ good faith efforts, the improvements in the approved Revised Open Space Plan would materially increase Tower Owner’s construction Costs above the Anticipated Costs, the TJPA shall either reduce the scope of the Alternate Open Space Improvements or reimburse Tower Owner for the difference between the Anticipated Costs and the reasonable Costs actually incurred by Tower Owner in constructing the Alternate Open Space Improvements (“**Additional OS Costs**”).

(d) Establishment of Easements on the Open Space Parcels.

(i) Tower Owner’s Non-Exclusive Easement for Construction, Operation, and Maintenance. Effective upon commencement of the Open Space Easement Term, as defined in Section 2(h), the TJPA as owner of the Open Space Parcels grants to the Tower Owner as owner of the Tower Parcel, and Tower Owner’s Permittees, an appurtenant, non-exclusive easement in, to, over and across the Open Space Parcels guaranteeing the right at all times to construct, operate, and maintain the Open Space Improvements (“**Open Space Easement**”). The Open Space Easement shall be subject to TJPA’s reserved right to construct (at its expense) and operate and maintain, on Parcel N3, one or more escalators, elevators, or other means of ingress or egress for public access to the Train Box, together with related architectural improvements (collectively, “**Escalator**”), all as provided in Section 2(e) below.

(ii) Public’s Right of Access. Commencing as to each Open Space Parcel upon completion of the Interim Open Space Improvements (or the Permanent Open Space Improvements if no Interim Open Space Improvements are constructed) for that Open Space Parcel, the TJPA as owner of the Open Space Parcel grants to the Public the right to access consistent with the Project Approvals, use and enjoy the Open Space Parcels in perpetuity, excepting for any Open Space Parcel any Suspension Period, as provided in Section 2(h) below, for that parcel, and subject to Authorized Closures as defined in Section 2(d)(ii)2(d)(iii) below. Tower Owner shall permit the Public to access, use and enjoy the Open Space Parcels and the Open Space Improvements consistent with the Project Approvals, subject to Authorized Closures.

(iii) Authorized Closures. The rights of the Public to access, use and enjoy the Open Space Parcels and Open Space Improvements are subject to the rights of Tower Owner and the TJPA to temporarily use, fence, or prevent access a portion of the Open Space Parcel for any of the following purposes (“**Authorized Closures**”), but only to the extent and for the duration reasonably necessary to achieve the purpose:

(1) By Tower Owner for construction of the Open Space Improvements.

(2) By Tower Owner for maintenance and repair of the Open Space Improvements, subject to the TJPA’s approval, which approval shall not be unreasonably withheld, conditioned or delayed.

(3) By Tower Owner in an emergency or where all or a portion of the Open Space Parcels are destroyed or damaged, where the emergency, damage or destruction presents an immediate threat of injury to Persons using the Open Space Parcels, provided that Tower Owner shall immediately notify the TJPA of such closure, promptly repair or remediate the condition that required the closure, and cooperate with the TJPA to reopen the closed portion of the Open Space Parcels as soon as safety and security permit.

(4) By the TJPA for any of the purposes in (1)–(3) above, or where TJPA has determined, in its sole discretion, that the closure is necessary to accommodate TJPA’s construction or related activities on the Open Space Parcels, including but not limited to construction of the Escalator.

Notwithstanding the foregoing, in no event shall Tower Owner be authorized to close or otherwise impede access across Parcel N3 by the Public to or from the Escalator without the prior approval of the Successor Agency and TJPA, which shall not be unreasonably withheld or delayed and shall be consistent with Project Approvals.

(e) Tower Owner Obligation to Operate and Maintain Open Space. Tower Owner shall, at Tower Owner’s sole cost and expense, throughout the Open Space Easement Term, as defined in Section 2(h) below (and excluding any Suspension Period), operate and maintain the Open Space Parcels and Open Space Improvements in good order and repair, keep the area clean and free of litter, and keep any plant material in a healthy state. In addition, the Permanent Open Space Improvements shall be maintained in a condition that is generally consistent with public ground floor outdoor space connected to Class “A” office projects in San Francisco, as required under the Development Controls. The TJPA shall have no maintenance obligations with respect to the Open Space Parcels or the Open Space Improvements, except that, if the TJPA constructs the Escalator, the TJPA, at its sole cost and expense, shall operate and maintain the Escalator.

(f) Concessions. Open Space Improvements shall not be used by or on behalf of Tower Owner for any concessions or other revenue generating activities without the prior written approval of both Tower Owner and TJPA and on such terms and conditions as may be agreed upon and consistent with Project Approvals..

(g) Removal of Open Space Improvements. If the TJPA, after providing a Suspension Notice or a Relocation Notice, requires the removal of Open Space Improvements from the property described in the notice, TJPA shall be solely responsible for the cost of removing the Open Space Improvements. If TJPA elects to require Tower Owner to remove some or all of the open space improvements, Tower Owner shall remove the specified improvements within 90 days of the TJPA’s written notice to Tower Owner of its election, and the TJPA shall reimburse Tower Owner for the costs of removal reasonably incurred by Tower Owner. The TJPA may elect to remove some or all of the open space improvements itself. Nothing herein shall abrogate the obligations in the Project Approvals to comply with the Open Space Requirement.

(h) Easement Term. The term of the Open Space Easement (“**Open Space Easement Term**”) shall commence with respect to an Open Space Parcel upon the TJPA’s

delivery of a Notice of Interim Availability (or Notice of Final Availability if no Notice of Interim Availability is provided) for that parcel and shall be perpetual in duration; provided that the Open Space Easement and related rights shall terminate as to the Removed Lands and be perpetual as to the Alternate Open Space Parcel upon relocation of the easement in accordance with Section 2(c)(ii); and provided further that the Open Space Easement shall terminate as to any lands where an in lieu fee has been paid pursuant to the OP/DDA in accordance with Section 2(b)(iii); and provided further that, if the TJPA provides written notice to Tower Owner stating TJPA's intention to occupy any portion of the Open Space Parcels for purposes of construction staging for the Train Box Expansion or related purposes ("**Suspension Notice**"), the Open Space Easement shall be immediately suspended as to the property described in the Suspension Notice, and shall remain suspended until the TJPA provides a Notice of Final Availability for the property ("**Suspension Period**"). Tower Owner shall remove all equipment or other removable property from the portion of the Open Space Parcels described in the Suspension Notice within 30 days of the Suspension Notice.

3. Natoma Street Easements and Improvements.

(a) Tower Owner Obligation to Construct and Maintain Natoma Street Improvements. Tower Owner, at its sole cost and expense, shall construct and maintain the Natoma Street Improvements as required by the Project Approvals and as set forth on Exhibit F, subject to the rights and obligations of the TJPA with respect to the North Sidewalk as set forth in Section 3(f). Subject to the prior review and approval of the TJPA, the Successor Agency, and, if necessary, the City, the Natoma Street Improvements shall be constructed in accordance with the Project Approvals, the laws of the State of California and the Ordinances and Regulations of the City and County of San Francisco, including the "Standard Specifications & Plans" as issued by the Department of Public Works of the City and County of San Francisco (<http://sfdpw.org/index.aspx?page=294>), and shall be maintained in good and operable condition. Tower Owner's obligation to maintain the Natoma Street Improvements shall remain in effect for the duration of the term of the Street Easement, defined in Section 3(e)(i).

(b) Grant of Non-exclusive Easement for Construction and Maintenance. The TJPA as owner of the Natoma Street Parcel, grants to the Tower Owner as owner of the Tower Parcel, and its Permittees, an appurtenant, non-exclusive easement in, to, over and across the Natoma Street Parcel and to construct and maintain Natoma Street Improvements as set forth on Exhibit F ("**Street Easement**"). The Street Easement shall be subject to the right of the TJPA and its Permittees to use the Natoma Street Parcel as provided in Sections 3(e) and 3(f), and for uses that do not unreasonably interfere with the ability of Tower Owner and its Permittees to construct and maintain the Natoma Street Improvements per a Plan attached hereto as a part of Exhibit F.

(c) Grant of Non-Exclusive Access Easement. The TJPA as owner of the Natoma Street Parcel, grants to the Tower Owner as owner of the Tower Parcel, and its Permittees, an appurtenant, non-exclusive easement in, to, over and across the Natoma Street Parcel for purposes of accessing at all times the Block 5 Tower and Block 5 Tower's loading dock and garage ("**Access Easement**"). The Access Easement shall be subject to the reserved rights of the TJPA and its Permittees to use the Natoma Street Parcel as provided in this Section

3, and for such other uses that do not unreasonably interfere with the ability of Tower Owner and its Permittees to access the Block 5 Tower.

(d) Grant of Basement Easements

(i) Exclusive Basement Easement. A portion of the basement for the proposed Block 5 Tower will encroach under the six (6) foot-wide sidewalk along the south side of the Natoma Street Parcel, more particularly described in Exhibit J (“**South Sidewalk**”). The TJPA as owner of the Natoma Street Parcel, grants to the Tower Owner as owner of the Tower Parcel, an appurtenant, exclusive and perpetual subsurface easement under the South Sidewalk, to a depth of approximately 100 feet below the surface, which area is more particularly described in Exhibit K (“**Basement Easement Area**”), for purposes of constructing and reconstructing, accessing, installing, operating, maintaining, repairing, and/or replacing the Block 5 Tower basement and related improvements, including without limitation foundations, caissons, structural walls and slabs, footing and piles, temporary shoring wall and other subterranean improvements and facilities related to the basement (“**Basement Improvements**”), and for the use of any encroaching portion of the basement for uses consistent with the Project Approvals (“**Basement Easement**”). Owner shall make no additional use of the Basement Easement Area without the written consent of the TJPA. Once Owner has constructed and installed all of the Basement Improvements within the Basement Easement Area, Owner shall, upon TJPA’s written request, cause to be executed, acknowledged and delivered on behalf of owner a quitclaim deed, in a form reasonably satisfactory to the TJPA, terminating the Basement Easement with respect to any portion of the Basement Easement Area that is neither occupied by Basement Improvements nor reasonably necessary to provide access to them.

(ii) Grant of Temporary Basement Construction Easement. The TJPA grants to Tower Owner a nonexclusive temporary construction easement in, to, over, under and across the South Sidewalk, between the surface and approximately 100 feet below the surface, as more particularly described in Exhibit L (“**Basement Construction Easement Area**”), for purposes of excavating, constructing and installing the Basement Improvements (“**Basement Construction Easement**”) in accordance with the Project Approvals.

(iii) Construction of Improvements. All construction activities performed by Tower Owner shall be performed in a safe, prudent and professional manner in accordance with best construction practices and all applicable laws, and subject to the Train Box Performance Requirements as defined herein. Without limiting Tower Owner’s obligations as provided in this Agreement, Tower Owner shall provide at least the same lateral and subjacent support to the TJPA’s property adjoining the Basement Construction Easement Area as it would be required to provide by law if it were the owner of the Basement Construction Easement Area.

(e) Term of Easements.

(i) Street Easement Term. The term of the Street Easement (“**Street Easement Term**”) shall commence upon the Effective Date of this Agreement, and shall terminate on the earlier of (1) acceptance by the City of the Natoma Street Parcel as dedicated public street, and (2) the date specified in any written notice from TJPA to Tower Owner of the TJPA’s intention to use the Natoma Street Parcel for construction of the Train Box or other OP/DDA

purpose of the TJPA (“**Construction Notice**”). Unless terminated, the Street Easement Term shall be perpetual.

(ii) Access Easement Term. The term of the Access Easement (“**Access Easement Term**”) shall commence upon issuance of a Temporary Certificate of Occupancy for the Block 5 Tower and shall terminate upon acceptance by the City of the Natoma Street Parcel as a dedicated public street and, if not so terminated, shall be perpetual, subject in all events to the TJPA’s rights and obligations relating to Alternative Access, as defined in Section 3(g).

(iii) Basement Easement Term. The term of the Basement Easement (“**Basement Easement Term**”) shall commence upon the Effective Date of this Agreement and be and shall be perpetual, unless earlier terminated by written agreement of the Parties, subject to compliance with the Project Approvals.

(iv) Basement Construction Easement Term. The term of the Basement Construction Easement (“**Basement Construction Easement Term**”) shall commence upon the Effective Date of this Agreement, and shall terminate on the earlier of (1) the date specified in a Construction Notice provided by the TJPA, and (2) issuance of a Temporary Certificate of Occupancy for the Block 5 Tower.

(f) North Sidewalk Encroachment by TJPA. The Street Easement and Access Easement shall be subject to the TJPA’s right to exclusively use or occupy some or all of the land proposed to be improved as a sidewalk along the north side of the Natoma Street Parcel, as depicted in Exhibit G (“**North Sidewalk**”). If the Tower Owner is required to construct improvements on the North Sidewalk, the Tower Owner shall cooperate with the TJPA in good faith and provide notice to the TJPA of the latest date by which the Tower Owner will require access to the North Sidewalk to complete any improvements required by the Development Controls. The requirements of this Section 3(f) notwithstanding, if the Tower Owner cannot complete the improvements due to an encroachment by the TJPA, the TJPA shall complete the improvements within the area of the encroachment, at the TJPA’s sole cost and expense, following the removal of the encroachment.

(g) Train Box Construction: Alternative Access.

(i) As of the date specified in a Construction Notice, the Access Easement shall be subject to the right of the TJPA and its Permittees to exclusively use some or all of the Natoma Street Parcel for construction of the Train Box Extension. If such use by the TJPA would unreasonably interfere with the ability of Tower Owner or its Permittees to access the Block 5 Tower including Block 5 Tower’s loading dock and garage, the TJPA, prior to such interference, shall provide and maintain, at its sole cost and expense, reasonable alternative access to the Tower Parcel (“**Alternative Access**”).

(ii) Alternative Access shall be deemed to include, without limitation, each of the following, either of which the TJPA may elect to provide in its sole discretion:

(1) Access to the Block 5 Tower Natoma Street entrance (in the location depicted on Exhibit H either from Beale Street along the Natoma Street Parcel, or, when use of the Natoma Street Parcel is required by TJPA, from Main Street along the proposed extension of the Natoma Street right of way, provided that the width of the access provided at least 20 feet (“**Natoma Street Option**”).

(2) Access to a temporary entrance in the east wall of the Block 5 Tower (in the location and with the ramp as set forth on Exhibit H from Main Street, across Parcel M1 (“**Parcel M1 Option**”). All Costs in connection with the construction of the ramp, excepting those costs described in Section 3(f)(iii), shall be borne by TJPA.

(iii) If the TJPA elects to provide the Natoma Street Option or the Parcel M1 Option, the TJPA shall be solely responsible for acquiring rights in or over the private property known as 201 Mission Street that may be required to provide the required access to the Block 5 Tower. The TJPA shall not be responsible for any costs of modifying the interior or exterior of the Block 5 Tower, or of removing any improvements or other impediments located on the Tower Parcel, that may be required to accommodate the Natoma Street Option or the Parcel M1 Option. The Tower Owner shall design and construct the Block 5 Tower in a manner that would reasonably accommodate the entrances required for both the Natoma Street Option and the Parcel M1 Option; Tower Owner’s failure to do so shall not serve as a limitation on the TJPA’s discretion to elect either option, and if the TJPA elects an option that is rendered infeasible due to Tower Owner’s failure to have provided the necessary accommodation, Tower Owner shall be solely responsible for the costs of providing Alternative Access.

(iv) If the TJPA has elected to provide the Natoma Street Option or the Parcel M1 Option, it shall deliver a notice thereof to Tower Owner (the “**Construction Notice**”) at least 180 days prior to the planned closure of the Natoma Street Parcel, which shall specify the selected Option. If TJPA has delivered the Construction Notice, then 180 days after such delivery, or upon TJPA’s completion of the access improvements the TJPA is required to construct under the selected Option, whichever is later, the TJPA may take exclusive possession of the Natoma Street Parcel, regardless of whether the Tower Owner has completed any modifications to the Block 5 Tower necessary to accommodate such Alternative Access, and the TJPA shall have no responsibility or liability for Tower Owner’s failure to do so. TJPA and Tower Owner shall consult and cooperate with each other in good faith in order to minimize any cost, disruption and inconvenience to Tower Owner and its Permittees in connection with the Alternate Access.

(v) The TJPA shall be responsible for providing and maintaining the Alternative Access until it has fully restored Tower Owner’s rights of access to the Natoma Street Parcel under the Access Easement and completed the reconstruction of the Natoma Street Improvements as provided in Section 3(h), at which time the TJPA’s obligation to provide Alternative Access shall terminate.

(h) TJPA Obligation to Reconstruct and Maintain Natoma Street Improvements. When the TJPA has determined, in its sole discretion, that it no longer requires the exclusive use and possession of the Natoma Street Parcel for construction of the Train Box

Extension or other purpose, the TJPA shall reconstruct, at its sole cost and expense, the Natoma Street Improvements, including any extension thereof. Following reconstruction, the TJPA shall be responsible for maintaining the Natoma Street Improvements for the duration of the Access Easement Term, provided, however, that the Tower Owner shall reimburse the TJPA for 50% of the TJPA's reasonable maintenance costs. Tower Owner shall not be responsible for payment of any real estate taxes that may be assessed for the Natoma Street Parcel except for any taxes assessed on Tower Owner's possessory interest therein, which shall be Tower Owner's sole responsibility. The TJPA shall invoice the Tower Owner annually for Tower Owner's share of the maintenance costs, which Tower Owner shall pay no later than 30 days after receipt of the invoice.

(i) Natoma Street Extension. In the event that Natoma Street is completed between Beale Street and Main Street, then the TJPA may elect to modify the scope of the Access Easement to include access to or from Main Street along the southern half of Natoma Street, and to exclude access along the northern half of Natoma Street as shown on Exhibit H (Phase D of Natoma Street Option). The modification of the Access Easement shall be effective following completion of construction of the Natoma Street extension to Main Street, upon notice from the TJPA to Tower Owner of its election to modify the Access Easement. Following the TJPA's election to modify the scope of the Access Easement, the Parties shall promptly record an amendment to this Agreement reflecting modification, but the modification shall be effective regardless of whether such amendment has been executed or recorded. The Tower Owner acknowledges that the TJPA intends to use the northern half of Natoma Street to serve the operational needs of the TJPA's facilities for taxi queuing or other uses in connection with the proposed bus facility on the Train Box Parcel; provided that TJPA retains the sole discretion to determine operational matters pertaining to the completed Natoma Street, including whether Natoma Street shall be a one-way or two-way street, whether to open it to public traffic, and whether to dedicate it as a public street.

(j) No Warranty of Access from Beale Street. No grant of any easement by the TJPA herein shall be construed as including a warranty of access to the easement property from other property, including, without limitation, access from Beale Street to the Natoma Street Parcel. Tower Owner acknowledges that vehicular and pedestrian access via Beale Street and adjoining sidewalk is presently limited due to the TJPA's Train Box excavation, and the TJPA shall have no obligation to provide access over the excavation site or otherwise provide alternative access to the Natoma Street Parcel.

4. Train Box Performance Requirements.

(a) Tower Owner shall ensure that the Block 5 Tower is constructed in accordance with the seismic requirements for the proposed Train Box Extension, as set forth in the report entitled "Block 5 Tower Structure-Soil-Structure Interaction with the Transbay Transit Center", dated as of August 22, 2013 ("**Train Box Performance Requirements**"), attached hereto as Exhibit I. Tower Owner shall design and construct the Block 5 Tower to be supported by a foundation system that will not invalidate the Train Box Performance Requirements. Without limiting the foregoing obligation, Tower Owner shall comply with all of the following requirements:

(i) Coordination of Design. Tower Owner's structural and geotechnical engineers shall coordinate the design of the foundation of the Block 5 Tower with the foundation of the Train Box to insure the design integrity of the Block 5 Tower.

(ii) Peer Review Panel. Within thirty (30) days after Tower Owner's geotechnical and structural engineers commence designing the foundation and structural elements for the Block 5 Tower, Tower Owner shall request that the San Francisco Department of Building Inspection ("DBI") convene a panel comprised of Dr. Jonathan Bray, Dr. Ari Chopra and Dominic Campi to provide peer review of the foundation and structural design of the Block 5 Tower ("**Peer Review Panel**") throughout the design and permit process for the Block 5 Tower. If one or more of such persons are unable to serve, the Parties shall request that DBI designate replacement(s) so that the panel shall consist of at least two structural and one geotechnical subject matter experts who are independent of Tower Owner, TJPA and the City. The members of the Peer Review Panel shall be approved by the TJPA, which approval shall not be unreasonably withheld, and approved by DBI. The TJPA's geotechnical and structural engineers and DBI shall be given notice of the meetings of the Peer Review Panel and shall have the right, but not the obligation, to attend the meetings to the extent permitted by DBI. Within ten (10) days after each meeting of the Peer Review Panel, Tower Owner shall provide the TJPA and DBI with copies of all meeting minutes which Tower Owner has received. Tower Owner shall provide all reports issued by the Peer Review Panel within ten (10) days after Tower Owner receives the report. Each replacement member of the Peer Review Panel shall have experience serving on peer review panels or equivalent experience, all to the extent required by DBI. Tower Owner shall provide the peer review panel with the Train Box Performance Requirements and shall advise the Peer Review Panel of Tower Owner's obligations under this Section.

(iii) Basis of Design Report. Within ninety (90) days after Tower Owner's geotechnical and structural engineers commence designing the foundation for the Block 5 Tower, Tower Owner shall provide the TJPA with a written report describing the Basis of Design ("**BOD Report**") for the foundation of the Block 5 Tower and a proposed construction schedule in sufficient detail and with sufficient explanation for an evaluation of the foundation for the Block 5 Tower by the TJPA's geotechnical and structural engineers. Tower Owner shall update the report at no less than 90-day intervals and shall promptly provide the TJPA with the updated report following each revision thereto until completion of the construction of the foundation system for the Block 5 Tower.

(iv) SSSI Analysis. The sufficiently progressed design of the Block 5 Tower and foundation shall be justified by a detailed Structure-Soil-Structure Interaction ("**SSSI**") analysis prepared by ARUP (or other qualified consultant, subject to approval by the TJPA, which approval shall not be unreasonably withheld) and submitted to and approved by the TJPA. The SSSI analysis must consider a 100 year return period earthquake and must show that the performance objectives of the TT Center are not compromised in this earthquake event.

(v) Specific Requirements. The Block 5 Tower shall conform to all the following, except to the extent an exception is justified by the SSSI analysis and approved by the TJPA:

(1) The Block 5 Tower foundation shall comprise a piled mat, with piles of sufficient length to control settlement and an appropriate factor of safety on capacity.

(2) No more than 20% of the net static building load shall be taken by the mat.

(3) The location of the northern shoring wall for the parking garage substructure shall be no closer than five feet from the easterly projection of the south face of the existing TT Center shoring wall ("**TTC shoring wall**").

(4) The piles of the Block 5 Tower foundation shall be no closer than 37' from the future extension of the TTC shoring wall.

(5) The average net pressure at the underside of the mat shall be limited to 2 ksf within approximately 50' from the northern shoring wall of the Block 5 basement. In calculating average net pressure, a hydrostatic water pressure profile shall be assumed below +8' NAVD88.

(6) The bottom of the Block 5 Tower basement excavation shall be no lower than the underside of the TT Center foundation base slab.

(vi) Monitoring Plan. Prior to the start of excavation for the Block 5 Tower, Tower Owner shall develop a plan for monitoring soil and structure movements and anticipated movements and action levels during and after completion of the construction of the Block 5 Tower at Tower Owner's sole cost. Tower Owner shall provide the plan to the TJPA for comment before starting excavation for the Block 5 Tower. From the date on which Tower Owner starts excavation for the Block 5 Tower through the date which is two (2) years after Tower Owner completes the building shell of the Block 5 Tower, Tower Owner shall implement the monitoring plan using equipment with real time reporting capability and shall provide the TJPA with access to the data feeds from the monitoring equipment.

(vii) Train Box Shoring Wall. Except as the Parties may otherwise agree in writing, the TJPA shall not construct the temporary shoring wall for the Train Box Extension closer than five (5) feet from the Block 5 Tower basement; provided, however, that nothing in this paragraph shall be construed as precluding the TJPA from constructing the Train Box Extension shoring wall up to the line created by the eastward projection of the existing train box shoring wall.

