Doc # 2021152008

City and County of San Francisco
Joaquin Torres, Assessor – Recorder

9/30/2021	2:48:23 PM	Fees	$0.00
Pages 73	Title 013 NH	Taxes	$0.00
Customer	028	Other	$0.00
		SB2 Fees	$0.00
		Paid	$0.00

RECORDING REQUESTED BY
CLERK OF THE BOARD OF SUPERVISORS
OF THE CITY AND COUNTY OF SAN FRANC

(Exempt from Recording Fees
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Section 27383)

AND WHEN RECORDED MAIL TO:

Angela Calvillo, Clerk of the Board of Supervisors
City Hall, Room 244
1 Dr. Carlton B. Goodlett Place
San Francisco, CA 94102

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC,
RELATIVE TO THE DEVELOPMENT KNOWN AS
542-550 HOWARD STREET (TRANSBAY PARCEL F) DEVELOPMENT PROJECT

Block 3721; Lots 016, 135, 136, 138

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Exhibits

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND PARCEL F OWNER, LLC, A DELAWARE LIMITED LIABILITY COMPANY,
RELATIVE TO THE DEVELOPMENT KNOWN AS
THE 181 FREMONT DEVELOPMENT PROJECT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**") dated for reference purposes only as of this 30 day of September, 2021, is by and between the CITY AND COUNTY OF SAN FRANCISCO, a political subdivision and municipal corporation of the State of California (the "**City**"), acting by and through its Planning Department, and Parcel F Owner, LLC, a Delaware limited liability company, its permitted successors and assigns (the "**Developer**"), pursuant to the authority of Section 65864 *et seq.* of the California Government Code.

RECITALS

This Agreement is made with reference to the following facts:

A. Developer is the owner of that certain property known as 542-550 Howard Street (Transbay Parcel F) (the "**Project Site**") which is an irregularly shaped property formed by four parcels measuring a total of approximately 32,229 square feet, located on the north side of Howard Street, between 1st Street and 2nd Street, as more particularly described Exhibit G. The Project Site is within the C-3-0 (SD) District, the 750-S-2 and 450-S Height and Bulk Districts, the Transit Center C-3-0 (SD) Commercial Special Use District, the Transbay C-3 Special Use District, the Transit Center District Plan area (the "**TCDP**") and in Zone 2 of the Transbay Redevelopment Project Area (the "**Project Area**").

B. Developer submitted development applications for a proposal to construct on the Project Site a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "**Project**").

C. The Redevelopment Plan for the Project Area ("**Plan**") establishes land use controls and imposes other requirements on development within the Project Area. Notably, the Plan incorporates, in section 4.9.2, state law requirements that 25 percent of the residential units developed in the Project Area "shall be available to" low-income households, and an additional 10 percent "shall be available to" moderate income households. Cal. Public Resources Code § 5027.1 (the "**Transbay Affordable Housing Obligation**"). To fulfill the Transbay Affordable Housing Obligation, the Plan requires that all housing developments within the Project Area contain a minimum of 15 percent on-site affordable housing. Redevelopment Plan, § 4.9.3. A similar requirement in § 249.28(b)(6) of the San Francisco Planning Code (the "**Planning Code**") provides that housing developments must provide the higher of (i) the 15 percent on-site affordable housing set forth in the Plan, or (ii) the amount required by Planning Code Section 415.6 (the "**On-Site Requirement**"). As of the date of this Agreement, Planning Code Section 415.6 would require 20 percent on-site affordable housing in connection with the Project, or 33 units. Neither the Redevelopment Plan nor the Planning Code authorize off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area.

D. The Plan provides that the land use controls for Zone 2 of the Project Area shall be the Planning Code, as amended from time to time, so long as any amendments to the Planning Code are

consistent with the Plan. Through a Delegation Agreement, the former Redevelopment Agency of the City and County of San Francisco (the "**Former Agency**") delegated jurisdiction for permitting of projects in Zone 2 (including the Project Site) to the Planning Department, with the Planning Code governing development, except for certain projects that require Redevelopment Agency action. The Plan also provides that exactions imposed by the Planning Code on development within the Project Area shall be administered by the Successor Agency to the Former Agency or provide direct benefits to the Project Area.