5. Indemnity.

(a) General Obligation. The Tower Owner shall indemnify, defend and hold the TJPA, the City, the Successor Agency, and their Affiliates and their respective members, officers, agents and employees ("**Indemnified Parties**") harmless from and against any losses, costs, claims, damages, liabilities, and causes of action of any nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel and engineering consultants) ("**Claims**") arising from the condition of, activities on, or use by any Person of (i)

the Open Space Parcels or the Open Space Improvements during the Open Space Easement Term with respect to such Open Space Parcel that Tower Owner is then obligated to maintain (but excluding any Suspension Period), (ii) the Natoma Street Parcel or the Natoma Street Improvements during the Street Easement Term, (iii) the Basement Easement Area during the Basement Easement Term, or (iv) the Basement Construction Easement Area during the Basement Construction Easement Term (each easement term described in clauses (i) through (iv), as applied to the corresponding property, the “**Applicable Easement Term**”). Notwithstanding the foregoing, the Tower Owner’s obligation to indemnify shall not include Claims arising from (w) the TJPA’s gross negligence or willful misconduct, (x) conditions and activities prior to the Applicable Easement Term, (y) any portion of the North Sidewalk that is exclusively used or occupied by the TJPA, for the duration of that use or occupation, (z) any portion of Parcel N3 exclusively used or occupied by the TJPA for the construction or operation of the Escalator, for the duration of such use or occupation.

(b) Hazardous Materials Indemnification.

(i) Tower Owner’s indemnification obligations under Section 5(a) shall include indemnifying, defending and holding Indemnified Parties harmless from and against any Claims incurred by or asserted against any Indemnified Party in connection with, arising out of, in response to, or in any manner relating to (A) Developer’s violation of any Environmental Law, with regard to the Open Space Parcels or Natoma Street Parcel, the Basement Easement Area, or the Basement Construction Easement Area (collectively, “**Easement Parcels**”), or (B) any Release of a Hazardous Substance, or any condition of pollution, contamination or Hazardous Substance-related nuisance on, under or from the Easement Parcels, occurring with respect to each during the Applicable Easement Term, and, with respect to the Natoma Street Parcel, excluding any portion of the North Sidewalk exclusively used or occupied by the TJPA, for the duration of that use or occupation); except to the extent such violation, Release or threatened Release, or condition was at any time caused by the gross negligence or intentional misconduct of the Indemnified Party seeking indemnification or first arose prior to the Applicable Easement Term. Notwithstanding the foregoing, Tower Owner shall not have any environmental indemnification obligations with respect to any Alternate Open Space Parcel except for its own acts or omissions during such period that it is obligated to maintain such Alternate Open Space Parcel.

(ii) Each of Tower Owner and TJPA, shall use, handle and store any Hazardous Substances hereunder in accordance with the applicable requirements of Environmental Law. In the event of a Release on, under or from the Easement Parcels, the party responsible therefor shall immediately notify the other party and take such remedial actions as may be necessary to clean up the same as may be required by and in accordance with the requirements of Environmental Law.

(iii) The term “Hazardous Substance” shall have the meaning set forth in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended as of the date of this Agreement, 42 U.S.C. §9601(14), and in addition shall include, without limitation, petroleum (including crude oil or any fraction thereof) and petroleum products, asbestos, asbestos containing materials, polychlorinated biphenyls (“**PCBs**”), PCB

containing materials, all hazardous substances identified in the California Health & Safety Code §§25316 and 25281(d), all chemicals listed pursuant to the California Health & Safety Code §25249.8, and any substance deemed a hazardous substance, hazardous material, hazardous waste, or contaminant under Environmental Law. The foregoing definition shall not include substances that occur naturally on the Easement Parcels.

(iv) The term “Environmental Law” shall include all federal, state and local laws, regulations and ordinances governing hazardous waste, wastewater discharges, drinking water, air emissions, Hazardous Substance releases or reporting requirements, Hazardous Substance use or storage, and employee or community right to know requirements related to the work being performed under this Agreement.

(v) The term “Release” shall mean any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment (including the abandonment or discharging of barrels, containers, and other closed receptacles containing any Hazardous Substance).

(c) The duration of the indemnity provided as to each Easement Parcel in this Section 5 shall not be limited in whole or in part by any shorter duration of indemnity provided for another, overlapping Easement Parcel.

(d) Survival. The Tower Owner’s obligations set forth in this Section shall survive the expiration or termination of this Agreement or the applicable easement term with respect to any acts, events or circumstances occurring or existing, or alleged to occur or exist, during the term of this Agreement and the applicable easement term.

6. Insurance.

(a) Tower Owner Insurance Obligation. Without in any way limiting Tower Owner’s indemnification obligations under this Agreement or the OP/DDA, and subject to approval by the TJPA of the insurers and policy forms, Tower Owner shall obtain and maintain, or shall contractually require others to maintain, throughout the term of this Agreement, the minimum insurance coverage for the Easement Parcels as forth in this Section, at no expense to TJPA. If the Tower Owner maintains broader coverages and/or higher limits than the minimums shown in this Section, the TJPA requires and shall be entitled to the additional coverage and/or the higher limits so maintained in the insured or beneficiary capacities set forth in this Section. Exceptions and/or deviations from the requirements of this Section shall be permitted with the written approval of the person serving as TJPA’s risk manager, which approval shall not unreasonably be withheld or delayed.

(b) Minimum Scope. Coverage must be at least as broad as:

(i) Insurance Services Office Commercial General Liability coverage (occurrence form CG 00 01 01) or other form approved by the TJPA.

(ii) Insurance Services Office Automobile Liability coverage, code 1 (form number CA 00 01 – “any auto”) or other form approved by the TJPA.

(iii) Workers' Compensation insurance as required by the State of California and Employer's Liability Insurance.

(iv) Professional Liability Insurance: Tower Owner must require that all architects, engineers, and surveyors, and all other design professionals for the Open Space Improvements, the Natoma Street Improvements, and Basement Improvements (collectively, "**Improvements**") have liability insurance covering their negligent acts, errors and omissions. Tower Owner must provide the TJPA with copies of consultants' insurance certificates showing such coverage.

(v) Property Insurance: Special form coverage against direct physical loss to the Project, excluding earthquake or flood, but including vandalism and malicious mischief, during the course of construction and following completion of construction of the Improvements.

(c) Minimum Limits. Tower Owner must maintain limits no less than:

(i) Commercial General Liability: \$5,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage. If Commercial General Liability Insurance or other form with a general aggregate limit is used, either the general aggregate limit must apply separately to the Easement Parcels, or the general aggregate limit must be twice the required occurrence limit. The policy may apply to the entirety of Block 5 Tower project, so long as the Policy has a per location endorsement for the Easement Parcels that satisfies all requirements of this Section 6(c)(i).

(ii) Automobile Liability: \$1,000,000 per accident for bodily injury and property damage.

(iii) Workers' Compensation and Employer's Liability: Workers' Compensation limits as required by the State of California and Employers Liability limits of \$1,000,000 for bodily injury by accident and \$1,000,000 per person and in the annual aggregate for bodily injury by disease.

(iv) Professional Liability: \$2,000,000 each occurrence and in the annual aggregate, covering all negligent acts, errors and omissions of Tower Owner's architects, engineers, surveyors and other design professionals. Tower Owner shall cause these minimum limits to be maintained for no less than ten (10) years beyond the completion of construction of all of the Improvements.

(v) Property Insurance: During the course of construction, builder's risk insurance in the full completed value of the Project including coverage in transit and storage off-site, with a deductible not to exceed \$50,000 each loss. Following Completion of Construction, full replacement value of the Project with no coinsurance penalty provision.

(d) Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions over \$25,000 must be declared to and approved by the TJPA. In the event such deductibles or self-insured retentions are in excess of \$25,000, at the option of the TJPA, either:

the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the TJPA, the City, the TJPA, and their respective commissioners, members, officers, agents, and employees; or the Tower Owner shall procure a financial guarantee satisfactory to the TJPA guaranteeing payment of losses and related investigations, claim administration and defense expenses.

(e) Other Insurance Provisions. The policies are to contain, or be endorsed to contain, the following provisions:

(i) General Liability and Automobile Liability Coverage:

(1) Additional Insureds: The TJPA, the City, the Successor Agency, their respective commissioners, members, officers, agents, and employees shall be named as additional insureds as respects: liability arising out of activities performed by or on behalf of the Tower Owner; products and completed operations of such party, premises owned, occupied or used by such party; and automobiles owned, leased, hired or borrowed by or on behalf of such party. The coverage shall contain no special limitations on the scope of protection afforded to the TJPA, the City, and their respective commissioners, members, officers, agents or employees.

(2) Defense: Defense shall be outside the limits with respect to all Tower Owner's required general liability insurance and auto insurance. Defense may permissibly be inside the limits with respect to any professional liability and pollution legal liability insurance.

(3) Primary Insurance: For any claims related to this Project, Tower Owner's insurance coverage must be primary insurance as respects to the TJPA, the City, the Successor Agency, and their respective commissioners, members, agents, and employees. Any insurance or self-insurance maintained the TJPA, the City, the Successor Agency, and their respective commissioners, members, agents, officers or employees must be in excess of the applicable party's insurance and will not contribute with it.

(4) Reporting Provisions: Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the TJPA, the City and their respective commissioners, members, officers, agents or employees.

(5) Separation of Insureds Condition: Tower Owner's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

(ii) Builder's Risk (Course of Construction) Insurance: Tower Owner may submit evidence of Builder's Risk insurance in the form of Course of Construction coverage. Such coverage shall name TJPA as loss payee as its interest may appear.

(iii) All Coverages: Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled by either party, or reduced in coverage or in limits, except after thirty (30) days' prior written notice has been given

to TJPA, except in the event of suspension for nonpayment of premium, in which case ten (10) days' notice shall be given.

(f) Acceptability of Insurers. Insurance is to be placed with insurers with a current A. M. Best's rating of no less than A:VII or as otherwise approved by the TJPA.

(g) Waiver of Subrogation. Tower Owner hereby grants to the TJPA and the additional insureds a waiver of any right to subrogation which any insurer of said Tower Owner may acquire against the TJPA and the additional insureds by virtue of the payment of any loss under such insurance. Tower Owner agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the TJPA or any of the additional insureds has received a waiver of subrogation endorsement from the insurer.

(h) Reservation of Rights. TJPA reserves the right to require an increase in Tower Owner's insurance coverage: (i) limits in the event the TJPA reasonably determines that changed conditions show cause for an increase; and/or (ii) in the event of a material change in existing law, additional endorsements to Tower Owner's coverage required herein as necessary to maintain comparable coverage to that required herein, unless Tower Owner demonstrates to the TJPA's reasonable satisfaction that such increase in coverage limits or additional endorsements are commercially unreasonable and/or unavailable to Tower Owner.

(i) Claims-Made Coverage. If any of the policies provide coverage on a claims-made basis:

(i) The retroactive date for coverage must be shown and must be before the effective date of the contract for which the coverage is obtained.

(ii) Insurance must be maintained and evidence of insurance must be provided for at least five years after completion of the contract of work.

(iii) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the contract effective date, the contractor must purchase "extended reporting" coverage for a minimum of five years after completion of contract work.

(j) Verification of Coverage. Tower Owner must furnish the TJPA with certificates of insurance and with original endorsements effecting coverage required by this Section 6. The certificates and endorsements for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. All certificates and endorsements are to be received and approved by the TJPA before work commences. The TJPA reserves the right to require complete, certified copies of all required insurance policies, including endorsements affecting the coverage required by these specifications at any time. Approval of Tower Owner's insurance by TJPA will not relieve or decrease the obligations of Tower Owner under this Agreement.

(k) Contractor, Subcontractors and Consultants Insurance. Before Tower Owner's general contractor, subcontractors, consultants, architects, and engineers ("Tower Owner's Contractors") enter the Tower Parcel or the Easement Parcels, Tower Owner shall cause each of the Tower Owner's Contractors to maintain workers compensation, automobile liability, and commercial general liability insurance in the amounts and in accordance with the requirements listed above, as applicable, unless otherwise approved by the TJPA's Risk Manager, and furnish the TJPA with the certificates of insurance and original endorsements effecting coverage required by this Section.

(l) Obligations and Remedies. If fails to carry a required policy meeting the requirements of this Section, then Tower Owner shall perform the duties which would have been performed by the carrier had Tower Owner carried such a policy as herein required, but only to the extent of the duties which such carrier would have had to perform. If Tower Owner fails to pay a premium for a required policy when due, the TJPA may, at its election and without waiving any of its other rights or remedies, pay the premium and all interest and penalties, if any, and shall have all legal and equitable remedies against Tower Owner for reimbursement of the amount paid, whether or not Tower Owner gives written notice to the TJPA of the failure to pay the premium.

(m) Survival. The Tower Owner's obligations set forth in this Section 6 shall survive the expiration or termination of this Agreement with respect to any acts, events or circumstances occurring or existing, or alleged to occur or exist, during the term of this Agreement.

7. Change to Completed Improvements. No material change shall be made by Tower Owner to the Improvements unless it is consistent with Project Approvals and Tower Owner has obtained the prior written approval of the TJPA, which approval shall not be unreasonably withheld, conditioned or delayed.

8. No Representations or Warranties; As-Is. Tower Owner acknowledges that the TJPA is granting the easements and other rights to use the Easement Parcels on an "as-is with all faults" basis. Tower Owner further acknowledges that neither TJPA nor any employee, representative or agent of TJPA, have made any representation or warranty, express or implied, with respect to the Easement Parcels, and it is agreed that the TJPA makes no representations, warranties or covenants, express or implied, as to the physical condition of the parcels; as to the condition of any improvements; as to the suitability or fitness of the land for the purposes of the easements and other rights granted to Tower Owner; as to any Environmental Law, or otherwise affecting the use, value, occupancy or enjoyment of the parcels; or as to any other matter whatsoever. The acknowledgements made in this Section shall survive the expiration or termination of this Agreement.

9. Rights of Mortgagees.

(a) Validity of Lien. No breach or violation or threatened breach or violation of any covenant, condition, restriction or easement herein contained shall defeat or render invalid or unenforceable the lien of any Mortgagee made in good faith and for value affecting any portion of the Tower Parcel, but such covenants, conditions, restrictions and easements shall be

binding upon and be effective against the Tower Owner or any subsequent owner of all or any portion of the Tower Parcel (“Owner”) whose title thereto is acquired by foreclosure, trustee’s sale, deed-in-lieu of foreclosure or termination of a ground or master lease or otherwise during the period of ownership of the Tower Parcel by such Owner.

(b) Term and Limitation of Liability Following Mortgagee Taking Title. No Mortgagee with respect to the Tower Parcel shall be obligated or liable for the obligations and liabilities of the Owner of the Tower Parcel hereunder unless and until such Mortgagee acquires fee title to all or a portion of the Tower Parcel, and then only to the extent of the duration of such ownership. The foregoing notwithstanding, if the Owner is in default of this Agreement at the time of a Mortgagee’s acquisition of the Tower Parcel, the Mortgagee shall remedy any curable defaults of such Owner within thirty (30) days following the acquisition by any such Mortgagee of title to the Tower Parcel (or three (3) days following such acquisition of title in the event of an immediate and serious danger to person or property); provided that, 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. The other provisions of this Section 9 notwithstanding, if the default is failure to complete any of the Improvements in accordance with the provisions of this Agreement, such Mortgagee shall complete the Improvements within such period as is reasonably necessary to complete those improvements, but in no event to exceed six (6) months after the later of (i) the date such Mortgagee acquires fee title to the Tower Parcel, or (ii) the date Tower Owner would have been required to complete the improvements. If a Mortgagee has given the TJPA written notice of the Mortgagee’s interest in the Tower Parcel, provided the Mortgagee’s mailing address, and requested delivery to Mortgagee of 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 such notice to the TJPA without the prior written consent of the Mortgagee. Notwithstanding, the foregoing, if a Mortgagee was not provided notice of Owner’s default prior to the date the Mortgagee acquires fee title to the Tower Parcel in accordance with Section 9(c) below, Mortgagee’s cure periods under this Section 9(b) shall commence on the date that the TJPA provides written notice of such default to Mortgagee.

(c) Mortgagee Cure Rights Prior to Mortgagee Taking Title. Notwithstanding any other provision in this Agreement for notices of default, the Mortgagee of Owner where Owner 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 Tower Parcel, provided TJPA with the Mortgagee’s mailing address, and requested notices that are required to be given under this Agreement. In the event that any notice shall be given by TJPA of the default of Owner, then 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 Tower Parcel or portion thereof at the same time that the TJPA gives notice of the default to Owner, that Owner is in default and such Mortgagee shall have sixty (60) days after such notice to cure any such default (or 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. The periods for cure referred to in this Section 9(c) for defaults that require possession of the Tower Parcel or any part of the Tower Parcel shall each be deemed to commence when the Mortgagee has obtained the permission of Owner, or obtains a court ordered right, to enter the Tower Parcel and perform the cure, which permission or order the Mortgagee shall attempt to obtain 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 so declaring such default.

(d) Intended Third Party Beneficiary. Each Mortgagee with respect to all or any portion of the Tower Parcel is an intended third-party beneficiary of the provisions of this Section 9 and, as an intended third-party beneficiary, shall be entitled to enforce the provisions of this Section 9 prior to succeeding to fee title to the Tower Parcel or any portion thereof. Such Mortgagee, however, is not an intended third-party beneficiary of the provisions of this Agreement other than this Section 9 and shall not be entitled to enforce the provisions of this Agreement other than this Section 9 prior to succeeding to fee title to the Tower Parcel or any portion thereof.

10. Defaults and Remedies. In the event of any breach or default of any Party of any term or provision of this Agreement which is not cured by the defaulting Party within thirty (30) days after receipt of written notice thereof from the non-defaulting Party, or is not cured within three (3) days after such notice in the event of an immediate and serious danger to person or property (or 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 Party commences the cure within the required cure period and thereafter diligently prosecutes such cure to completion), the non-defaulting Party 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 (but not the obligation) to perform the obligation as to which such breach or default arose at the commercially reasonable expense of the breaching or defaulting party after reasonable notice and a reasonable opportunity (but not less than five (5) days after notice) to cure such breach or default. Except as otherwise provided herein and subject to the limitations herein, the rights and remedies of the Parties under this Agreement shall be cumulative. The foregoing notwithstanding, neither Party shall be liable to the other Party for consequential or incidental damages.

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

amount that may become due to Tower Owner or on any obligations under the terms of this Agreement.

12. **Force Majeure.** If any Person is delayed or hindered in or prevented from the performance of any act required hereunder because of any event of Force Majeure, performance of such act shall be excused for the period of the Force Majeure event, and the period for the performance of such act shall be extended for an equivalent period.

13. **No Cancellation.** No breach of any provision of this Agreement shall entitle any Party 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 Party may have by reason of any such breach.

14. **Assignment.** Direct or indirect interests in the Tower Parcel, the Easement Parcels, or any portions thereof, may be freely transferred by the Party owning the interest without the necessity of any consent by the other Party. The transferring Party shall give the other Party prompt written notice of any transfer of fee title. Acceptance of a conveyance of fee simple title shall constitute an assumption by the transferee of all of the surviving rights and obligations of the transferor under this Agreement, subject to the limitations set forth in this Agreement. Except by transfer of a Party's ownership of parcel to a new owner, a Party may not transfer or assign its obligations under this Agreement to any other party, and any attempt at such transfer or assignment shall be void.

15. **Notices.**

(a) **Addresses for Notices.** All notices and other communications under this Agreement by either Party to the other shall be in writing and shall be sufficiently given or delivered if personally delivered or dispatched by registered or certified mail, postage prepaid, return receipt requested or reputable overnight courier service and addressed as follows:

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

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Executive Director Maria Ayerdi-Kaplan
Reference: Block 5 Tower
Telefacsimile: (415) 597-4615
Telephone: (415) 597-4620

With a copy to:

Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attn: Andrew W. Schwartz
Reference: Block 5 Tower
Telefacsimile: (415) 552-5816
Telephone: (415) 552-7272

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

The John Buck Company
Attn: Kevin Hites
1 North Wacker Drive
Suite 2400
Chicago IL 60606
Telefacsimile: (312) 993-0857
Telephone: (312) 627-7674

and

Golub Real Estate Corp.
Attn: Lee Golub
625 N. Michigan Avenue
Suite 2000
Chicago, IL 60611
Telefacsimile: (312) 440-0809
Telephone: (312) 440-8701

(b) Contents of Notice. Every notice given to a Party hereto, 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 thereto;

(iii) if approval is being requested, shall be clearly marked "Request for Approval under the Block 5 Easement Agreement and Declaration of Covenants"; 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 or telefacsimile number may be changed at any time by giving written notice of such change in the manner provided above at least ten (10) days 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 on the date the notice is actually delivered to the office of the person to whom it is addressed or, if mailed or sent by overnight courier, on the delivery date or attempted delivery date shown on the return receipt. A Party may not give official or binding notice by telefacsimile. The effective time of a notice shall not be affected by the receipt, before receipt of the original, of a telefacsimile copy of the notice.

16. Estoppel Certificates. Each Party, upon written request of any other Party, shall, within 30 days following such request, issue to such other Party or to any prospective Mortgagee or transferee of such Party's interest in any Easement Parcel, or (with respect to Tower Owner) any lender secured by a pledge of a direct or indirect interest in Tower Owner, 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, Tower Owner has completed its obligations under Sections 2(a), 2(c), 3(a), and 4 of this Agreement, 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.

17. Term of this Agreement. This Agreement shall become effective upon the recordation of this Agreement in the Official Records of the City and County of San Francisco (the "**Effective Date**") and shall be perpetual, unless earlier terminated by written agreement of the Parties, subject to compliance with the Project Approvals.

18. Running with the Land. Each and every easement, covenant, right, obligation, condition and restriction set forth in this Agreement (each a "**Covenant**") burdening a parcel touches and concerns and shall affect, relate to, and run with the parcel so burdened, and shall apply to and bind the respective successor Owners of the burdened parcel or any portion thereof; and each and every Covenant benefitting a parcel touches and concerns and shall affect, relate to, and run with the parcel so benefitted, and shall apply to, accrue to benefit of, and be enforced by the respective successor Owners of the benefitted parcel or any portion thereof. Each and every Covenant is a covenant running with the land pursuant to applicable law, including, without limitation, Section 1468 of the Civil Code of the State of California. The Tower Owner's rights and obligations under this Agreement shall run with the Tower Parcel. The TJPA's rights and obligations under this Agreement pertaining to the Natoma Street Parcel (including the Basement Easement Area) and the Train Box Performance Requirements shall run with the Natoma Street Parcel and the Train Box Parcel. The TJPA's rights and obligations pertaining to the Open Space Parcels shall run with the Open Space Parcels. The provisions of this Section 18 are intended to be subject to the limitations of liability and other provisions of this Agreement.

19. Temporary Tieback Easement.

(a) In connection with the construction of the Block 5 Tower, Tower Owner may wish to utilize temporary tiebacks to support the temporary basement shoring during excavation. The tiebacks, if utilized, would run from the temporary shoring wall below the surface at a downward angle to be determined by Tower Owner's contractors, for approximately 80 feet. The tiebacks on the north and east sides of the Block 5 Tower would extend under the Natoma Street Parcel, Parcel N2, and Parcel M1 (see Exhibit M for illustrative purposes only). The TJPA agrees to grant to Tower Owner a temporary, subsurface easement for the installation and use of portions of the Natoma Street Parcel, Parcel N2, and Parcel M1, for tiebacks ("**Tieback Easement**"), subject to the following:

(i) As a condition of granting the Tieback Easement, the TJPA shall have approved, in its reasonable discretion, the number, design, and specific location of the tiebacks, and shall have determined that the tiebacks will not diminish the safety, functionality, or performance, or increase the cost of, the Train Box Extension, or the use of the Open Space Parcels for public open space. Prior to the TJPA's determination, Tower Owner shall provide to the TJPA engineering design drawings and calculations for the tiebacks that will allow the TJPA's engineers to make the required determination.

(ii) The Tieback Easement shall commence upon the TJPA's written notice of approval under Section 19(a)(i), and shall terminate within 30 days of (A) completion of the tower basement or (B) the TJPA's issuance of a Construction Notice, whichever is earlier. In no event will the TJPA approve the Tieback Easement after the issuance of a Construction Notice.