E. However, pursuant to Section 3.5.5 of the Plan, the Commission on Community Investment and Infrastructure (**"CCII"**) (as the Commission to the Successor Agency to the Former Agency, a public body organized and existing under the laws of the State of California, also known as the Office of Community Investment and Infrastructure (**"Successor Agency"** or **"OCII"**)) has the authority to grant a variation from the Plan and the associated Transbay Development Controls and Design Guidelines, or the Planning Code where the enforcement of these controls would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Transbay Design for Development or the Transbay Development Controls and Design Guidelines.

F. Where a variation or other action of the Successor Agency materially changes the Successor Agency's obligations to provide affordable housing, the Board of Supervisors ("**Board**") must approve that action. San Francisco Ordinance No. 215-12, § 6(a) (Oct. 4, 2012).

G. On December 17, 2020, OCII received a request from the Developer for a variation from the On-Site Requirement. Letter, C. Higley, Farella Braun + Martel on behalf of Parcel F Owner, LLC, to S. Oerth (December 17, 2020) ("**Variation Request**"), attached to this Agreement as Exhibit A.

H. The Variation Request concludes that the application of the On-Site Requirement to the Project would create practical difficulties for maintaining the affordability of the units because homeowners association ("HOA") fees, which are already high in such developments, will likely increase over time such that the original residents would not be able to afford the payments. Non-payment of HOA fees by affordable residents would lead to legal actions by the HOA to recover unpaid amounts, including action to place liens on the units themselves, and ultimately to the loss of the units by the residents. Thus, undue hardship would be created for both the Project Sponsor and the owners of the inclusionary housing units and undermine the intent of the Plan to provide affordable units to low- and moderate-income households.

I. In order to strengthen the public planning process, encourage private participation in comprehensive planning, and reduce the economic risk of development, the Legislature of the State of California adopted Government Code Section 65864 et seq. (the "**Development Agreement Statute**"), which authorizes the City to enter into a development agreement with any person having a legal or equitable interest in real property related to the development of such property. Pursuant to the Development Agreement Statute, the City adopted Chapter 56 (**"Chapter 56"**) of the San Francisco Administrative Code establishing procedures and requirements for entering into a development agreement. The Parties are entering into this Agreement in accordance with the Development Agreement Statute and Chapter 56.

J. It is the intent of the Parties that all acts referred to in this Agreement shall be accomplished in a way as to fully comply with CEQA, the CEQA Guidelines, Chapters 31 and 56 of the San Francisco Administrative Code, the Development Agreement Statute, the Enacting Ordinance and all other applicable laws as of the Effective Date. This Agreement does not limit the City's obligation to comply with applicable environmental laws, including CEQA, before taking any discretionary action

regarding the Project, or Developer's obligation to comply with all applicable laws in connection with the development of the Project

K. The San Francisco Planning Department, in compliance with the California Environmental Quality Act (CEQA), issued a Community Plan Exemption (CPE) certificate for the Project on August 27, 2019. F

L. On January 9, 2020, the San Francisco Planning Commission held a public hearing on the Project, and approved Motions 20613 (recommending approval of certain General Plan amendments), 20614 (recommending approval of certain Zoning Map, Height Map, and Planning Code amendments), 20615 (adopting Shadow Findings), 20616 (approving Downtown Project Authorization), 20617 (approving an Office Development Allocation), and 20618 (approving a Condition Use Authorization for hotel development). The Project approvals required compliance with the On-Site Requirement.

M. On June 5, 2020 the Zoning Administrator issued a variance decision to allow bike parking to be located on the 4th story of the Project.

N. On January 19, 2021 the CCII held a public hearing on the Variation Request and approved, pursuant to Resolution No. 02-2021, a variation pursuant to Section 3.5.5 of the Plan, attached as Exhibit B (the "**OCII Variation**") on the condition that the Developer contribute to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, pursuant to the terms in Section 2.1 of this Agreement (the "**Affordable Housing Fee**").

O. On January 28, 2021, the Planning Commission held a public hearing on the Project, duly noticed and conducted under the Development Agreement Statute and Chapter 56, to consider revisions to the previously recommended zoning legislation, as well as this Agreement. Following the public hearing, the Planning Commission made General Plan Consistency Findings with respect to the zoning changes and this Agreement, and approved Resolution No. 20842 (recommending approval of revisions to the previously endorsed Planning Code amendments), and Resolution No. 20841 (recommending adoption of an ordinance approving this Agreement).