(iii) Prior to termination of the Tieback Easement, the Tower Owner, at its sole cost and expense, shall (A) de-tension all of the installed tiebacks, (B) for any tieback cable that crosses the TTC Shoring Wall, cut and remove that portion of the cable between the Block 5 Tower and the TTC Shoring Wall, or the first 20 feet of cable, whichever is greater, and (C) provide to the TJPA evidence of compliance with the foregoing, to the TJPA's satisfaction. The Tower Owner may leave any remaining tieback cables in place following termination of the Tieback Easement, provided the TJPA, in its reasonable discretion, has determined that doing so will not increase the costs of constructing the Train Box Extension, or Tower Owner has agreed to compensate the TJPA for any such increased costs.

(iv) Tower Owner shall bear sole responsibility for all matters relating to the tiebacks, including, without limitation, the construction of the Block 5 Tower, ensuring the functionality of the tiebacks for their intended purpose, providing adequate support for the basement shoring in the event the Tieback Easement is terminated prior to completion of construction of the basement, obtaining easements from any other property owners necessary to implement the proposed tiebacks, and obtaining any required governmental approvals for the tiebacks. The areas in which the tiebacks will be located shall Tieback Easement shall be included as an Easement Parcel, and the term of the Tieback Easement shall be an Applicable Easement Term, for purposes of this Agreement, and the provisions applicable generally to the Easement Parcels,

including without limitation the indemnification provisions of Section 5, shall apply to the Tieback Easement.

20. **General Provisions.**

(a) **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.

(b) **Non-Waiver.** No waiver made by either Party with respect to the performance, or manner or time of performance, or any obligation of the other Party or any condition to its own obligation under this Agreement will be considered a waiver with respect to the particular obligation of the other Party or condition to its own obligation beyond those expressly waived to the extent of such waiver, or a waiver in any respect in regard to any other rights of the Party making the waiver or any other obligations of the other Party.

(c) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. The TJPA and Tower Owner 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 Tower Owner 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.

(d) **Attorneys' Fees.** In the event any litigation arises under this Agreement, the prevailing party in such litigation shall be entitled to recover its reasonable attorneys' fees and costs of the proceedings. 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 intended to be several from the other provisions of this Agreement and to survive and not 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.

(e) **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 Easement Parcels to 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 herein granted, whether or not such use is consistent with the provisions of this Agreement. The use of the Open Space Parcels or Natoma Street Parcels by members of the Public is by permission of the TJPA and shall not give rise to a prescriptive easement.

(f) **No Third Party Beneficiaries or Duties.** The City is an intended third party beneficiary of the TJPA's rights under this Agreement, provided that no approval of the City shall be required to amend this Agreement. Except as provided above with respect to the City and except as provided in Section 9, no other Person (including any member of the Public) shall be a third party beneficiary or have any enforcement or other rights, express or implied, under this Agreement. Nothing in this Agreement shall be deemed or construed to create any duty to any third party or to describe any standard of care owed to any third party.

(g) **Amendments.** This Agreement may be amended, modified, supplemented or revoked only by the written agreement of all Parties hereto, subject to compliance with Project Approvals, which amendment, modification, supplement or revocation shall be effective and binding upon the whole of the Tower Parcel and the Easement Parcels upon the recordation of same in the Official Records of the City and County of San Francisco, except as may be otherwise provided in this Agreement. In the event of any amendment modifying the area subject to an easement, or in the event an easement otherwise terminates in whole or in part, the parties shall cooperate in promptly preparing, executing and recording a quitclaim deed in the form of Exhibit E for the lands from which the easement has been removed or in which the easement has been terminated.

(h) **Entire Agreement.** This Agreement (including the Exhibits) contains 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.

(i) **Interpretation of Agreement.**

(i) **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.

(ii) **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.

(iii) **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.

(iv) 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.

(v) 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.

(vi) 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.

(j) Conflicts of Interest. Through its execution of this Agreement, Tower Owner acknowledges that it is familiar with the provisions of Section 15.103 of the San Francisco Charter, Article III, Chapter 2 of the City’s Campaign and Governmental Conduct Code, and Section 87100 et seq. and Section 1090 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which would constitute a violation of said provision, and agrees that if Tower Owner becomes aware of any such fact during the term of this Agreement, Tower Owner shall promptly notify the TJPA.

(k) Notification of Limitations on Contributions. Through its execution of this Agreement, Tower Owner acknowledges that it is familiar with Section 1.126 of the San Francisco Campaign and Governmental Conduct 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 commencement of negotiations for such contract until either (i) the termination of negotiations for such contract, or (ii) three (3) months has elapsed from the date the contract is approved by the City or the TJPA. San Francisco Ethics Commission Regulation 1.126-1 provides that negotiations are commenced when a prospective contractor first communicates with a City elective officer or a member of the TJPA Board about the possibility of obtaining a specific contract. This communication 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 or the TJPA (or both) and the

contractor. Negotiations are terminated when City or the TJPA or the prospective contractor end the negotiation process before a final decision is made to award the contract.

(l) **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 Tower Owner's business, or joint venturer or member in any joint enterprise with Tower Owner.

(m) **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.

(n) **Authority to Bind.** The TJPA and Tower Owner each represent and warrant to the other that the individual signing this Agreement has the full right, power, and authority to sign on behalf of and bind its entity under this Agreement.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date first written above.

TRANSBAY JOINT POWERS AUTHORITY

By: _____
Maria Ayerdi-Kaplan
Executive Director

TJPA Board Resolution No. _____,
Adopted on _____, 2012

APPROVED AS TO FORM:
Shute, Mihaly & Weinberger LLP

William J. White
Counsel for TJPA

TOWER OWNER:

MA WEST, LLC, a Delaware limited liability corporation, a joint venture between affiliates of Golub Real Estate Corp., an Illinois corporation, and The John Buck Company, a Delaware limited liability company

By: _____
Managing Member

By: _____

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 _____, 2015, 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

LEGAL DESCRIPTION OF TOWER PARCEL

EXHIBIT A

TOWER PARCEL LEGAL DESCRIPTION

"TRANSBAY BLOCK 5"

PARCEL A

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.

PARCEL B

ASSESSORS PARCEL NUMBER: LOT 012 BLOCK 3718

EXHIBIT B

LEGAL DESCRIPTION OF NATOMA STREET PARCEL

[to be provided]

NATOMA STREET PARCEL

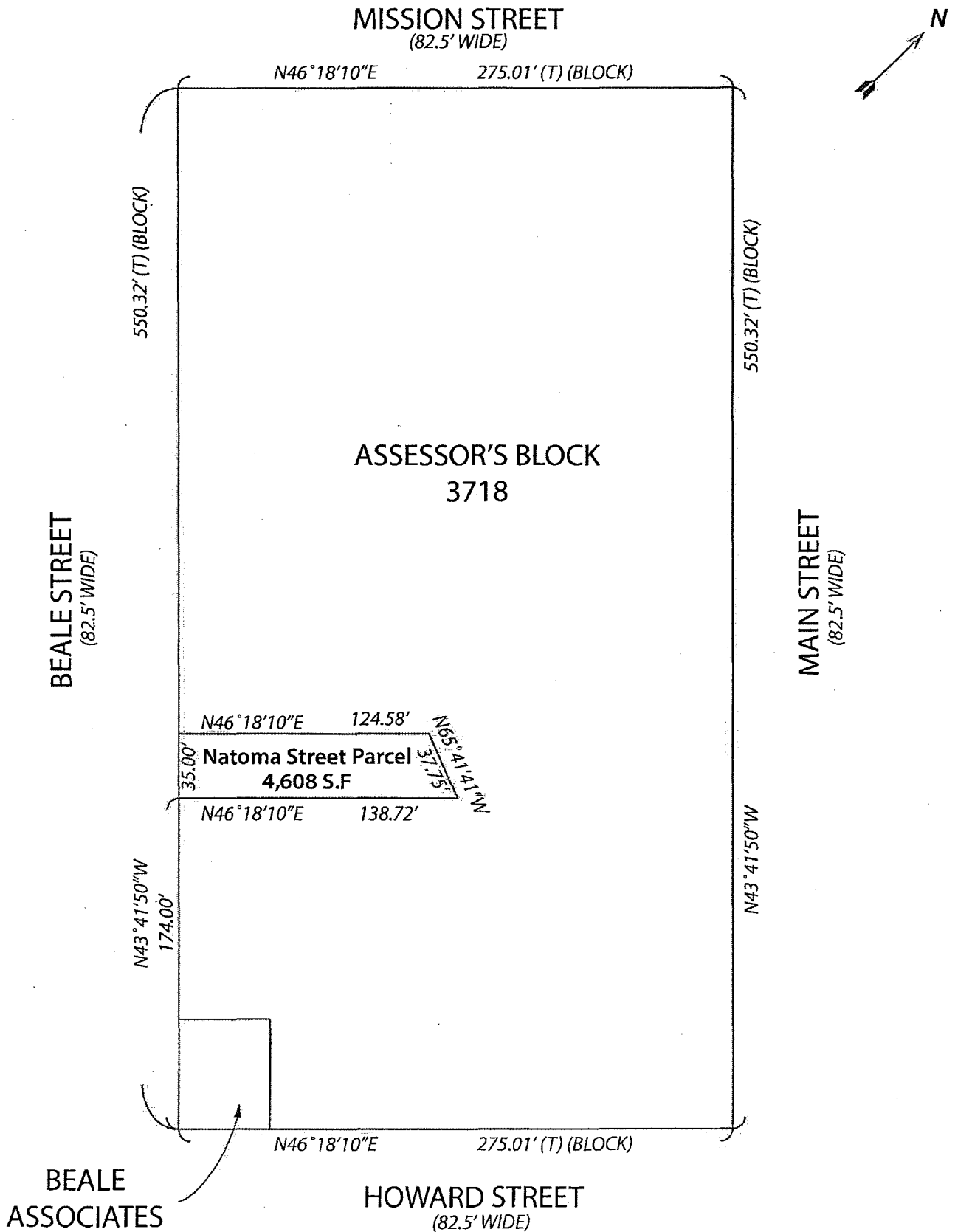


EXHIBIT C

LEGAL DESCRIPTION OF OPEN SPACE PARCELS

[to be provided]

OPEN SPACE PARCELS

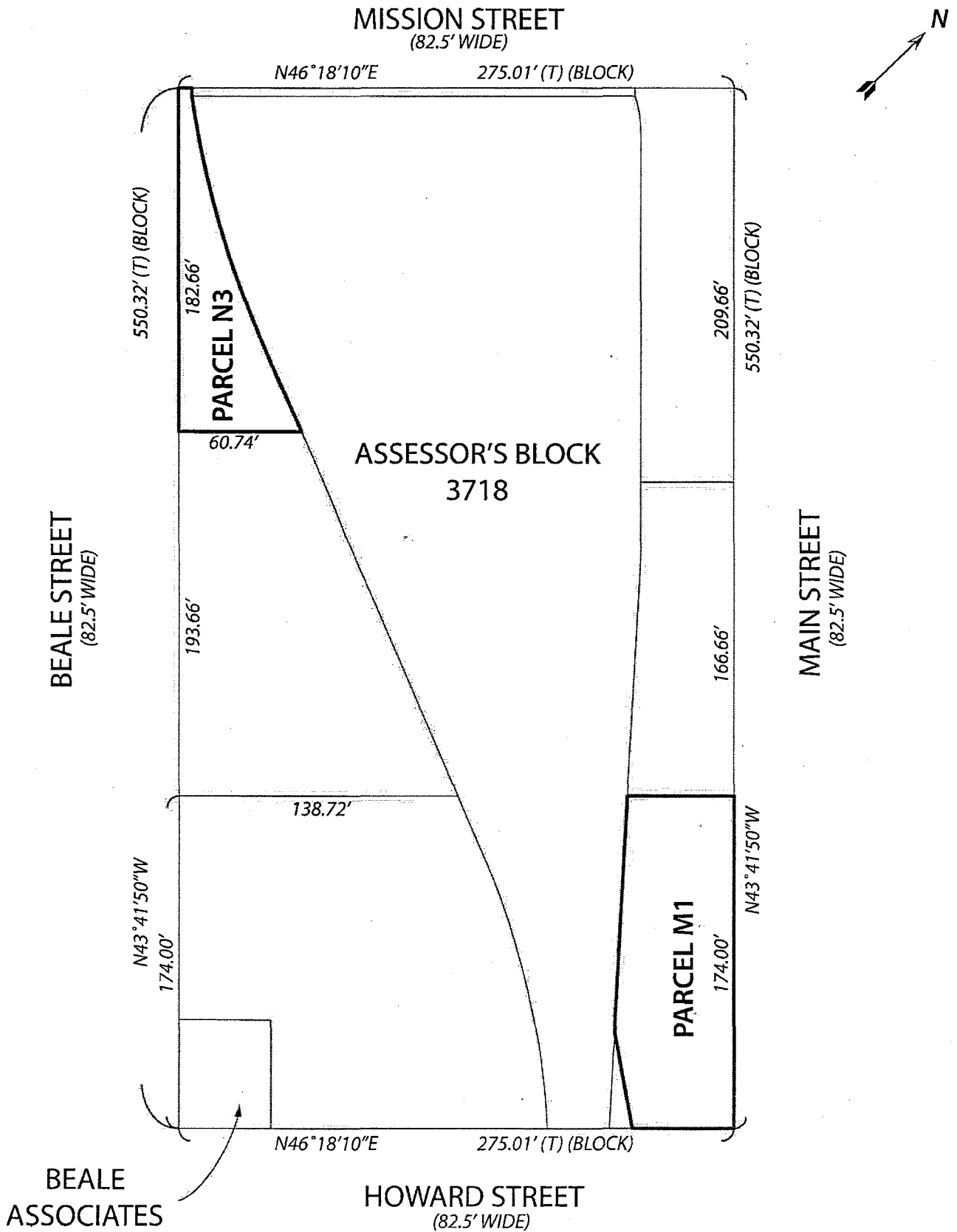


EXHIBIT D

LEGAL DESCRIPTION OF TRAIN BOX PARCEL

[to be provided]

TRAIN BOX PARCELS

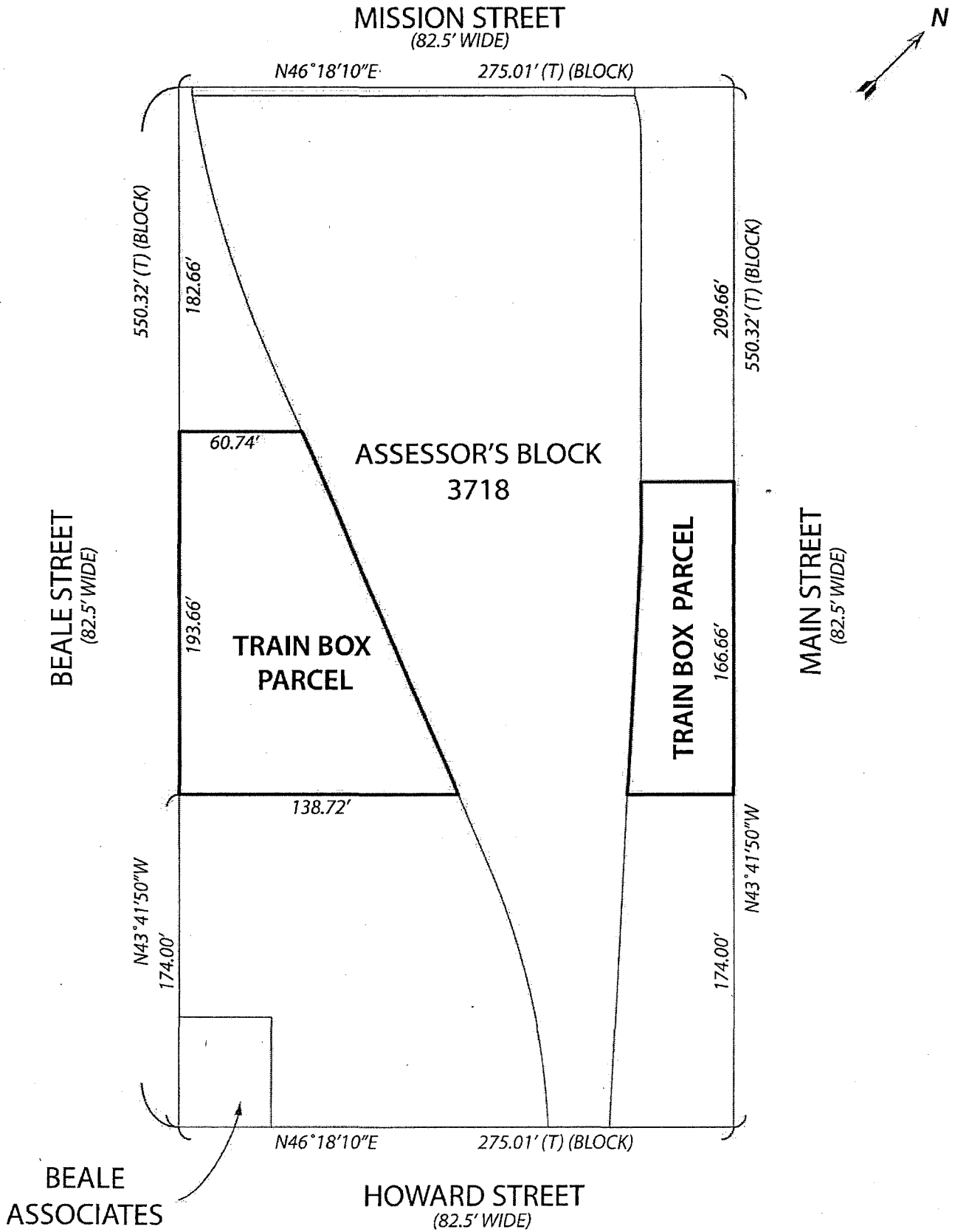


EXHIBIT E

FORM OF REMOVED LANDS QUITCLAIM DEED

[to be provided]

EXHIBIT E

FORM OF REMOVED LANDS QUITCLAIM DEED

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Transbay Joint Powers Authority
c/o William J. White
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102

Document Transfer Tax \$0
(Rev & Tax Code § 11922; SF Bus. & Tax. Code 1105)

(Space above this line reserved for Recorder's use only)

EASEMENT QUITCLAIM DEED

(*INSERT PARCEL INFORMATION*)

RECITALS

A. On September ____, 2015, the TRANSBAY JOINT POWERS AUTHORITY, a joint powers agency created under California Government Code Sections 6500 *et seq.* ("TJPA"), and MA WEST LLC ("MA West"), a Delaware limited liability company _____, entered into the Block 5 Easement Agreement and Declaration of Restrictions, recorded on _____ as _____ ("Agreement").

B. MA West purchased the property known as 250 Howard Street ("Tower Parcel") pursuant to that Owner Participation /Disposition and Development Agreement recorded on _____ as _____.

The Agreement, *inter alia*, granted to MA West and any subsequent owner of the Tower Parcel ("Tower Owner"), for the benefit of the Tower Parcel, certain appurtenant easements in and over property owned by the TJPA, including [*specify easement(s) to be quitclaimed*].

C. On _____, pursuant to Section __ of the Agreement, ["the parties executed an amendment to the Agreement to remove from the [*specify easement*]" or "the [*specify easement*] was terminated in"] that property more particularly described in Attachment 1 hereto ("Quitclaim Property").

THEREFORE, FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, TOWER OWNER hereby releases, remises and quitclaims to the TIPA all of its rights and interest in and to the Quitclaim Property under the [*insert easement*].

TOWER OWNER:

By: _____

State of California)
County of San Francisco)

On _____ before me, _____, personally appeared

_____ personally known to me (or 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 on behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____ (Seal)

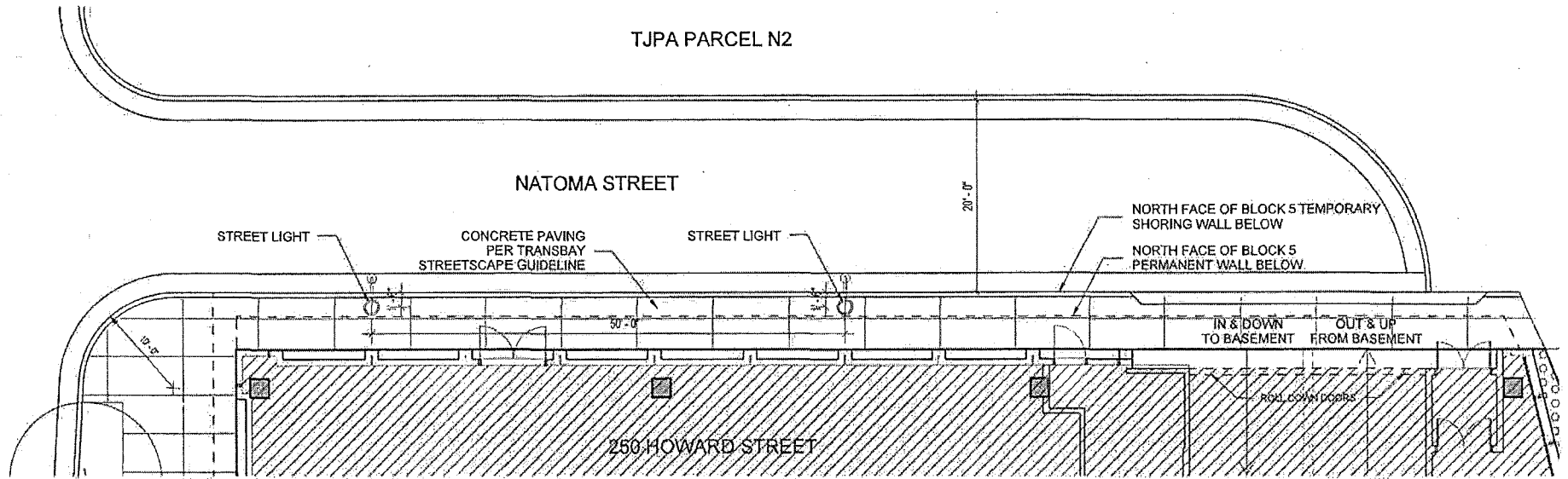
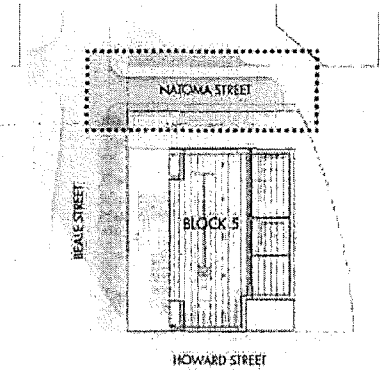
Quitclaim Deed – Attachment 1
[Insert Legal Description of Quitclaim Property]

683177.1

EXHIBIT F
NATOMA STREET IMPROVEMENTS

IMPROVEMENT OF STREETScape

- NATOMA STREET



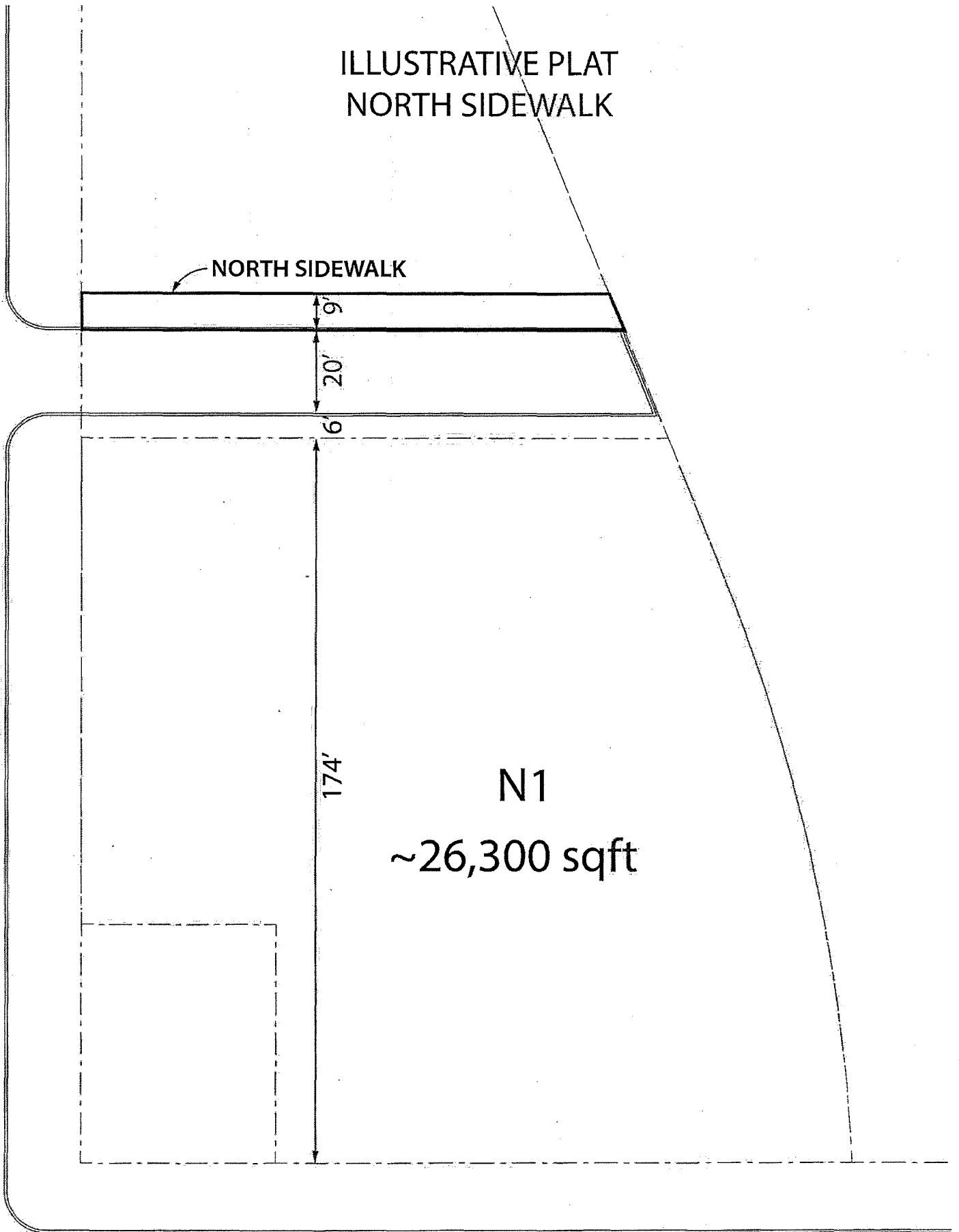
GROUND FLOOR PLAN
SCALE: 1/16"=1'-0"