P. On March 16, 2021, the Board, in its capacity as the governing body of OCII, reviewed the OCII Variation under the authority that it reserved to itself in Ordinance No. 215-12 to approve material changes to the Successor Agency's affordable housing program and approved, by Board of Supervisors Resolution No. 120-21, the actions of OCII in granting the OCII Variation.

Q. The City has determined that as a result of the development of the Project in accordance with this Agreement additional, clear benefits to the public will accrue that could not be obtained through application of existing City ordinances, regulations, and policies because the payment of the Affordable Housing Fee at an amount equal to 150% of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require and its use thereof in accordance with this Agreement rather than compliance with the On-Site Requirements will result in more affordable housing units within the Project Area while maintaining land values necessary for the financing assumptions of the Transbay Joint Powers Authority (the "**TJPA**"). The basis for this determination is the following:

- To achieve the overall goal of at least 35% affordability of all new housing development units within the Project Area, there must be both inclusionary units and stand-alone affordable housing developments in the Project Area.

- The Plan's 2005 report set a goal of 388 inclusionary units and approximately 795 stand-alone affordable housing units but at the time of the Plan's adoption, mixed-use, high-rise developments were not contemplated within the Project Area.

- The Project Area covers 40 acres and includes blocks programmed for: (i) stand-alone affordable housing developments; (ii) all or a majority of office space; and (iii) a combination of market and affordable housing.

- The TJPA established specific land value goals for each block in its funding plan for the Transbay Transit Center (the "**TTC**") and there are a limited number of publicly-owned blocks (including Transbay Block 4) remaining upon which affordable housing may be built to meet the Plan's 35% affordability requirement.

- Adding affordable housing to blocks that must be sold to finance the TTC is not feasible without significantly reducing the land value and thereby creating shortfalls in the TTC funding.

- The Affordable Housing Fee is intended to assist OCII in meeting its Transbay Affordable Housing Obligation, which may include the use of the funds for the development of affordable housing units at Transbay Block 4.

R. On March 23, 2021, the Board, having received the Planning Commission recommendations, adopted Ordinance No. 41-21, amending the Zoning Map, Height Map, and Planning Code, and Ordinance No. 42-21, approving this Agreement (File No. 201386), and authorizing the Planning Director to execute this Agreement on behalf of the City (the "**Enacting Ordinance**"). The Enacting Ordinance took effect on May 3, 2021. The above described actions are referred to in this Agreement as the "**Approvals**" for the Project.

Now therefore, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. GENERAL PROVISIONS

1.1 **Incorporation of Preamble, Recitals and Exhibits**. The preamble paragraph, Recitals, and Exhibits, and all defined terms contained therein, are hereby incorporated into this Agreement as if set forth in full.

1.2 **Definitions**. In addition to the definitions set forth in the above preamble paragraph, Recitals and elsewhere in this Agreement, the following definitions shall apply to this Agreement:

1.2.1 "**Administrative Code**" shall mean the San Francisco Administrative Code.

1.2.2 "**Affiliate**" shall mean any entity controlling, controlled by, or under common control with Developer (and 'control' and its correlative terms 'controlling', 'controlled by' or 'under common control with' mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of Developer, whether through the ownership of voting securities, by contract or otherwise).

1.2.3 "**Affordable Housing Fee**" shall mean the payment, pursuant to Section 2.1 of this Agreement, from the Developer to OCII of an amount that is equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement (based on the published fee schedule applicable to calendar year 2021).

1.2.4 "**Board of Supervisors**" or "**Board**" shall mean the Board of Supervisors of the City and County of San Francisco.

1.2.5 "**CCII**" shall mean the Commission on Community Investment and Infrastructure.

1.2.6 "**City**" shall have the meaning set forth in the preamble paragraph. Unless the context or text specifically provides otherwise, references to the City shall mean the City acting by and through the Planning Director or, as necessary, the Planning Commission or the Board of Supervisors. The City's approval of this Agreement will be evidenced by the signatures of the Planning Director and the Clerk of the Board of Supervisors [need to confirm if the Clerk needs to sign].