EXHIBIT G

ILLUSTRATIVE PLAT OF NORTH SIDEWALK

ILLUSTRATIVE PLAT
NORTH SIDEWALK

Beale St

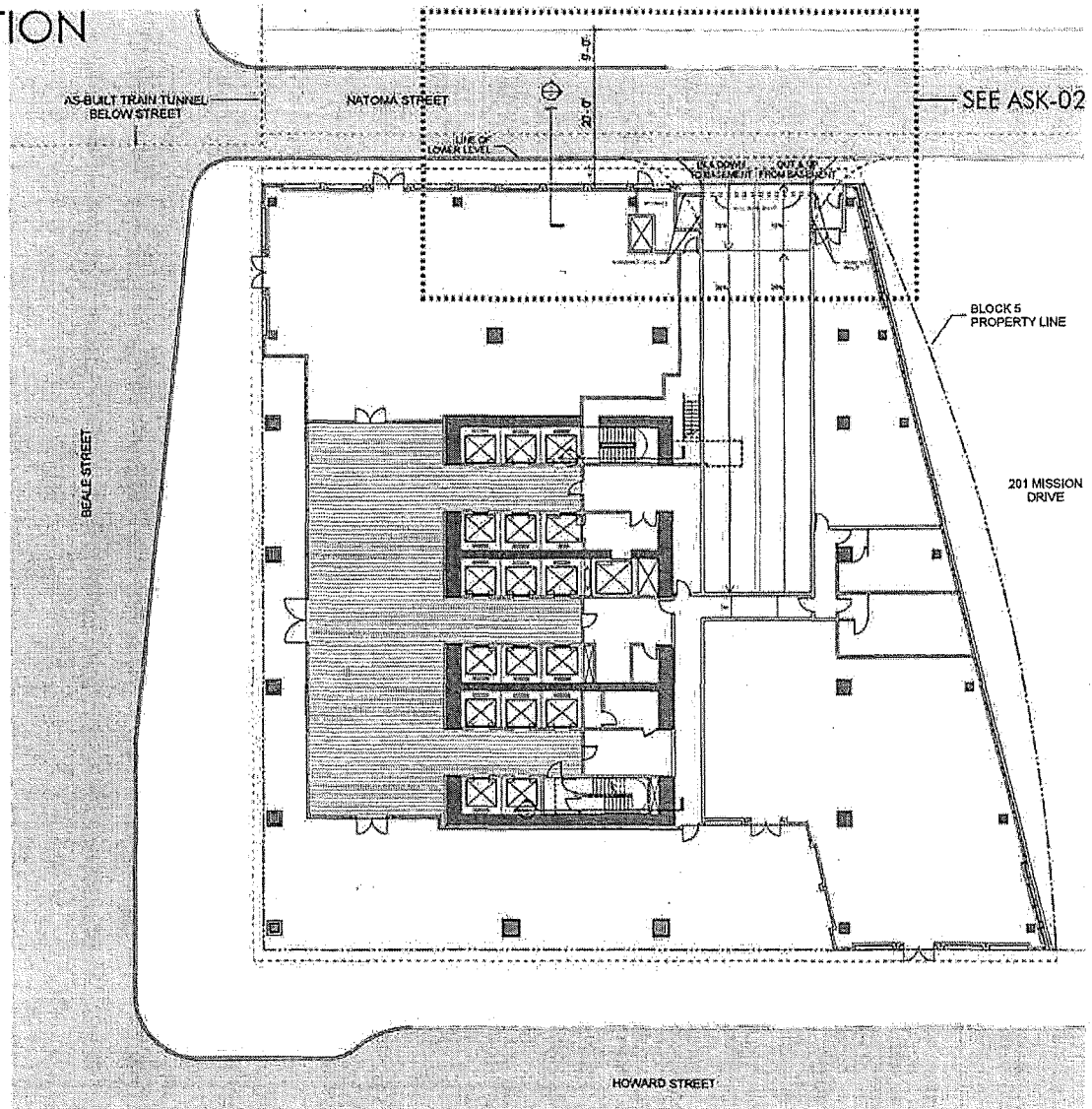


Howard St

EXHIBIT H

DIAGRAM OF ALTERNATIVE ACCESS OPTIONS

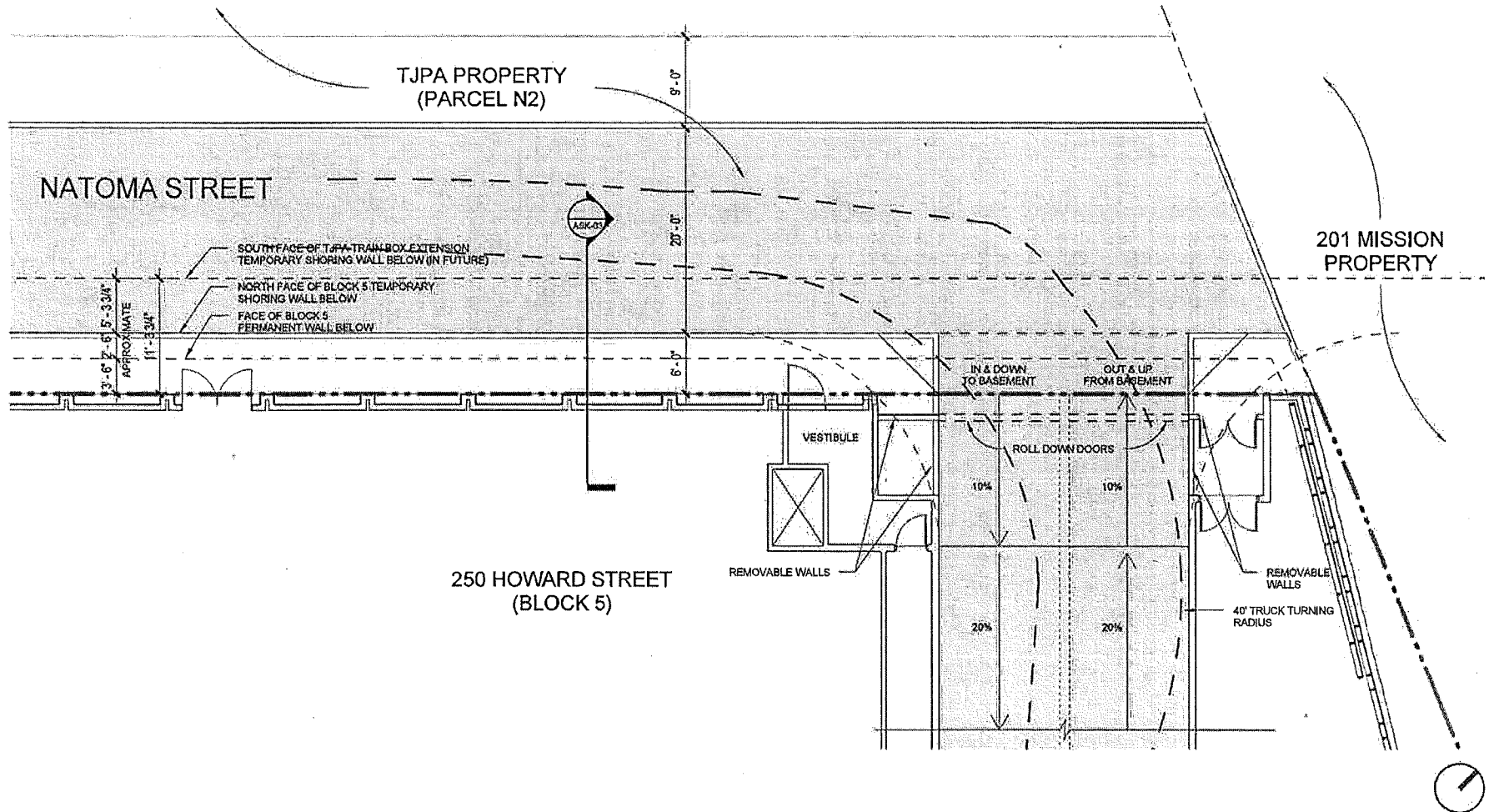
NATOMA STREET OPTION GROUND FLOOR PLAN



ASK-01
APRIL 23, 2015

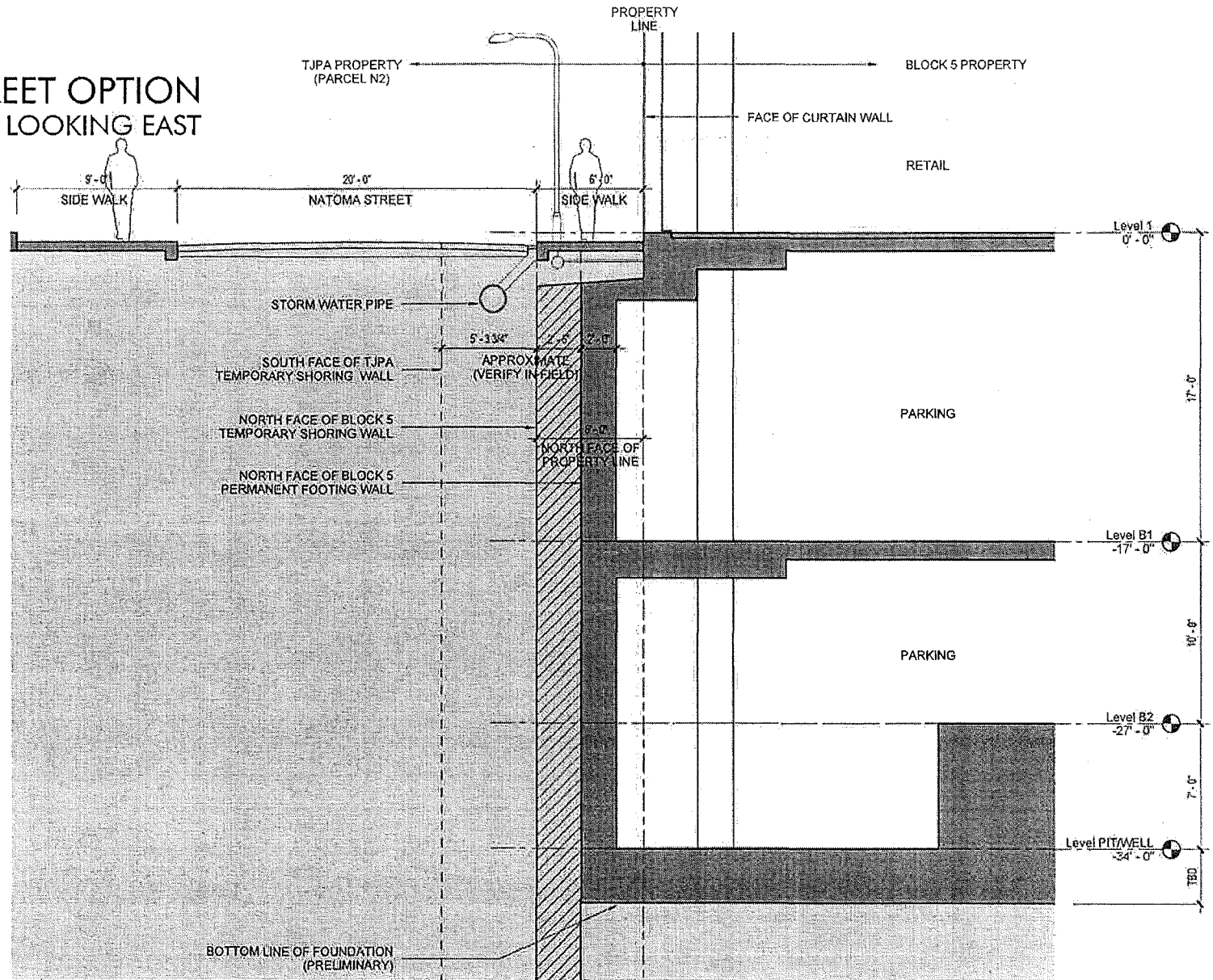
NATOMA STREET OPTION

ENLARGED PLAN - INITIALLY BUILT CONDITION



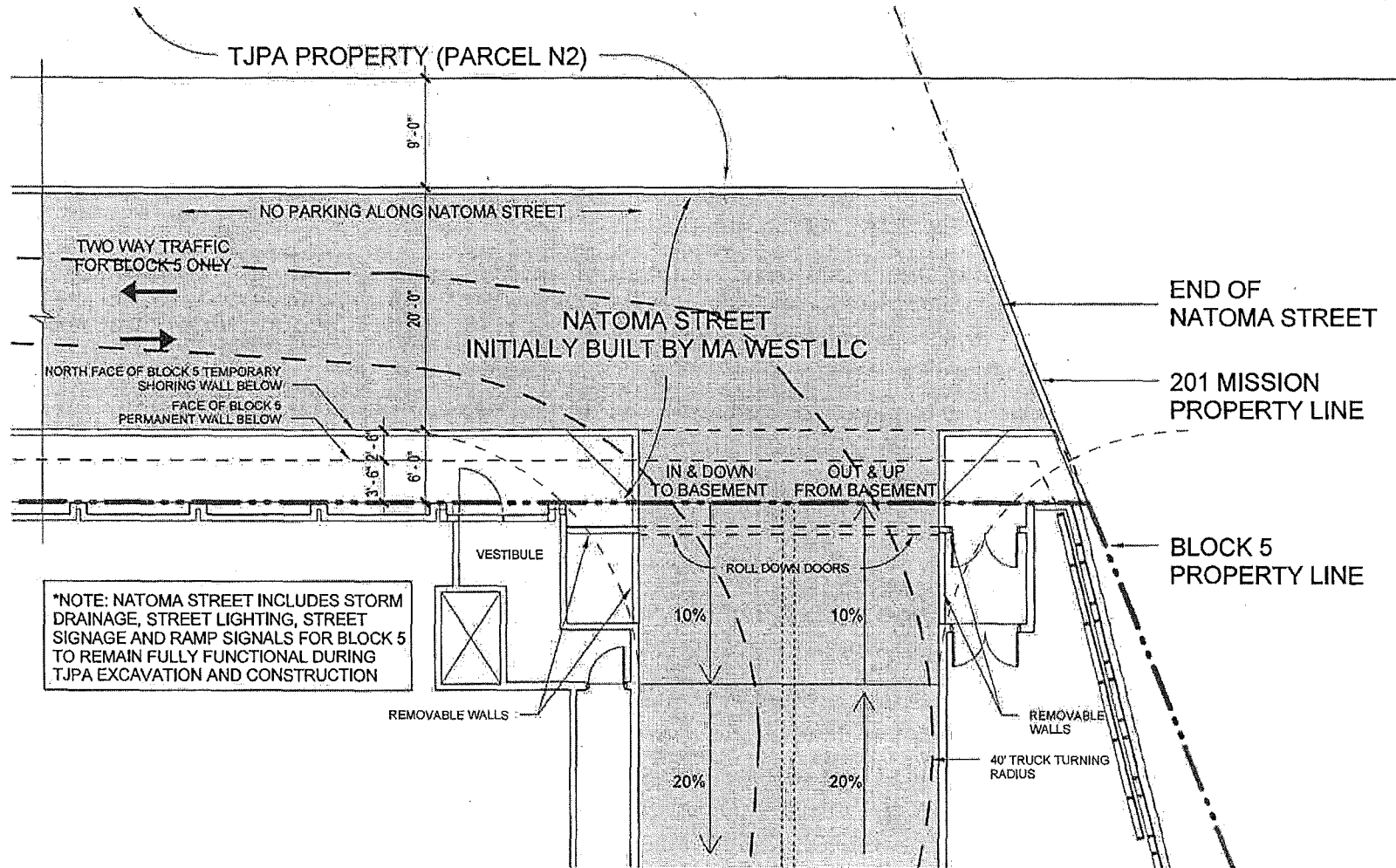
ASK-02
 APRIL 23, 2015

NATOMA STREET OPTION STREET SECTION LOOKING EAST



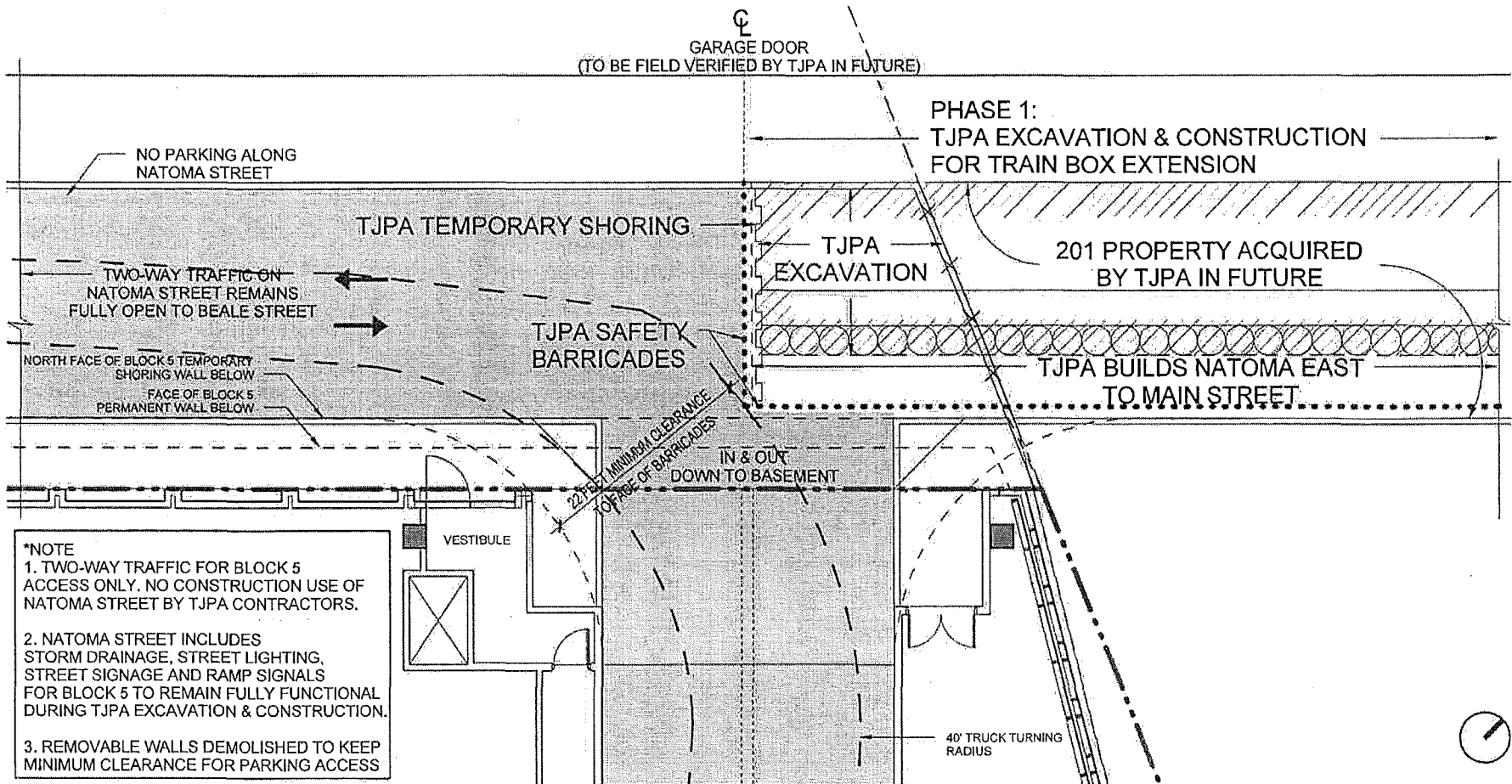
PHASING PLAN

A. BUILT IN 2018

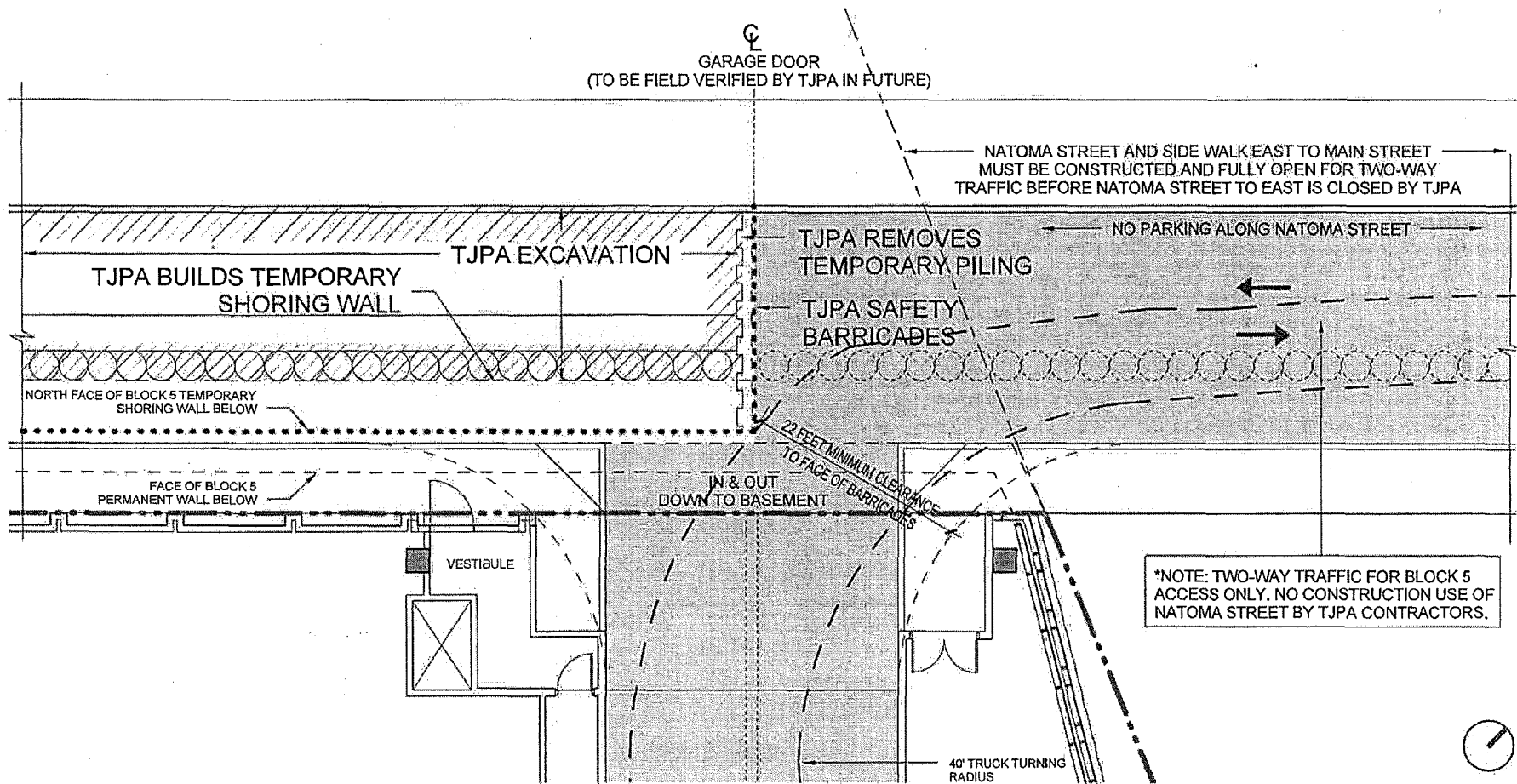


PHASING PLAN

B. IN FUTURE WHEN TJPA CONSTRUCTS TRAIN BOX EXTENSION & NATOMA STREET EAST TO MAIN STREET



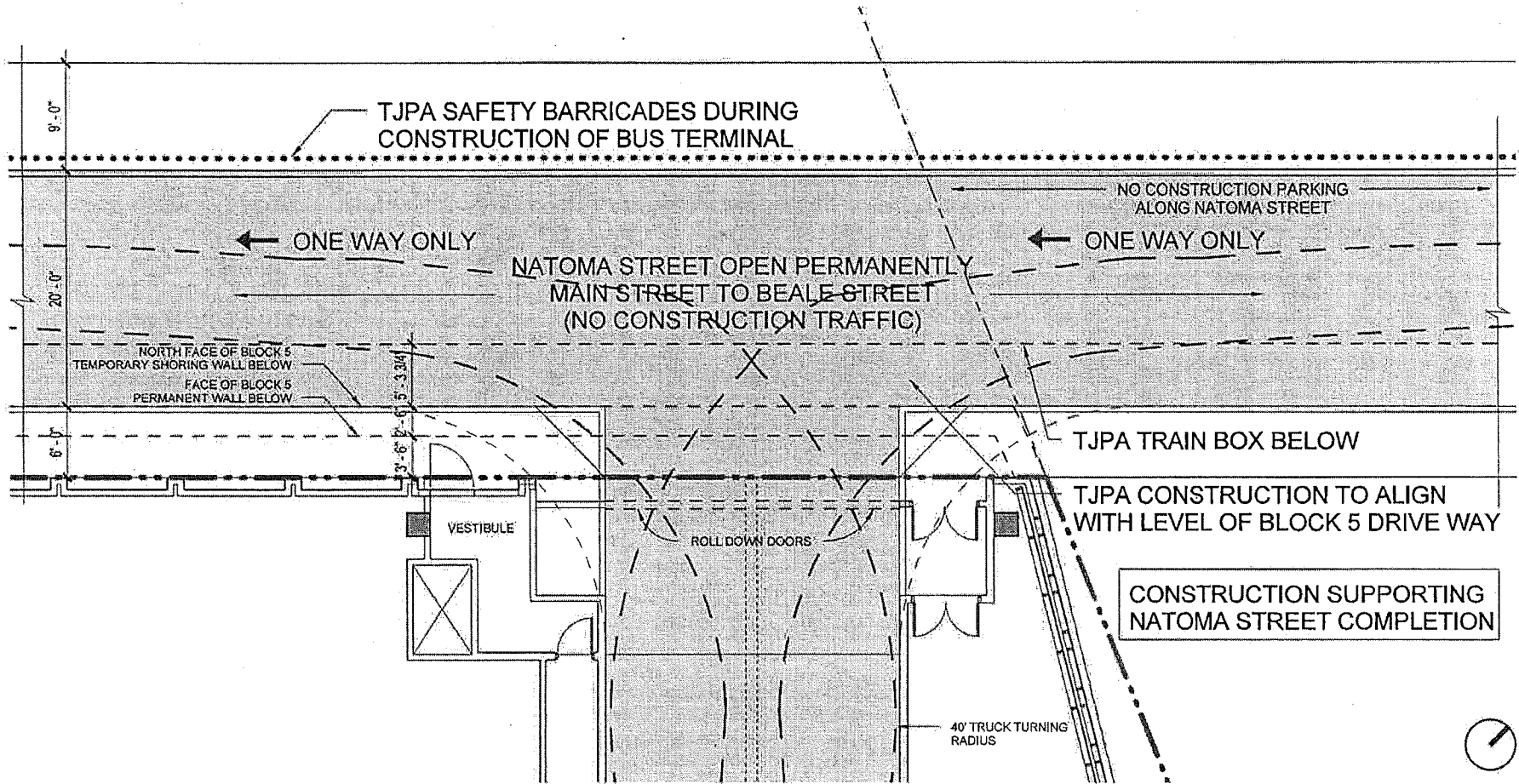
PHASING PLAN
C. CLOSE NATOMA STREET.



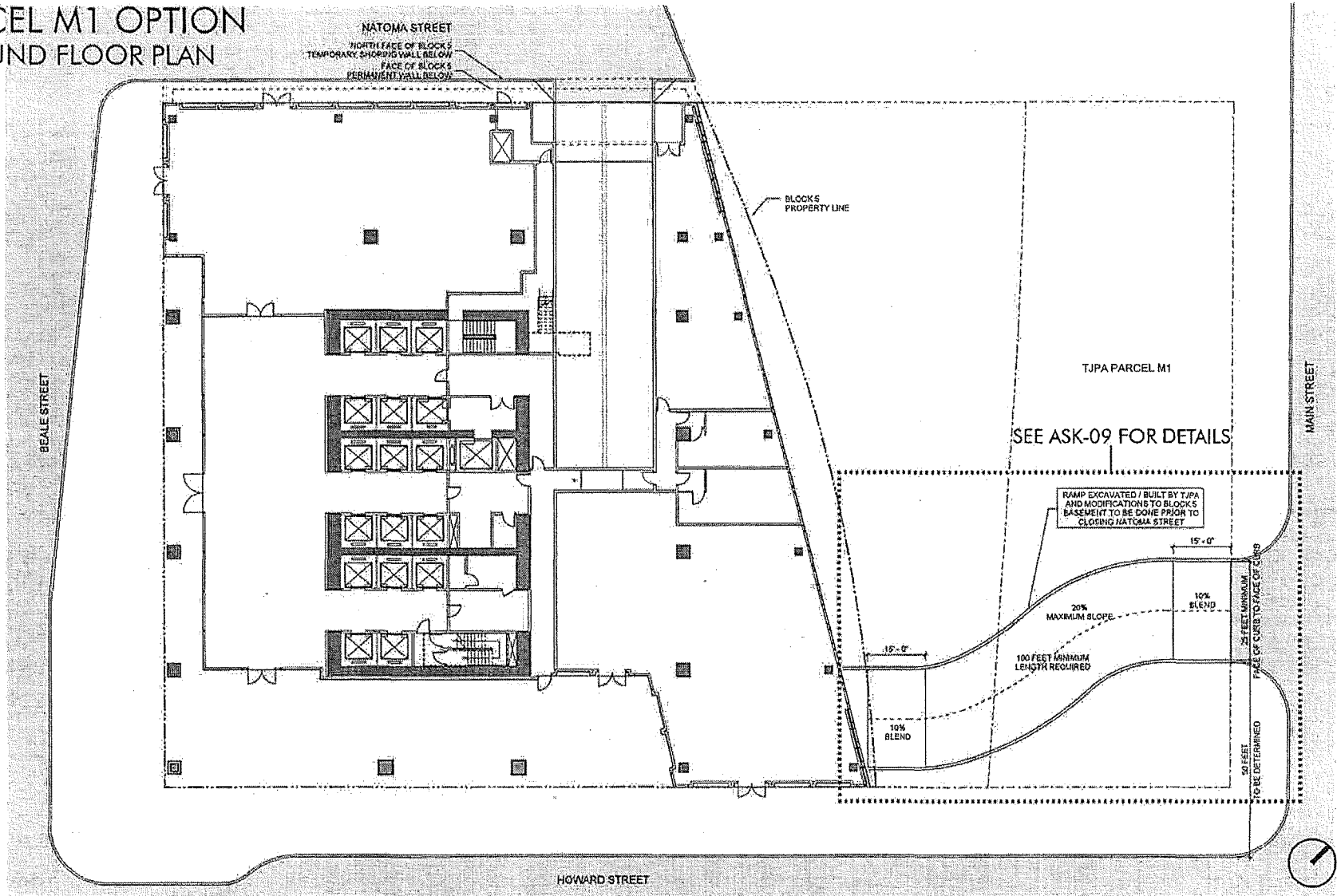
ASK-06
APRIL 23, 2015

PHASING PLAN

D. FINAL FULLY CONSTRUCTED IN FUTURE BY TJPA



PARCEL M1 OPTION GROUND FLOOR PLAN



SEE ASK-09 FOR DETAILS

RAMP EXCAVATED / BUILT BY TJPA AND MODIFICATIONS TO BLOCK'S BASEMENT TO BE DONE PRIOR TO CLOSING NATOMA STREET

20% MAXIMUM SLOPE

100 FEET MINIMUM LENGTH REQUIRED

10% BLEND

15'-0"

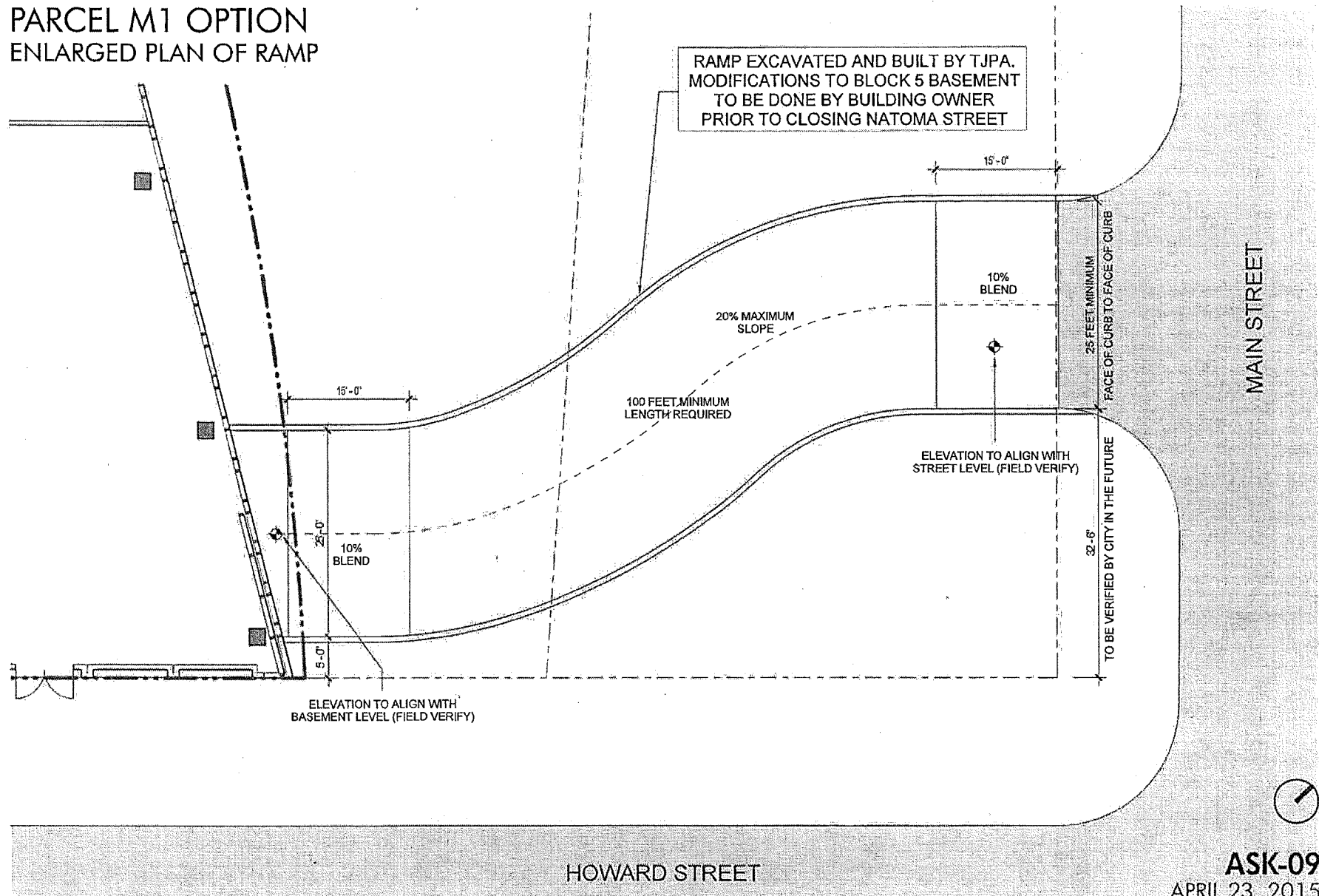
10% BLEND

25 FEET MINIMUM FACE OF CURB TO FACE OF CURB

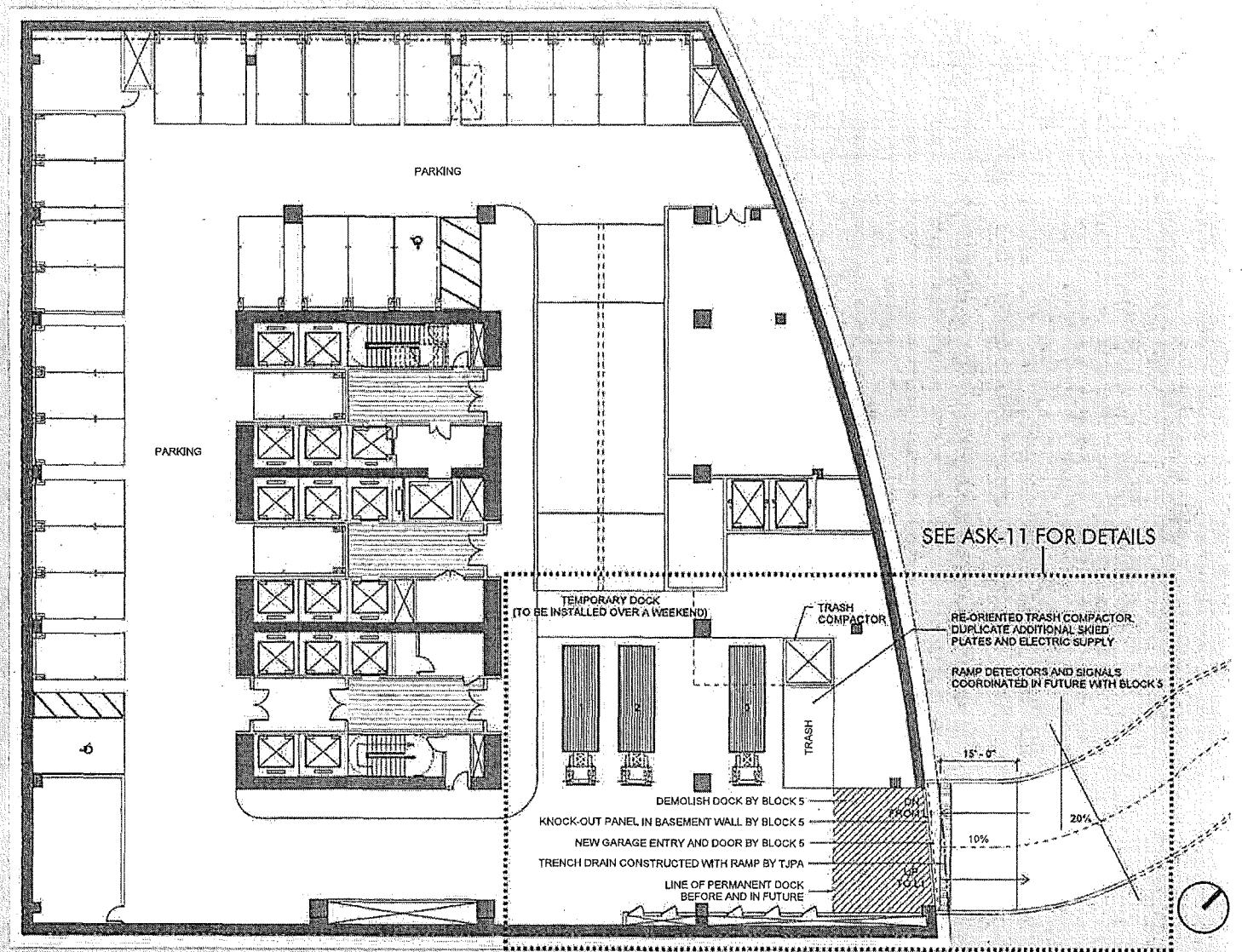
20 FEET TO BE DETERMINED

ASK-08
APRIL 23, 2015

PARCEL M1 OPTION ENLARGED PLAN OF RAMP



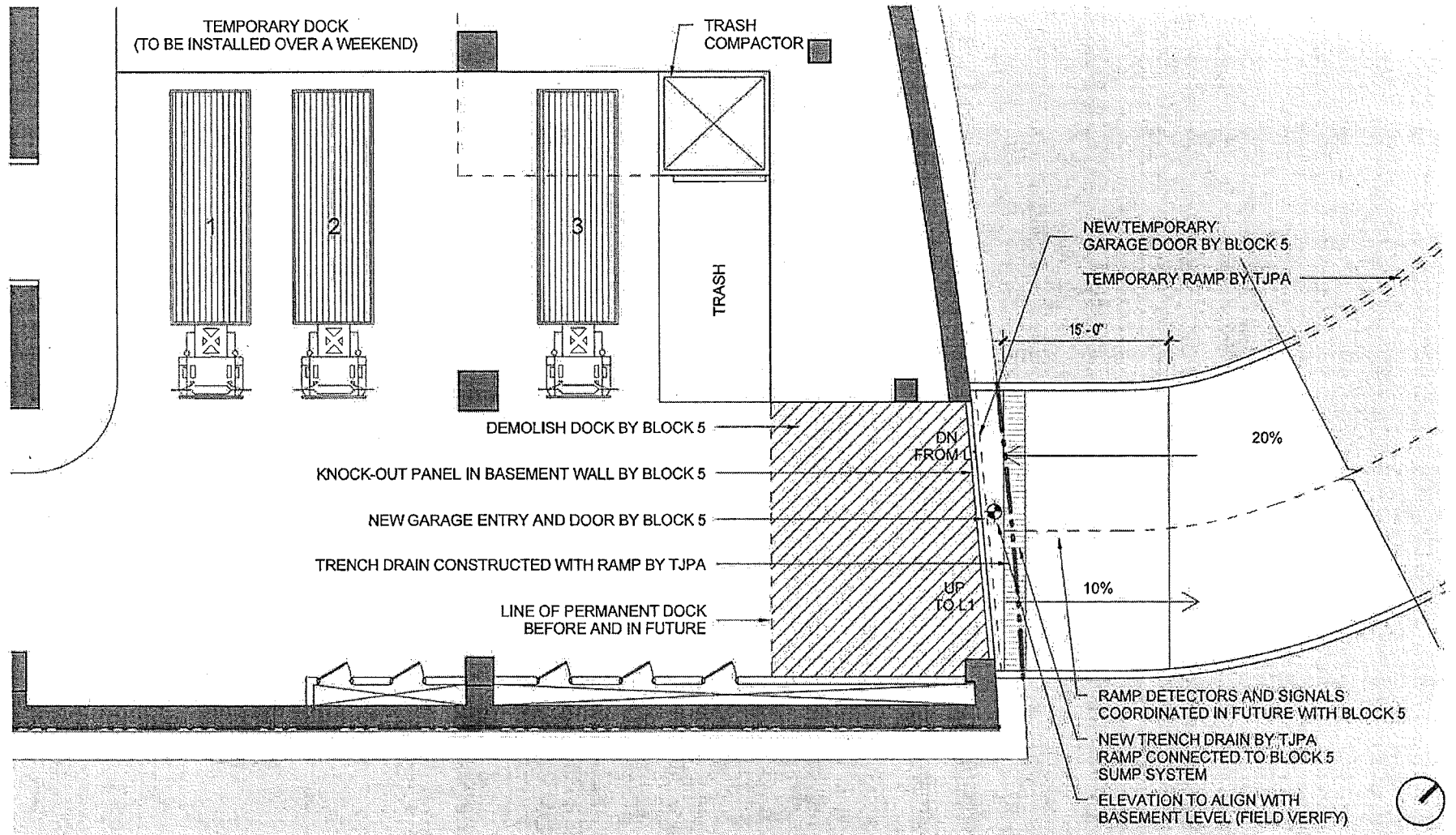
PARCEL M1 OPTION
B1 FLOOR PLAN



ASK-10
APRIL 23, 2015

PARCEL M1 OPTION

MODIFIED DESIGN SCHEME WITH ACCESS FROM MAIN STREET



ASK-11
APRIL 23, 2015

PARCEL M1 OPTION

PERMANENT SCHEME WITH ACCESS FROM NATOMA STREET

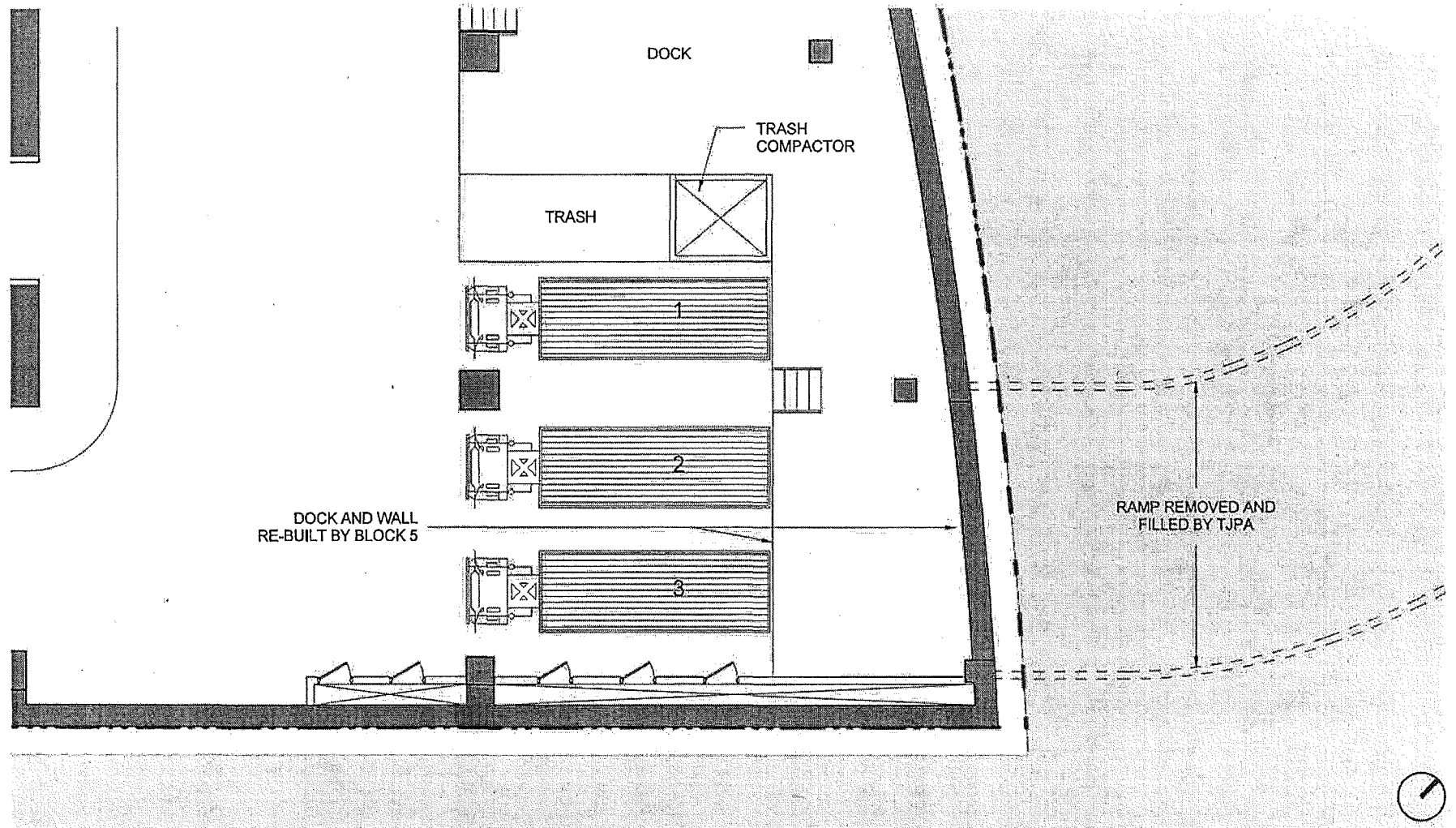




EXHIBIT I

TRAIN BOX PERFORMANCE REQUIREMENTS



Transbay Joint Powers Authority
Block 5 Tower
Structure-Soil-Structure Interaction
with the Transbay Transit Center

Rev A | August 22, 2013



This report takes into account the particular instructions and requirements of our client.

It is not intended for and should not be relied upon by any third party and no responsibility is undertaken to any third party.

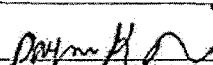


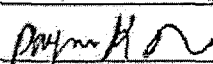
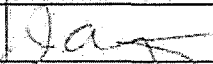

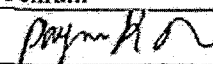
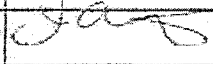

Job number 123456

Arup North America Ltd
560 Mission Street
Suite 700
San Francisco 94105
United States of America
www.arup.com

ARUP

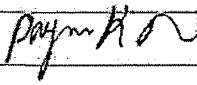
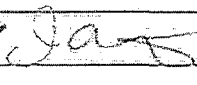
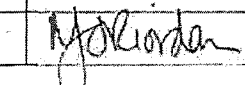
Document Verification

ARUP

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				123456	
Document title		Structure-Soil-Structure Interaction with the Transbay Transit Center		File reference	
Document ref					
Revision	Date	Filename	Block5_Report.docx		
Draft 1	May 5, 2013	Description	First draft		
			Prepared by	Checked by	Approved by
		Name	PKT/LMB	Ibrahim Almufti	Nick O'Riordan
		Signature			
Final	May 20, 2013	Filename	Final Issue - Block 5 Interaction with TTC.docx		
		Description	Issue to TJPA		
			Prepared by	Checked by	Approved by
		Name	Payman Khalili	Ibrahim Almufti	Nick O'Riordan
		Signature			
Proposed Re-issue	Jul 19, 2013	Filename	Revised Final Issue - Block 5 Interaction with TTC .docx		
		Description			
			Prepared by	Checked by	Approved by
		Name	Payman Khalili Tehrani	Ibrahim Almufti	Nick O'Riordan
		Signature			
Revised Final Issue	Jul 24, 2013	Filename	Revised Final Issue - Block 5 Interaction with TTC .docx		
		Description	Revised Final Issue		
			Prepared by	Checked by	Approved by
		Name	Payman Khalili Tehrani	Ibrahim Almufti	Nick O'Riordan
		Signature			



Document Verification

Job title		Block 5 Tower		Job number		123456	
Document title		Structure-Soil-Structure Interaction with the Transbay Transit Center		File reference			
Document ref							
Revision	Date	Filename	Revised Final Issue - Block 5 Interaction with TTC_08 22 2013.docx				
Rev A	Aug 22, 2013	Description					
			Prepared by	Checked by	Approved by		
		Name	PKT	IA	NO		
		Signature					
		Filename					
		Description					
			Prepared by	Checked by	Approved by		
		Name					
		Signature					
		Filename					
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		Filename					
		Description					
			Prepared by	Checked by	Approved by		
		Name					
		Signature					



Contents

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1 Site Location and Zoning Configuration	2
1.1 Soil Profile	4
2 Block 5 Tower and Foundation	4
2.1 Heavy Concrete Tower	4
2.2 Light Steel Tower	4
2.3 Pile Design	5
2.4 Basement and Shoring Wall Properties	5
3 TTC Structure and Foundation	6
4 Structure-Soil-Structure Interaction Analysis (SSSI)	6
4.1 Baseline Case: TTC Only	6
4.2 Block 5 Tower Cases	7
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Tables

Table 1	Soil Profile at Borehole TTB-20
---------	---------------------------------

Figures

Figure 1	Plan view of the Transbay Redevelopment Project Area
Figure 2	East-west cross section through Block 5 Tower and TTC
Figure 3	Baseline Case: No Tower Model
Figure 4	LS-DYNA model showing Block 5 tower and its basement located 5ft from the shoring wall of TTC
Figure 5	Lateral stresses in soil layer between basements with No tower case (left) and light steel tower case (right)

Appendices

Appendix A

Structure-Soil-Structure Interaction Analysis Results

Executive Summary

The Transbay Joint Powers Authority (TJPA) commissioned this study to determine whether additional site constraints should be included in the Request for Proposal (RFP) for the Block 5 parcel. The purpose of additional site constraints is to minimize the effects of seismic loading (considering GSL-2 earthquake intensity) of the Block 5 Tower and parking garage substructure construction upon the extension of the Transbay Transit Center (TTC) that will be constructed after Block 5. The shoring wall of the TTC will be installed as a continuation of the existing shoring wall flanking the extension to Natoma Street.

We studied two conceptual design options for a potential 550' tall Block 5 Tower following the developable program for the site: heavy reinforced concrete framing and light steel framing. A three level parking garage, approximately 28' deep, has been assumed. Shoring walls for the Block 5 basement were assumed to extend approximately 68' below ground surface.

The results of our study indicate that the northern shoring wall and basement of the Block 5 Tower may be constructed as close as 5' from the TTC shoring wall (i.e. 5' gap of soil) without negatively impacting the performance of the TTC in an earthquake. In most cases, the Block 5 Tower has a beneficial effect in reducing the earthquake demands on the TTC because the Tower piled mat foundation provides additional lateral support to the TTC. In some cases, the Block 5 tower induces higher demands on the TTC relative to the baseline case (no Block 5 Tower) but we believe that the design of the TTC trainbox can accommodate such demands (to be confirmed with the structural engineer of the TTC).

It follows that there are the following technical constraints which must be addressed in the RFP for a future Block 5 development:

1. The Block 5 Tower foundation shall comprise a piled mat, with piles of sufficient length to control settlement and an appropriate factor of safety on capacity.
2. No more than 20% of the net static building load shall be taken by the mat.
3. The location of the northern shoring wall for the parking garage substructure shall be no closer than 5' from the TTC shoring wall.
4. The piles of the Block 5 Tower foundation shall be no closer than the property setback line which is approximately 37' from the TTC shoring wall.
5. The average net pressure at the underside of the mat is limited to 2 ksf within approximately 50' from the northern shoring wall of the Block 5 basement. In calculating average net pressure, a hydrostatic water pressure profile shall be assumed below +8' NAVD88.
6. The bottom of the Block 5 Tower basement excavation shall be no lower than the bottom of the TTC basemat.

In addition, the developer is responsible for the following should they be awarded the contract:

1. The sufficiently progressed design of the Block 5 Tower and foundation shall be justified by a detailed Structure-Soil-Structure Interaction (SSSI) analysis and submitted to the TJPA for approval. The analysis must show that the performance objectives of the TTC are not compromised in a rare earthquake event.
2. The SSSI analysis may be used, with approval from TJPA, to justify any exceptions taken to the above RFP constraints.
3. The gravity and seismic performance criteria of the TTC in the temporary excavated condition shall not be compromised by the Block 5 Tower excavation. To satisfy the seismic requirements, a detailed SSSI analysis considering a 100 year return period earthquake should be considered.

In addition, our results suggest that a lighter tower may be the most effective in minimizing any negative impact on the TTC.

1 Site Location and Zoning Configuration

The Block 5 parcel is located adjacent to the TTC on the south side and at the east end of the trainbox extension. Figure 1 shows a plan view of the Transbay Redevelopment Project Area.

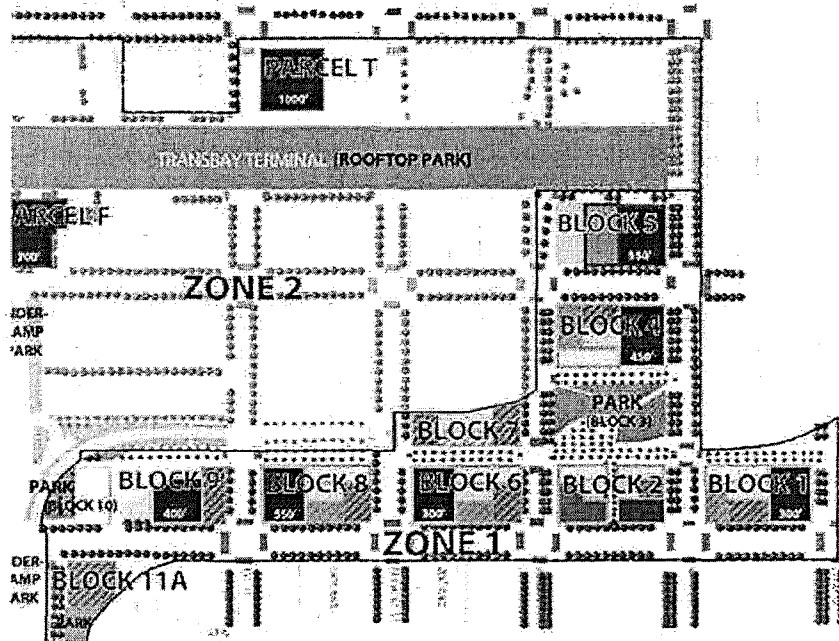


Figure 1 Plan view of the Transbay Redevelopment Project Area

The site is zoned for a 550' tall office tower which is likely to be located towards the southeast quadrant of the parcel to meet the requirements of the Transbay Re-Development Design Guidelines. We assumed that the Block 5 Tower footprint is restricted to 120' x 105', centered within the Tower Parcel such that the face of the Tower and closest pile are located approximately 50' from the TTC shoring wall. Note that while we assumed 50' for the analysis, we believe that the piles could be located as close as the property setback line without compromising the performance of the TTC. This is reflected in our technical constraints provided in the Executive Summary.

The basement footprint is approximately 187' x 115'. This encompasses the entire area of the Tower portion of the parcel in the east-west direction and extends from the southern Block 5 property line to 5' from the TTC shoring wall in the north-south direction. Figure 2 shows an indicative section through the Block 5 Tower and basement and the adjacent TTC. Note that we assumed the basement of the Block 5 Tower is three levels, with one level for taxi staging and two levels for parking.

We understand that the Successor Agency to the San Francisco Redevelopment Agency has recently modified some of the requirements in the Transbay Re-Development Design Guidelines to allow larger office floor footprints. This will likely not affect the results of this study but the exact geometry and tower massing should be incorporated into any future study.

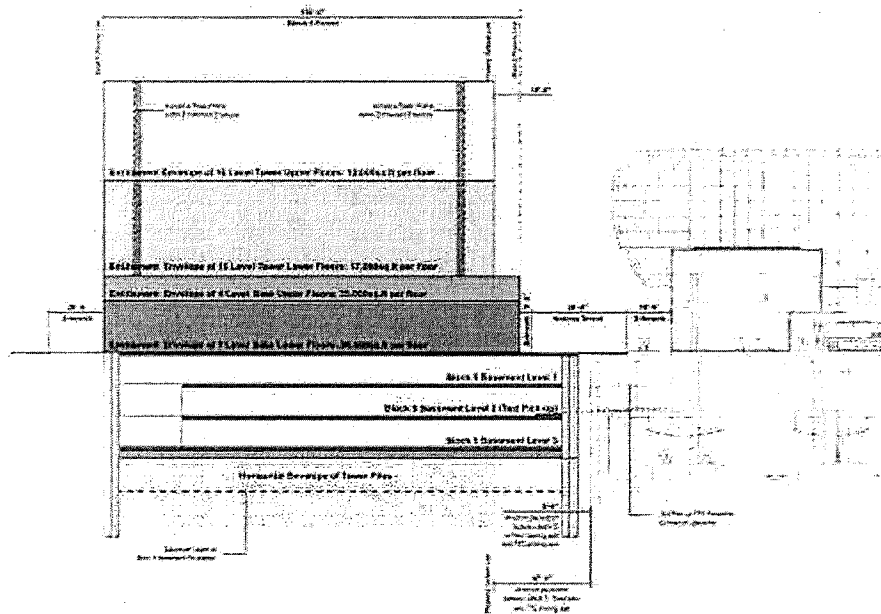


Figure 2 East-west cross section through Block 5 Tower and TTC

1.1 Soil Profile

For the purposes of the analysis, we used soil properties from the closest existing borehole for which we have data. Site subsurface conditions were evaluated based on borehole TTB-20 and soil parameters were determined from Base Case East of the excavation analysis for the Transbay Transit Center.

Table 1 shows the layer thicknesses of the soils identified in the borehole.

Table 1 Soil Profile at Borehole TTB-20

Layer	Depth at top of layer (ft)	Thickness (ft)
Fill above water line	0	13.0
Fill below water line	13.0	6.5
Bay Mud	19.5	24.5
Marine Sands	44.0	24.0
Lower Bay Mud	68.0	12.0
Lower Marine Sands	80.0	4.0
Old Bay Clay 1	84.0	61.0
Old Bay Clay 2	145.0	27.0
Bedrock	172.0	—

2 Block 5 Tower and Foundation

We assumed that the Block 5 Tower would be either a heavy concrete tower or a lighter steel structure. It is zoned for 550' tall which we assumed equivalent to approximately 50 stories for the purposes of obtaining the dynamic properties of the Tower.

2.1 Heavy Concrete Tower

The heavy concrete tower was assumed to weigh approximately 169,000 kips. We calculated that 36 seven foot diameter concrete piles drilled approximately 8' into bedrock would be required to control settlements.

The first three modes of the heavy tower are assumed to be approximately 3.9 sec, 0.9 sec, and 0.4 sec

2.2 Light Steel Tower

The light steel tower was assumed to weigh approximately 82,000 kips. The light steel tower has the benefit that 36 seven foot diameter concrete piles could control settlements without having to be drilled into bedrock. For the purposes of the

analysis, we assumed that the tips of the concrete shafts were 5' higher than the bedrock elevation (i.e. total pile length is approximately 136').

The first three modes of the light tower are assumed to be approximately 4.4 sec, 1.0 sec, and 0.5 sec

2.3 Pile Design

The depth of excavation was assumed as 36' below current grade. A deep foundation system would be necessary because of the magnitude of the previously mentioned loads. It was assumed that thirty six 7-foot diameter cast-in-drilled-hole (CIDH) piles would be used. This assumption is based on the proven method and successful installation of the buttress shafts adjacent to 301 Mission Tower, which were 7-foot diameter rock-socketed CIDH shafts. Using the above assumptions, the required pile length was estimated based on strength capacity and settlement performance. We assumed that 80% of the loads (including the weight of the basement) were carried by the piles. The analysis did not account for buoyancy effects or downdrag.

Capacity was the controlling case for the lightweight steel tower; the required pile length for a factor of safety of 2.0 was estimated to be approximately 125'.

In the case of the heavy concrete tower, the settlements would be unacceptable if the piles were left short of bedrock. The compressibility of the bedrock was taken from the consolidation testing performed on the m \acute{e} lange matrix of the Franciscan Complex for the Caltrain Downtown Extension geotechnical investigation. Based on this methodology, the required pile length for the heavy concrete tower was estimated to be 141' with the pile tips socketed 8' into bedrock. The Franciscan Complex bedrock underlying the site was analyzed as an intermediate geomaterial (IGM) as outlined in the FHWA manual, but it should be noted that a thorough site investigation will be necessary to characterize the engineering properties of bedrock due to its high variability.

2.4 Basement and Shoring Wall Properties

We assumed that the basement walls are 2' thick and the basement mat is 8' thick. The ground floor is 16" thick and the intermediate basement levels are 12" thick.

The 36 seven-foot diameter concrete piles are only located within the Block 5 Tower footprint and are placed in a 6 x 6 pattern approximately 17.5' on center in the east-west direction and 20' on center in the north-south direction. We assumed that tie-downs were not required beneath the part of the basement outside of the footprint of the Block 5 Tower.

We assumed that the shoring walls of the Block 5 Tower extend 68' below ground surface and are 2' thick.

3 TTC Structure and Foundation

At the far east end of the TTC adjacent to the Block 5 parcel, only an extension of the TTC trainbox is present; the TTC superstructure does not exist. Tie-downs are required to hold down the trainbox throughout the TTC due to buoyancy effects, and especially so in the absence of the superstructure.

We also assumed that the basement concrete moment frames, shoring walls, trainbox walls, floor thicknesses and basement thickness for the extension are the same as the rest of the trainbox (under the superstructure).

4 Structure-Soil-Structure Interaction Analysis (SSSI)

We constructed a nonlinear dynamic analysis model in LS-DYNA to assess the impact of the Block 5 Tower and basement on the TTC under static and earthquake loads. While the model is constructed using 3D solid elements, the analysis is effectively a 2D plane strain analysis. The out-of-plane width is 35', which is equal to a third of the tower's footprint.

To assess the earthquake-induced demands of the Block 5 Tower on the TTC, we considered three earthquake ground motions developed for the bedrock at the TTC to represent GSL-2 intensity level (governed by either a 975-year return period or deterministic scenario on the San Andreas fault).

We understand that a tunnel will connect the TTC trainbox to the basement of the Block 5 Tower. We assume that the tunnel will not provide a rigid connection and we therefore did not model it.

4.1 Baseline Case: TTC Only

The baseline case included an analysis of the TTC trainbox in the absence of the Block 5 Tower and basement. Figure 3 shows an image of the LS-DYNA model, which includes a representative slice through the TTC trainbox next to the Block 5 parcel.

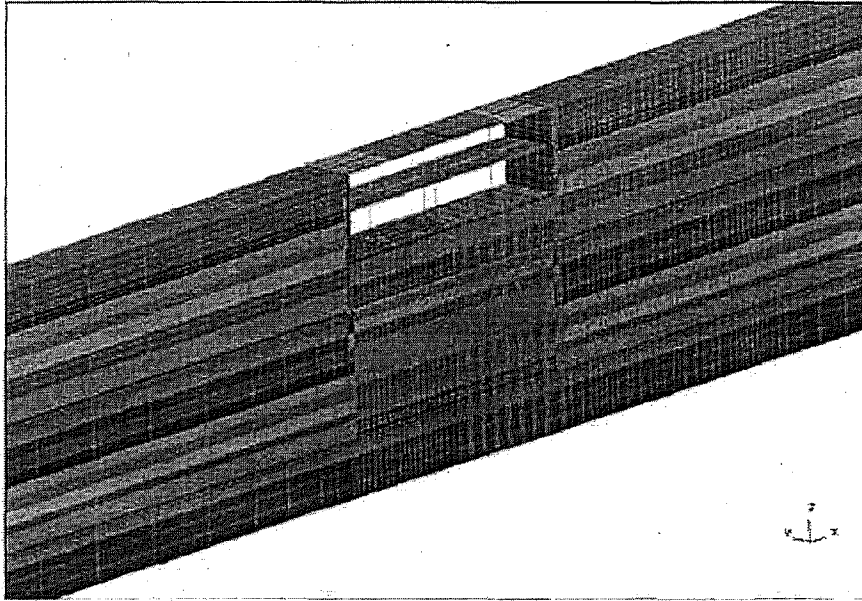


Figure 3 Baseline Case: No Tower Model

First, a construction sequence analysis of the excavation is performed to obtain the static drifts/displacements and tie-down forces, considering drainage where appropriate. Since the soil pressures are balanced on either side of the trainbox, no shear forces arise in the trainbox.

Next, we applied the GSL-2 earthquake accelerations to the bedrock which are propagated up through the soil profile. The resulting demands on the TTC are compared to the demands in the presence of the Block 5 Tower in Appendix A.

4.2 Block 5 Tower Cases

We included the Block 5 Tower and basement in the LS-DYNA model as described in Section 1 and Section 2. Figure 4 shows an image of the LS-DYNA model.

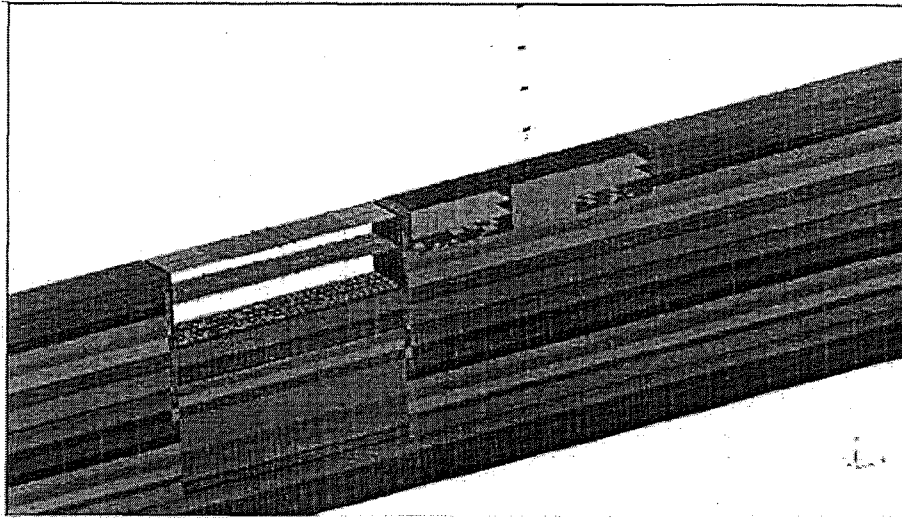


Figure 4 LS-DYNA model showing Block 5 tower and its basement located 5ft from the shoring wall of TTC

Since the Block 5 Tower is expected to be completed before the TTC trainbox extension, the Block 5 basement and Tower are present in the LS-DYNA model before the construction sequence analysis of the TTC commences. We then followed the same methodology described above in Section 4.1 and determined the resulting static and seismic-induced drifts and forces on the TTC for comparison to the baseline case.

5 Results and Discussion

The analysis results for the three ground motions are presented in Appendix A. The shear forces, overturning moments, and drift demands on the TTC trainbox are generally *lower* in the presence of the Block 5 Tower. In other words, the construction of the Block 5 Tower and basement is generally beneficial in reducing the demands on the TTC because it provides lateral restraint to the TTC. The gravity-induced drifts on the south side of the TTC demonstrate the restraining effect of the Block 5 Tower basement. Figure 5 shows this effect for one of the ground motions where larger compressive stresses are developed in the soil when the Block 5 Tower basement is present.

The presence of a velocity pulse in one of the motions (Arcelik) results in higher shear force demands and interstory drift demands in the TTC when the Block 5 Tower is present though the effects are negligible if the lighter tower is used. Note that the Arcelik motion contains a pulse which produces a response spectrum that is much higher than the target spectrum at the pulse period which approximately coincides with the first mode of the Tower. This results in significantly larger overturning moments at the base of the Block 5 Tower. In either case, we believe that the demands may be accommodated with little modification to the design of

the trainbox lateral system (to be confirmed with the structural engineer of the TTC), though the heavy tower is clearly responsible for inducing greater demands.

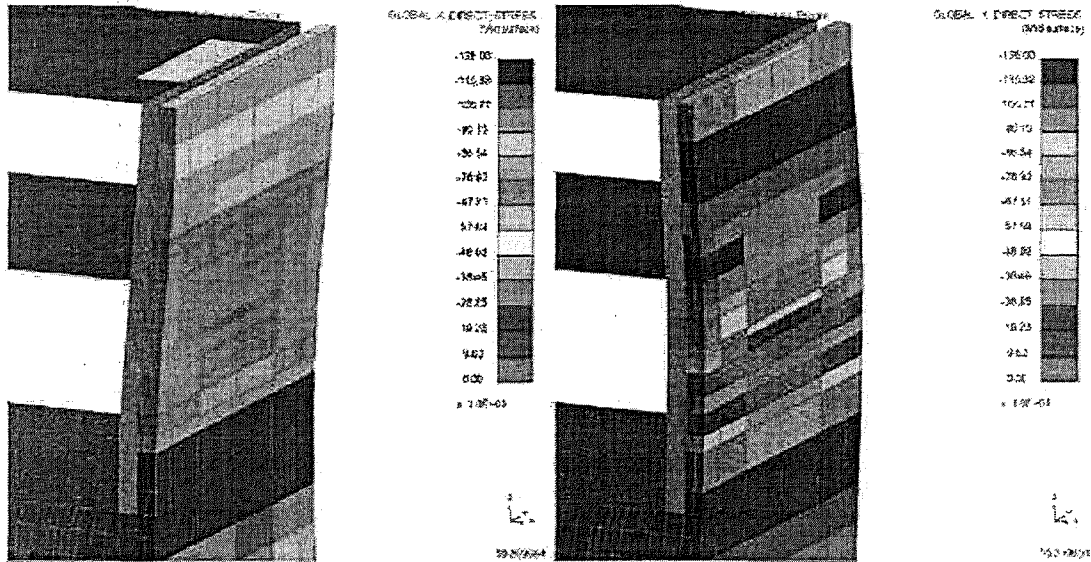


Figure 5 Lateral stresses in soil layer between basements with No tower case (left) and light steel tower case (right)

We also performed a sensitivity analysis which showed that increasing the gap distance from 5' to 10' resulted in less beneficial reduction in demands. These results are also presented in Appendix A.