1.2.7 "**City Agency**" or "**City Agencies**" shall mean, where appropriate, all City departments, agencies, boards, commissions, and bureaus that execute or consent to this Agreement and that have subdivision or other permit, entitlement or approval authority or jurisdiction over the Project or the Project Site, together with any successor City agency, department, board, or commission.

1.2.8 "**City Attorney's Office**" shall mean the Office of the City Attorney of the City and County of San Francisco.

1.2.9 "**Director**" or "**Planning Director**" shall mean the Director of Planning of the City and County of San Francisco.

1.2.10 "**Impact Fees and Exactions**" shall mean any fees, contributions, special taxes, exactions, impositions, and dedications charged by the City, whether as of the date of this Agreement or at any time thereafter during the Term, in connection with the development of the Project, including but not limited to transportation and transit fees, child care requirements or in-lieu fees, housing (including affordable housing) requirements or fees, dedication or reservation requirements, and obligations for on- or off-site improvements. For development within the Project Area, Section 5.9 of the Plan requires that the Jobs-Housing Program Linkage Fee and the Downtown Park Fee shall be administered by the Successor Agency and that all Impact Fees and Exactions must provide direct benefits to the Project Area.. Impact Fees and Exactions shall not include the Mitigation Measures, Processing Fees, taxes or special assessments or school district fees, SFPUC Capacity Charges, Transit Center District Plan Transit Delay Mitigation Fee (Planning Code Section 424.7.2(c)) and any fees, taxes, assessments impositions imposed by any non-City agency, all of which shall be due and payable by Developer as and when due in accordance with applicable Laws.

1.2.11 "**Indemnify**" shall mean to indemnify, defend, reimburse, and hold harmless.

1.2.12 "**Letter of Credit**" is defined in Section 2.1.2.

1.2.13 "**OCII**" shall mean Office of Community Investment and Infrastructure.

1.2.14 "**Official Records**" shall mean the official real estate records of the City and County of San Francisco, as maintained by the City's Recorder's Office.

1.2.15 "**On-Site Requirement**" is defined in Recital B.

1.2.16 "**Party**" means, individually or collectively as the context requires, the City and Developer (and, as Developer, any Transferee that is made a Party to this Agreement under the terms of an Assignment and Assumption Agreement). "**Parties**" shall have a correlative meaning.

1.2.17 "**Plan**" shall mean the Transbay Project Area Redevelopment Plan, Approved by Ordinance No. 124-05, Adopted by the Board of Supervisors on June 21, 2005 and Ordinance No. 99-06 adopted by the Board of Supervisors May 9, 2006, as amended from time to time.

1.2.18 "**Planning Code**" shall mean the San Francisco Planning Code.

1.2.19 "**Planning Commission**" or "**Commission**" shall mean the Planning Commission of the City and County of San Francisco.

1.2.20 "**Planning Department**" shall mean the Planning Department of the City and County of San Francisco.

1.3 **Effective Date**. This Agreement shall take effect upon the later of (i) the full execution of this Agreement by the Parties and (ii) the effective date of the Enacting Ordinance ("**Effective Date**"). The Effective Date is September 30, 2021

1.4 **Term**. The term of this Agreement shall commence upon the Effective Date and shall continue in full force and effect for the earlier of (i) Project completion (as evidenced by issuance of the Temporary Certificate of Occupancy) or (ii) ten (10) years after the effective date., unless extended or earlier terminated as provided herein ("**Term**"). Following expiration of the Term, this Agreement shall be deemed terminated and of no further force and effect except for any provisions which, by their express terms, survive the expiration or termination of this Agreement.

2. PROJECT CONTROLS AND VESTING

2.1 Affordable Housing Fee; Impact Fees.

2.1.1 During the Term of this Agreement, Developer shall have the vested right to develop the Project Site in accordance with the Approvals, provided Developer shall pay the Affordable Housing Fee to OCII to fund OCII's obligation to fulfill the Transbay Affordable Housing Obligation on the earlier to occur: (a) of issuance of the temporary certificate of occupancy associated with the residential portions of the Project; (b) on the date that is two years after the effective date of this Agreement (if DBI