We also studied the effect of the 'rigid' end walls at the eastern end of the TTC trainbox and the interaction with end wall of the Block 5 basement by adding a wall to one side of the LS-DYNA model. Note that this likely provides an upper bound stiffness estimate. This analysis showed that although the shear force demands decreased due to the presence of the Block 5 Tower, the overturning moment and drift demands were generally similar to the No Tower case.

Finally, the effective stresses at the underside of the Block 5 Tower mat under gravity loads are presented. These are below 2ksf within approximately 50' from the shoring walls which indicates that the Tower loads do not significantly increase the lateral pressures on the shoring walls.

Appendix A

Structure-Soil-Structure Interaction Analysis Results

A1 Results of SSSI with 5' Gap

The resulting demands on the TTC trainbox for the three different ground motions considering three scenarios (no Tower, heavy Tower, and light Tower) are presented in the following tables. Note that Level B2 is the bottom level of the TTC trainbox and Level B1 is the upper level of the TTC trainbox. The shear and overturning moments are from cut sections through the columns and the trainbox walls over the full width of the model (35').

We provided additional information for the Hector Mine motion only at the request of the TTC structural engineer. We chose Hector Mine because it produced the highest shear demands in the TTC basement in the No Tower case relative to the other earthquakes studied.

A1.1 Erzincan Motion

Table A-1 TTC Seismic Force and Moment Demands for Erzincan

Level	Shear Force (kips)			Overturning Moment (kip-ft)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1	1,131	526	631	19,555	16,090	17,946
B2	1,036	717	461	57,306	46,676	41,353

Table A-2 TTC Interstory Drift Demands (%) for Erzincan

Scenario	Load Case	Level B2	Level B1
No Tower	Gravity	0.03	0.03
Heavy Tower		0.00	0.02
Light Tower		0.05	0.02
No Tower	Seismic	0.42	0.54
Heavy Tower		0.27	0.32
Light Tower		0.16	0.31
No Tower	Total	0.45	0.57
Heavy Tower		0.27	0.34
Light Tower		0.20	0.33

A1.2 Hector Mine Motion

Table A-3 TTC Seismic Force and Moment Demands for Hector Mine

Level	Shear Force (kips)			Overturning Moment (kip-ft)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1	1,494	722	768	24,581	22,880	25,265
B2	1,203	707	471	77,508	50,792	46,536

Table A-4 TTC Interstory Drift Demands (%) for Hector Mine

Scenario	Load Case	Level B2	Level B1
No Tower	Gravity	0.03	0.03
Heavy		0.00	0.02
Light		0.05	0.02
No Tower	Seismic	0.49	0.68
Heavy		0.32	0.41
Light		0.16	0.37
No Tower	Total	0.52	0.71
Heavy Tower		0.32	0.43
Light Tower		0.21	0.39

Tables A-5 and A-6 provide the out-of-plane shear forces and weak-axis bending moments along the height of the TTC trainbox wall nearest the Block 5 Tower for the three scenarios.

Table A-5 Forces in TTC Trainbox Wall Nearest Tower under Gravity + Seismic

Level	Out-of-Plane Shear Force (kips/foot width)			Weak Axis Bending Moment (kip-ft/foot width)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1 at Ground Level	13	20	20	53	37	38
B1 at Mid-Height	8	9	9	45	93	94
B1 at Lower Concourse	25	23	22	118	118	119
B2 at Lower Concourse	41	31	30	168	145	152
B2 at Mid-Height	7	5	7	153	105	78
B2 at Basemat	31	32	29	143	47	47

Table A-6 Forces in TTC Trainbox Wall Nearest Tower under Gravity Only

Level	Out-of-Plane Shear Force (kips/foot width)			Weak Axis Bending Moment (kip-ft/foot width)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1 at Ground Level	7	8	8	26	26	25
B1 at Mid-Height	2	2	2	17	29	30
B1 at Lower Concourse	9	10	11	31	30	32
B2 at Lower Concourse	27	24	24	112	110	113
B2 at Mid-Height	2	3	3	85	65	65
B2 at Basemat	22	19	19	48	41	42

Tables A-7 and A-8 provide the axial forces in the three slab levels in the TTC at locations adjacent to the trainbox wall nearest the tower. Figure A-1 shows the locations of the section cuts used to determine the diaphragm forces for the three tower scenarios.

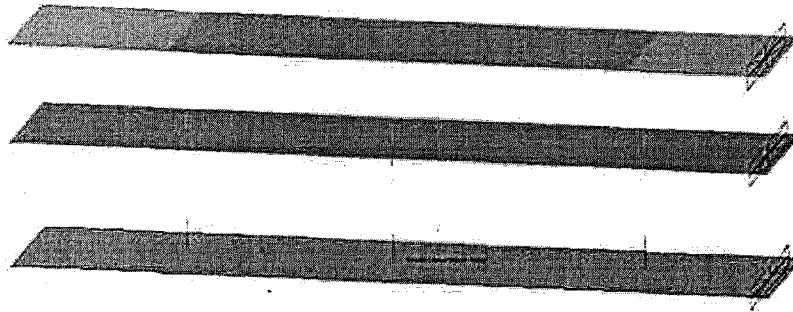


Figure A-1 TTC Diaphragm Force Section Cuts

Table A-7 Forces in TTC Slabs Nearest Tower under Gravity + Seismic

Level	Axial Force (kips)		
	No Tower	Heavy Tower	Light Tower
Ground Level	326	752	778
Lower Concourse	2,494	3,702	3,679
Basemat	3,528	4,058	4,133

Table A-8 Forces in TTC Slabs Nearest Tower under Gravity Only

Level	Axial Force (kips)		
	No Tower	Heavy Tower	Light Tower
Ground Level	118	171	182
Lower Concourse	2,315	2,251	2,321
Basemat	2,124	1,827	1,956

A1.3 Arcelik Motion

Table A-9 TTC Seismic Force and Moment Demands for Arcelik

Level	Shear Force (kips)			Overturning Moment (kip-ft)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1	1,235	1,541	1,268	26,664	19,318	21,099
B2	1,038	1,135	758	66,389	56,059	50,211

Table A-10 TTC Interstory Drift Demands (%) for Arcelik

Scenario	Load Case	Level B2	Level B1
No Tower	Gravity	0.03	0.03
Heavy Tower		0.00	0.02
Light Tower		0.05	0.02
No Tower	Seismic	0.43	0.55
Heavy Tower		0.50	0.62
Light Tower		0.28	0.52
No Tower	Total	0.46	0.58
Heavy Tower		0.50	0.64
Light Tower		0.33	0.54

A2 Results of SSSI with 10' gap

We repeated the analysis using only the Erzincan motion utilizing a 10' gap between the face of shoring walls. The results generally show less benefit in reducing the demands when the Block 5 Tower basement is set back further.

Table A-11 TTC Seismic Force and Moment Demands for 10' gap

Level	Shear Force (kips)			Overturning Moment (kip-ft)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1	1,131	620	742	19,555	16,543	18,113
B2	1,036	775	529	57,306	47,656	43,074

Table A-12 TTC Interstory Drift Demands for 10' gap (%)

Scenario	Load Case	Level B2	Level B1
No Tower	Gravity	0.03	0.03
Heavy Tower		0.00	0.00
Light Tower		0.05	0.03
No Tower	Seismic	0.42	0.54
Heavy Tower		0.30	0.37
Light Tower		0.17	0.35
No Tower	Total	0.45	0.57
Heavy Tower		0.30	0.37
Light Tower		0.22	0.38

A3 Results of SSSI with the End Walls

We repeated the analysis using the Erzincan ground motion with end walls added to the eastern end of the trainbox as well as the Block 5 Tower basement. In general the shear force demands on the TTC moment frames and end wall decreased. The overturning moment demands on the TTC moment frames and the interstory drift demands were similar to the No Tower case.

Table A-13 TTC Seismic Force and Moment Demands in the presence of the end walls

Level	Shear Force (kips)			Overturning Moment (kip-ft)		
	No Tower	Heavy Tower	Light Tower	No Tower	Heavy Tower	Light Tower
B1	323	243	224	28,550	31,310	29,876
B2	623	427	495	74,195	59,841	76,181

Table A-14 TTC End Wall Seismic Force and Moment Demands

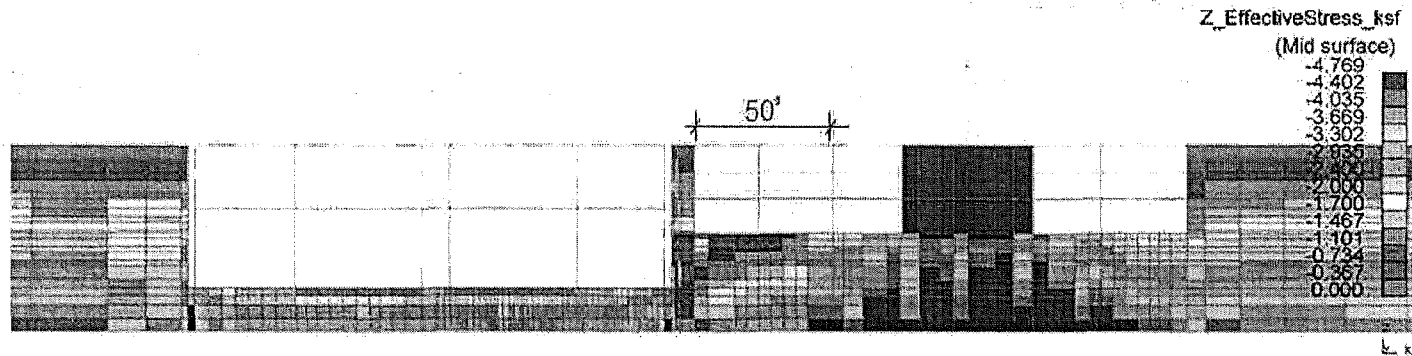
Level	End Wall Shear Force (kips)		
	No Tower	Heavy Tower	Light Tower
B1	1,093	885	762
B2	3,402	3,385	2,886

Table A-15 TTC Interstory Drift Demands in the presence of the end walls (%)

Scenario	Load Case	Level B2	Level B1
No Tower	Gravity	0.02	0.01
Heavy Tower		0.01	0.01
Light Tower		0.04	0.01
No Tower	Seismic	0.05	0.05
Heavy Tower		0.06	0.06
Light Tower		0.04	0.03
No Tower	Total	0.06	0.05
Heavy Tower		0.07	0.06
Light Tower		0.08	0.05

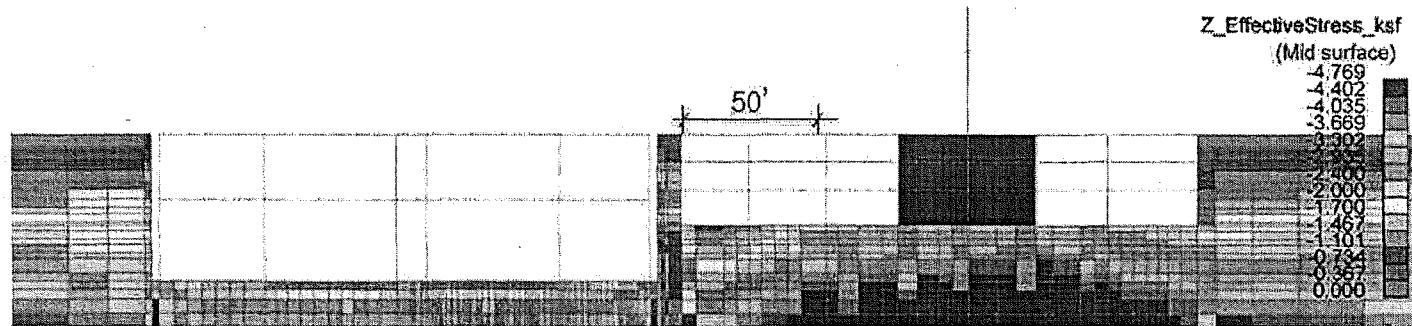
A4 Effective Soil Stress Beneath the Block 5 Tower Mat Under Gravity

The effective vertical stress contours at the underside of the mat foundation under gravity loads only is shown in Figure A-2. The stress contour values are presented in ksf. The contour plot on top of the figure is for the heavy concrete tower while the plot on the bottom shows the results for the light steel tower. The results indicate that the bearing pressures at the underside of the mat are smaller than 2ksf at all locations within approximately 50ft from the TTC shoring wall.



Results show analyzed condition

2.999935



Results show analyzed condition

2.999939

Figure A-2 The effective soil vertical stress beneath Block 5 tower's mat foundation under gravity. Heavy concrete tower (Top), Light Steel tower (Bottom).

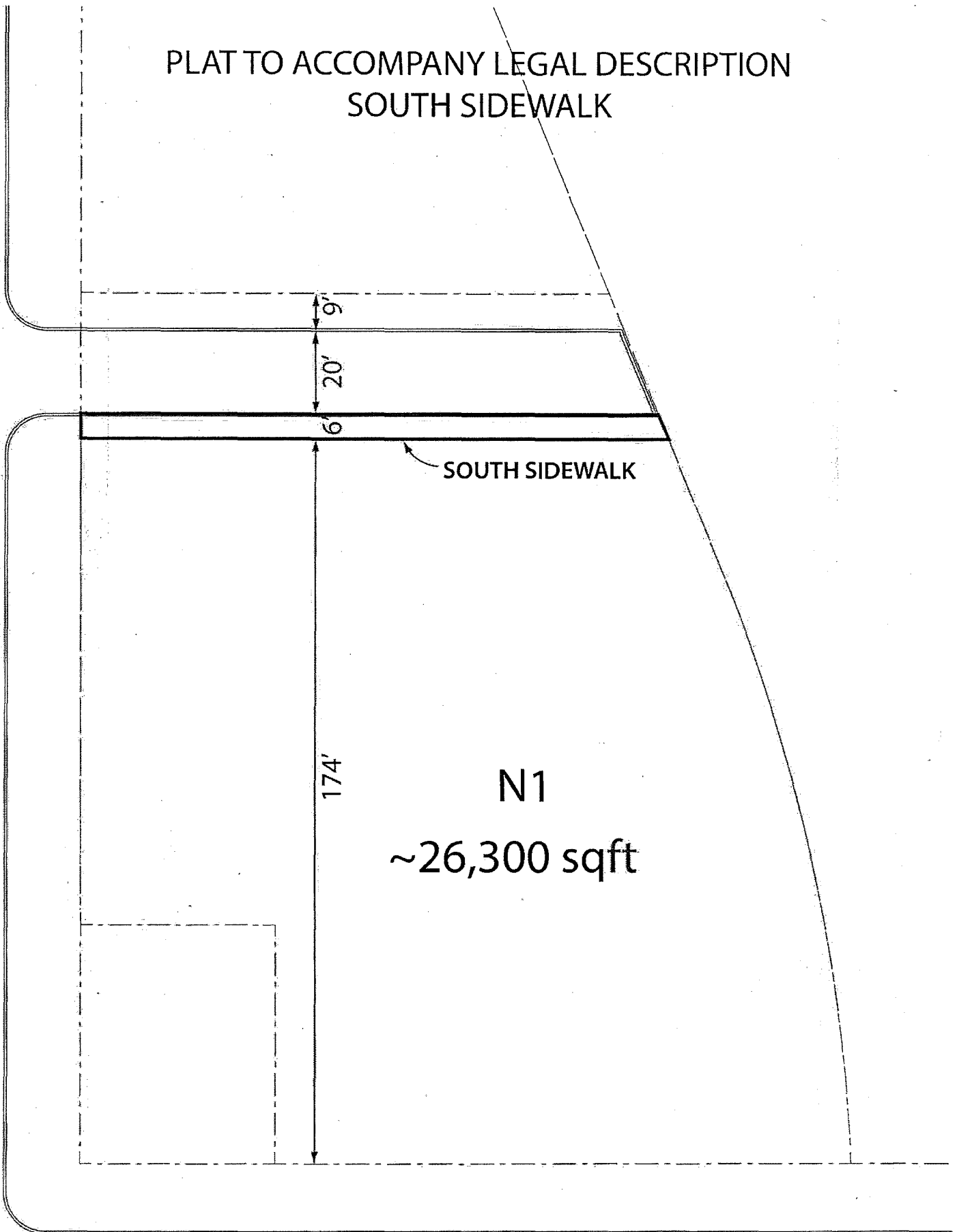
EXHIBIT J

SOUTH SIDEWALK LEGAL DESCRIPTION

[to be provided]

PLAT TO ACCOMPANY LEGAL DESCRIPTION
SOUTH SIDEWALK

Beale St



174'

SOUTH SIDEWALK

N1

~26,300 sqft

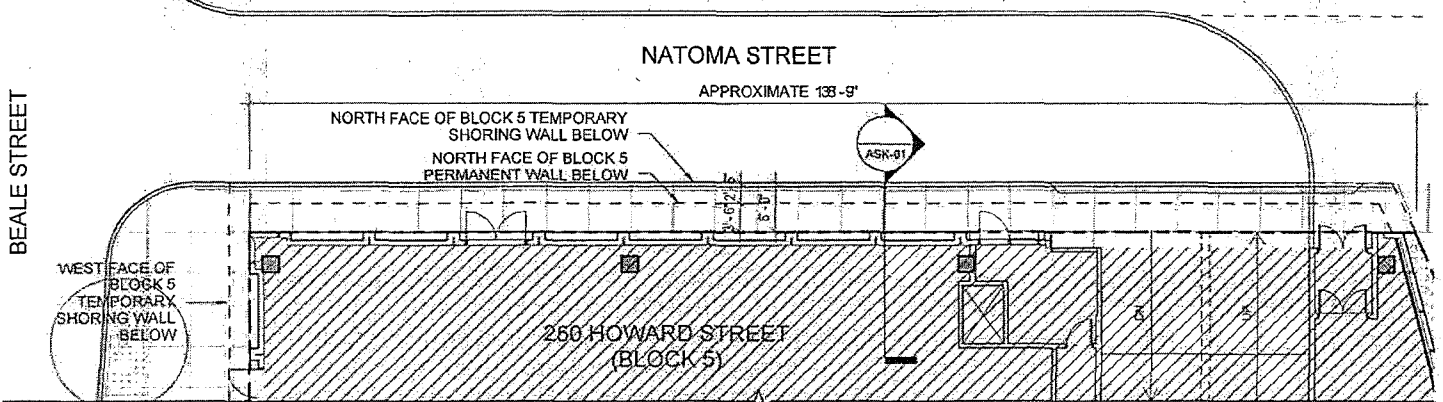
Howard St

EXHIBIT K

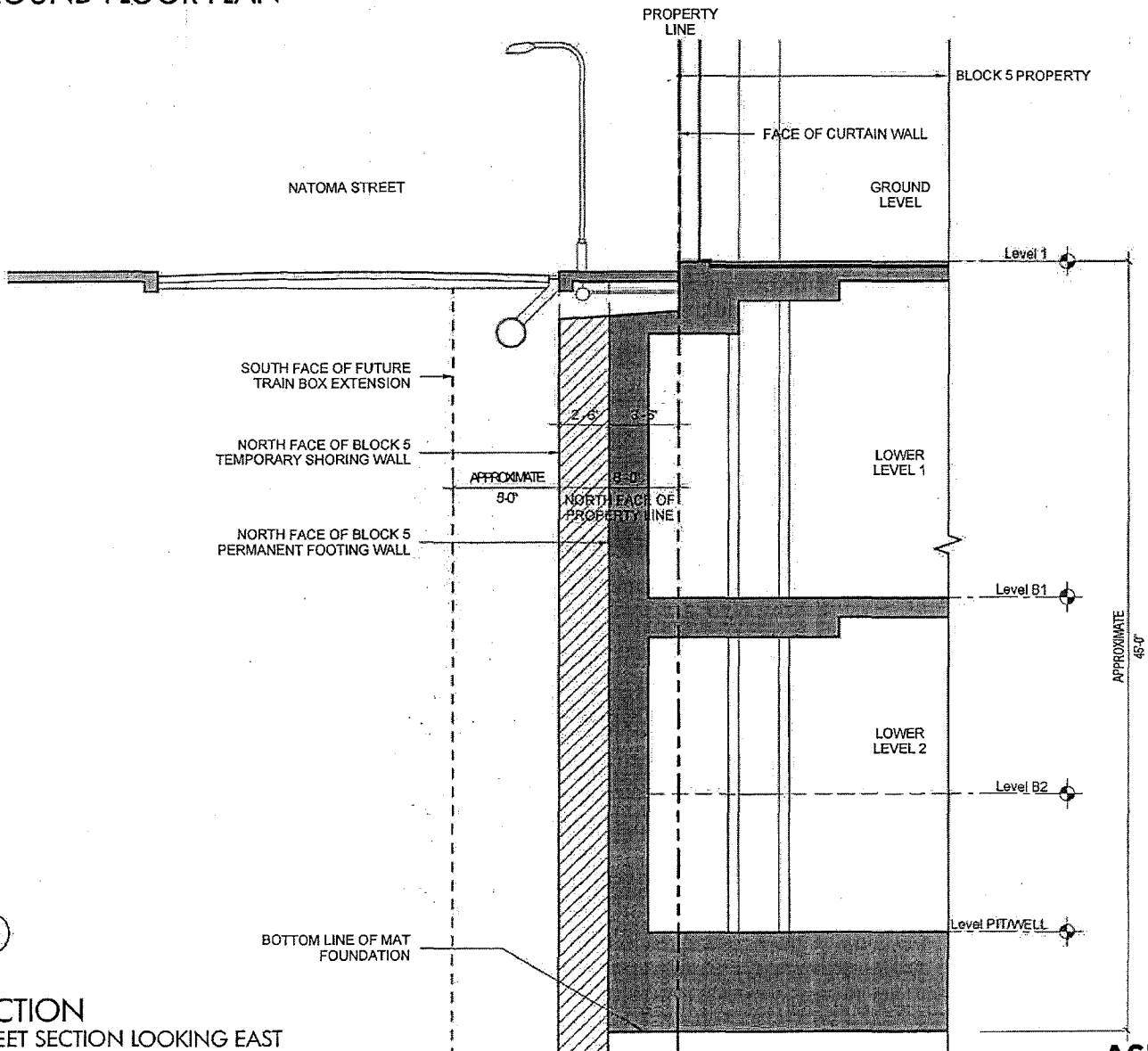
BASEMENT EASEMENT AREA LEGAL DESCRIPTION

[to be provided]

BASEMENT EASEMENT



GROUND FLOOR PLAN



SECTION
STREET SECTION LOOKING EAST

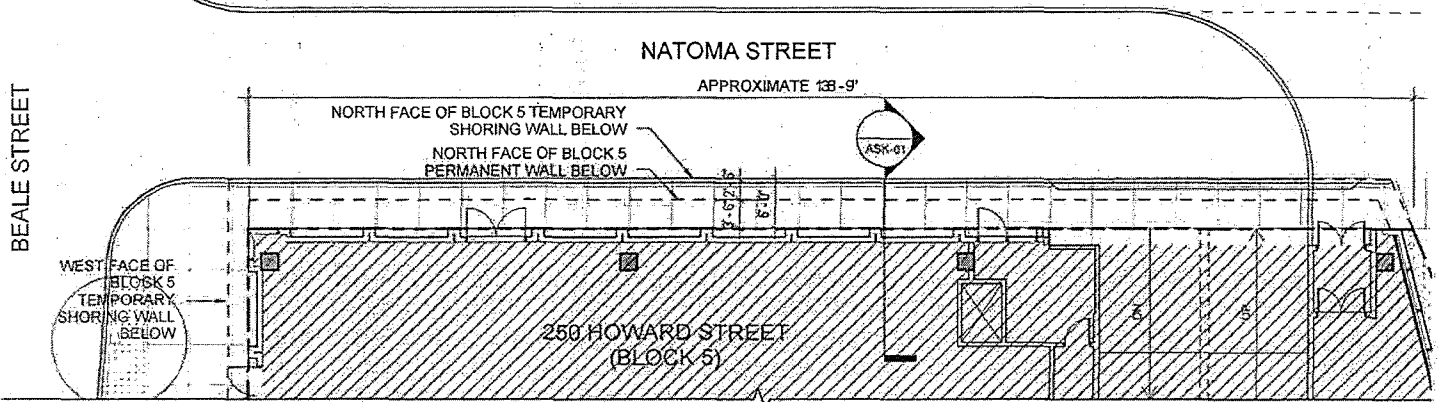
ASK-01
MAY 28, 2015

EXHIBIT L

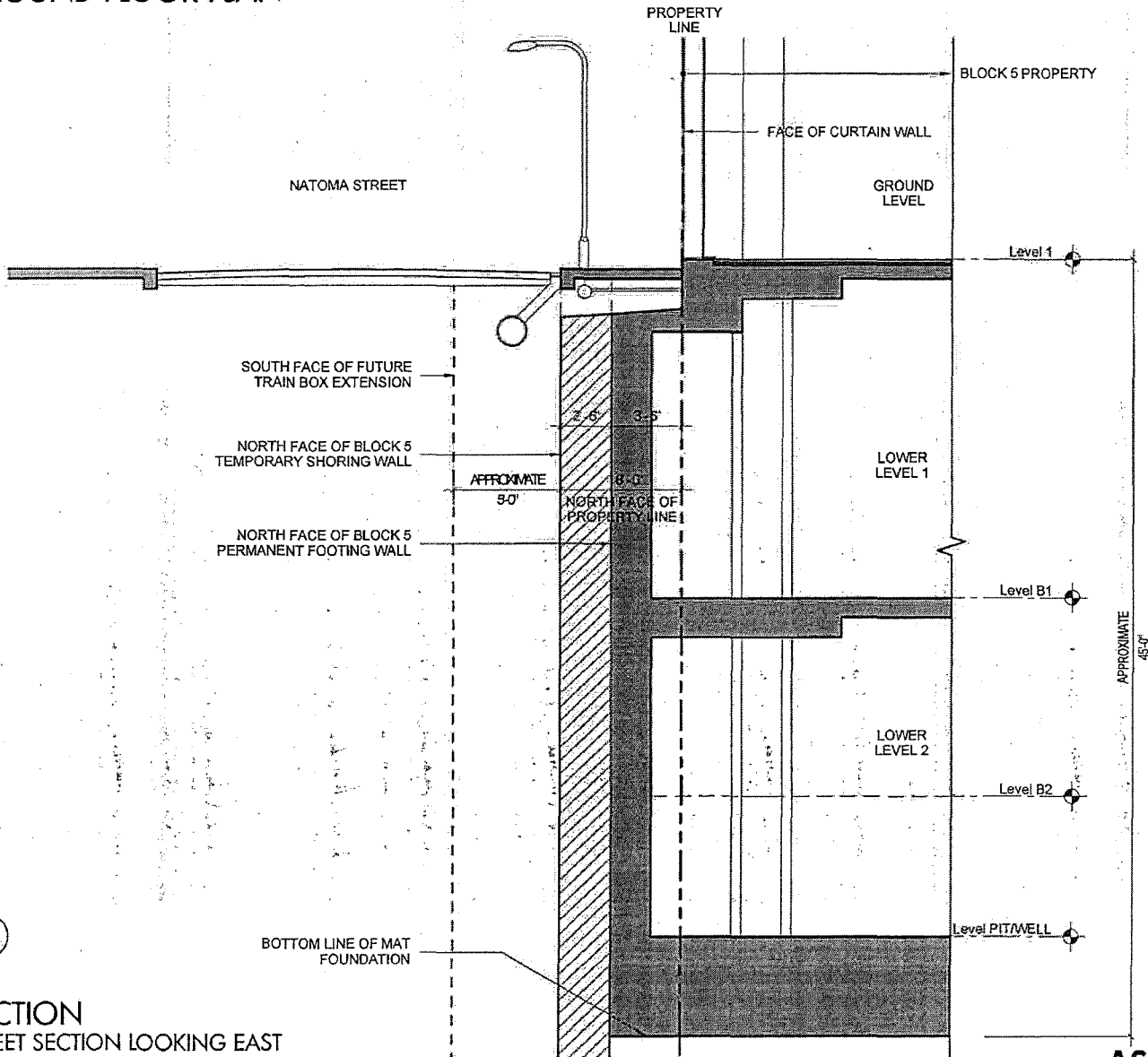
BASEMENT CONSTRUCTION EASEMENT AREA LEGAL DESCRIPTION

[to be provided]

BASEMENT EASEMENT



GROUND FLOOR PLAN



SECTION
STREET SECTION LOOKING EAST

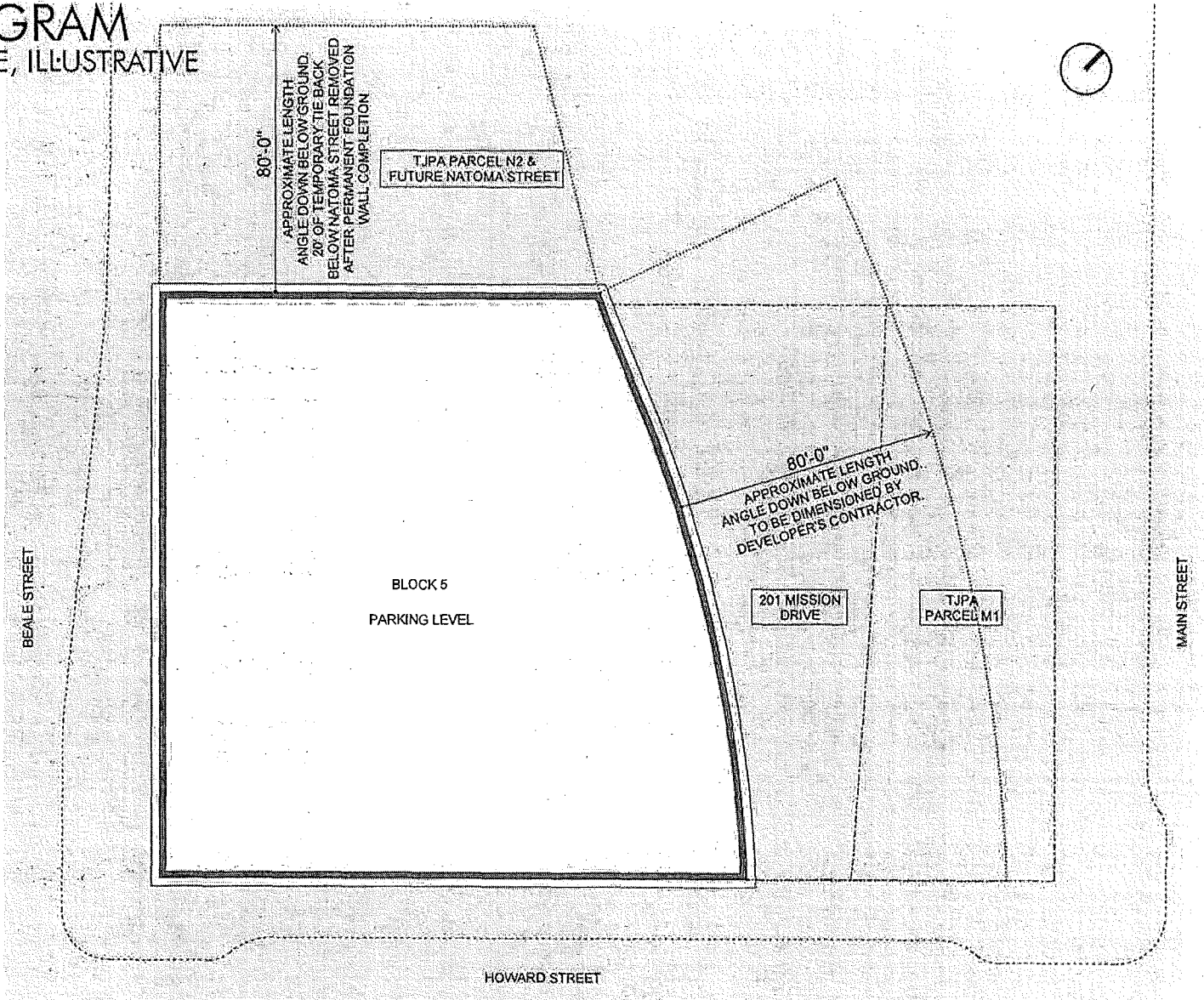
ASK-01
MAY 28, 2015

EXHIBIT M
ILLUSTRATIVE TIEBACK DIAGRAM

656894.29

TIEBACK DIAGRAM

-NOT TO EXACT SCALE, ILLUSTRATIVE



ATTACHMENT 20

Form of Declaration of Deed Restrictions Regarding Property Taxes

Free Recording Requested Pursuant to Government Code Section 27383 at the Request of the Transbay Joint Powers Authority

RECORDING REQUESTED BY AND WHEN RECORDED MAIL TO:

Transbay Joint Powers Authority
201 Mission Street, Suite 2100
San Francisco, CA 94105
Attn: Maria Ayerdi-Kaplan

Commonly Known as Portion of Transbay Block 5, Assessor's Block 3718, Portion of Lot 025

(Space above this line for Recorder's use)

DECLARATION OF DEED RESTRICTION REGARDING PROPERTY TAXES

The following are covenants and restrictions affecting a portion of that property situated in the City and County of San Francisco, State of California commonly known as "Parcel N1" within the parcel commonly known as "Transbay Block 5," also being a portion of Lot 25 in Assessor's Block 3718, and more particularly described in Exhibit A attached hereto and made a part hereof ("Property"). The Property is owned by MA West LLC ("Owner"), a Delaware limited liability company and joint venture between affiliates of Golub Real Estate Corp. ("Golub"), an Illinois corporation, and The John Buck Company ("John Buck"), a Delaware limited liability company. The Property is an approximately 26,300-square-foot parcel on Howard Street between Beale and Main Streets, located adjacent to the future Transbay Transit Center and within the Transbay Redevelopment Project Area in the City and County of San Francisco, State of California.

THIS DECLARATION OF DEED RESTRICTIONS REGARDING PROPERTY TAXES ("Declaration Regarding Taxes") is made as of the ___ day of September, 2015, by Owner.

WITNESSETH:

WHEREAS, in furtherance of the objectives of the Community Redevelopment Law of the State of California, the Redevelopment Agency of the City and County of San Francisco ("Former Agency") undertook a program to redevelop and revitalize blighted areas in San Francisco and in connection therewith adopted a redevelopment project area known as the Transbay Redevelopment Project Area ("Project Area"); and

WHEREAS, the Former Agency, acting through the Board of Supervisors of the City and County of San Francisco, approved a Redevelopment Plan for the Project Area by Ordinance No. 124-05, adopted on June 21, 2005 and by Ordinance No. 99-06, adopted on May 9, 2006 ("Redevelopment Plan"). Said Redevelopment Plan was filed in the Office of the Recorder of the City and County of San Francisco ("Official Records"); and

WHEREAS, per the Redevelopment Plan for the Project Area and the Transbay Redevelopment Project Tax Increment and Sales Proceeds Pledge Agreement (“**Pledge Agreement**”) between the Former Agency, the Transbay Joint Powers Authority (“**TJPA**”), and the City and County of San Francisco (“**City**”), land sale and net tax increment revenue generated by the parcels in the Project Area that are currently or formerly owned by the State of California (“**State**”) has been pledged to the TJPA to help pay the cost of building the Transbay Transit Center, which is generally located on real property in the City and County of San Francisco between Beale, Second, Mission, and Howard Street, and includes that parcel generally known as Parcel D, which is adjacent to the Property and more particularly described in Exhibit A to that certain Director’s Deed recorded with the San Francisco Assessor Recorder as Document Number 2010J017199 on August 9, 2010 (“**Transit Center Property**”); and

WHEREAS, in 2003, the TJPA, the City, and the State, acting by and through its Department of Transportation (“**Caltrans**”), entered into a Cooperative Agreement, which sets forth the process for the transfer of the State-owned parcels to the City and the TJPA (“**Cooperative Agreement**”). The Cooperative Agreement provides, inter alia, that the Transbay Transit Center construction costs would be partly financed by funds generated by the adoption of a redevelopment plan; in particular, the Cooperative Agreement anticipates a redevelopment plan that dedicates net tax increment and gross sales proceeds from the sale of the formerly State-owned parcels be dedicated to the Transbay Transit Center; and

WHEREAS, in 2005, the TJPA and the Former Agency entered into the Transbay Redevelopment Project Implementation Agreement (“**Implementation Agreement**”) which requires the Successor Agency to the Redevelopment Agency of the City and County of San Francisco (“**Successor Agency**”), as successor in interest to the Former Agency, to prepare and sell the formerly State-owned parcels and to construct and fund new infrastructure improvements (such as parks and streetscapes) and to meet affordable housing obligations. Subsequently, in 2008, the TJPA, the City and the Former Agency entered into an Option Agreement for the Purchase and Sale of Real Property (“**Option Agreement**”), which sets forth the process for the transfer of certain of the formerly State-owned parcels to the Former Agency, and now to the Successor Agency, to facilitate the sale of the parcels to private developers; and

WHEREAS, on January 1, 2010, TJPA entered a TIFIA Loan Agreement with the United States Department of Transportation (as amended, “**TIFIA Loan**”), which pledges certain property tax increment revenue attributable to certain State-owned parcels as security for the payment of the loan proceeds from TIFIA. In 2014, the TJPA and the TIFIA Loan lender entered into two amendments to the TIFIA Loan. The TIFIA Loan has a term that expires no later than February 1, 2052, but which term may expire at an earlier date pursuant to the terms of the TIFIA Loan; and

WHEREAS, a condition of the TIFIA Loan requires the Successor Agency to record a deed restriction for the term of the TIFIA Loan on each current or formerly State-owned parcel transferred to the City or the TJPA under the Cooperative Agreement and that is the subject of a Disposition and Development Agreement that such property will not be used, in whole or in part,

by an entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the TIFIA Loan lender, with the exception of the following: (1) property that is used for infrastructure and other public facilities and (2) property that is used for the production of affordable housing, as contemplated by the Redevelopment Plan. The Property is subject to that certain Disposition and Development Agreement by and between the Successor Agency and Owner, dated as of ____, 2015, and recorded on ____, 2015 in the Office of the Recorder of the City and County of San Francisco, as Document No. _____ of the Official Records (“DDA”), which provides for the development on the Property; and

WHEREAS, the Property is made up of formerly State-owned parcels deeded to Owner pursuant to the terms of the DDA. Pursuant to the Pledge Agreement, certain property tax increment revenue attributable to the Property is pledged to the TJPA to help pay the cost of building the Transbay Transit Center. Pursuant to the TIFIA Loan, certain property tax increment revenue attributable to the Property is pledged for repayment of the TIFIA Loan during the term of the TIFIA Loan; and

WHEREAS, for the purpose of ensuring that certain property tax increment revenue attributable to the Property will be pledged to help pay the cost of building the Transbay Transit Center; to safeguard such revenue for the benefit of the Transbay Transit Center, the Transit Center Property, and the public; to ensure the best use and the most appropriate development and improvement of the Property as described in the Redevelopment Plan; to ensure the highest and best development of the Property; and, in general, to provide adequately for a high type and quality of improvement on the Property and further the objectives of the Redevelopment Plan, the Owner, in accordance with the terms and conditions set forth in the DDA, seeks to subject the Property to the covenants, conditions and restrictions hereinafter set forth, each and all of which is and are for the benefit of the Property and the Transit Center Property and for each owner thereof and shall inure to the benefit of the Property and the Transit Center Property and for each owner thereof and pass with said Property and each and every parcel thereof, and shall apply to and bind the successors in interest and any owner the Property.

NOW, THEREFORE, the Owner hereby declares that the Property is and shall be held, transferred, sold, and conveyed, subject to the covenants and restrictions, hereinafter set forth:

1. Property Subject to This Declaration Regarding Taxes

The Property is and shall be held, conveyed, transferred and sold subject to the covenants and restrictions of this Declaration Regarding Taxes.

2. Restrictions on Use Affecting Taxes

The Property will not be used, in whole or in part, by an entity or for a purpose that will result in an exemption from the payment of real estate taxes being granted in any amount, without the prior written consent of the TIFIA Loan lender, with the exception of property (or portions thereof) that is used for infrastructure and other public facilities.

3. General Provisions

a. Term

The covenants contained in this Declaration Regarding Taxes are to run with the land and shall be binding on all parties and all persons claiming under them during the term of the TIFIA Loan, which expires on the date that is the earlier of (i) February 1, 2052, or (ii) the date when the TJPA makes the last payment required under the terms of the TIFIA Loan (“**TIFIA Loan Termination**”). On or as soon as practicable following the TIFIA Loan Termination but in no event later than thirty (30) days after the TIFIA Loan Termination, the TJPA shall provide Owner (x) written notice of the expiration of the term of the TIFIA Loan, and (y) a document in form reasonably acceptable to each of TJPA and Owner to release the Property from this Declaration Regarding Taxes, which document TJPA and/or Owner may record in the Official Records of the City and County of San Francisco.

b. Enforcement

In the event of any breach of any of the covenants contained herein, the Successor Agency and the TJPA shall endeavor immediately to remedy such breach by conference, conciliation and persuasion. In the event Owner fails to comply with the covenants described herein, Successor Agency and the TJPA shall give Owner written notice of such failure which notice shall specify in detail all alleged failures to comply. Owner shall have sixty (60) days from Owner’s receipt of such written notice from the Successor Agency and the TJPA to so comply or such additional time as is reasonably necessary to comply. If Owner fails to cure the alleged failures within the sixty (60) day period or such longer period as allowed hereunder, the Successor Agency and the TJPA, each on its own behalf or on behalf of any owner or owners, singly or collectively, of any real property in the Project Area covered by these restrictions or the real property on which the Transbay Transit Center is located, may, at any time, prosecute any proceedings in law or in equity in case of any violation or attempt to violate any of the covenants contained herein.

c. Notice

All notices or other written communications hereunder shall be deemed to have been properly given (a) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (b) one (1) business day after having been deposited for overnight delivery with any reputable overnight courier service, or (c) three (3) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Owner:

Fax No: _____

With a copy to Owner's legal counsel:

Fax No: _____

If to the TJPA:
Transbay Joint Powers Authority
201 Mission Street Suite 2100
San Francisco, CA 94105
Attn: Executive Director
Fax No.: 415-597-4615

With a copy to TJPA's legal counsel:
Shute, Mihaly & Weinberger LLP
396 Hayes Street
San Francisco, CA 94102
Attention: William J. White
Fax No.: 415-552-5816

or addressed as such party may from time to time designate by written notice to the other parties. Any party by notice to the others may designate additional or different addresses for subsequent notices or communications.

d. Foreclosure and Enforcement of Liens

The provisions of this Declaration Regarding Taxes do not limit the rights of any lender who is the beneficiary of any deed of trust recorded on the Property or any portion thereof, holder of any mortgage recorded on the Property or any portion thereof, or in whose favor any encumbrance on the Property or portion thereof runs, nor shall a breach of this Declaration Regarding Taxes impair or invalidate the lien of any such mortgage, deed of trust or other encumbrance or the rights of such obligees to pursue any remedies for the enforcement of any lien or encumbrance upon the Property; provided, however, that in the event of a foreclosure sale under any such mortgage, deed of trust, or other lien or encumbrance or a sale pursuant to any power of sale contained in any such mortgage or deed of trust, the purchaser or purchasers and their successors and assigns, and the Property, shall be and shall continue to be, subject to all of the conditions, restrictions, and covenants herein provided for.

e. Covenants Run With Land

All covenants contained in this Declaration Regarding Taxes shall be covenants running with the land.

f. Covenants For Benefit of the TJPA and the Successor Agency.

All covenants in this Declaration Regarding Taxes shall be binding for the benefit of the TJPA and the Successor Agency, and such covenants shall run in favor of the TJPA and the Successor Agency for the entire period during which such covenants shall be in force and effect, without regard to whether the TJPA or Successor Agency is or remains an owner of any land or interest therein to which such covenants relate.

g. Dissolution

In the event that the Successor Agency or the TJPA is dissolved or their respective designation changed by or pursuant to law prior to the expiration of the term of the TIFIA Loan, such agency's powers, duties, rights, and functions under this Declaration Regarding Taxes shall be transferred pursuant to any applicable provisions of such laws.

h. Severability of Provisions

If any provision of this Declaration Regarding Taxes or the application of such provision to any owner or owners or parcel of land is held invalid, the validity of the remainder of this Declaration Regarding Taxes and the applicability of such provision to any other owner or owners or parcel of land shall not be affected thereby.

[NO FURTHER TEXT ON THIS PAGE]

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed as of the day and year first written above.

OWNER:

By: _____

Name: _____

Title: _____

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 CALIFORNIA

COUNTY OF _____

On _____, 2015, 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"
Property Legal Description

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING ALL OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED SEPTEMBER 1, 1936, IN BOOK 3002, PAGE 448, SEPTEMBER 18, 1936, IN BOOK 3021, PAGE 161 AND NOVEMBER 27, 1937, IN BOOK 3213, PAGE 447, AND A PORTION OF THE LANDS DESCRIBED IN THOSE CERTAIN DEEDS CONVEYED TO THE STATE OF CALIFORNIA RECORDED OCTOBER 9, 1936, IN BOOK 3016, PAGE 474, NOVEMBER 6, 1953, IN BOOK 6261, PAGE 180 AND JANUARY 12, 1954, IN BOOK 6298, PAGE 564, ALL OF OFFICIAL RECORDS AND DESCRIBED AS A WHOLE AS FOLLOWS:

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), DISTANT THEREON S46°18'10"W 92.41 FEET FROM THE SOUTHWESTERLY LINE OF MAIN STREET (82.50 FEET WIDE), SAID POINT OF BEGINNING BEING THE MOST SOUTHERLY CORNER OF THE PROPERTY DESCRIBED IN THAT CERTAIN DIRECTOR'S DEED RECORDED APRIL 10, 1956, IN BOOK 6822, PAGE 120, OFFICIAL RECORDS; THENCE ALONG SAID LINE OF HOWARD STREET S46°18'10"W 136.76 FEET TO A POINT DISTANT THEREON 45.83 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF BEALE STREET (82.50 FEET WIDE); THENCE N43°41'50"W 57.50 FEET; THENCE S46°18'10"W 45.83 FEET TO SAID NORTHEASTERLY LINE OF BEALE STREET; THENCE ALONG SAID LINE OF BEALE STREET N43°41'50"W 116.50 FEET; THENCE N46°18'10"E 138.70 FEET TO THE SOUTHWESTERLY LINE OF THE PROPERTY DESCRIBED IN SAID DIRECTOR'S DEED; THENCE ALONG SAID SOUTHWESTERLY LINE THE FOLLOWING COURSES: S65°41'41"E 32.85 FEET TO THE BEGINNING OF A TANGENT CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 448.59 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°37'15", AN ARC LENGTH OF 75.33 FEET TO A POINT OF COMPOUND CURVE CONCAVE TO THE SOUTHWEST HAVING A RADIUS OF 420.00 FEET; THENCE ALONG SAID CURVE TO THE RIGHT THROUGH A CENTRAL ANGLE OF 9°52'18", AN ARC LENGTH OF 72.36 FEET TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK NO. 3718

BASIS OF BEARINGS: THE SAN FRANCISCO CITY MONUMENT LINE LOCATED IN BEALE STREET BETWEEN MONUMENT LINES IN MISSION STREET AND HOWARD STREET, IS TAKEN AS SOUTH 43°41'50" EAST AS SHOWN ON RECORD OF SURVEY NO. 6428, FILED ON MAY 31, 2012, IN BOOK EE OF SURVEY MAPS, AT PAGES 19-27, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO.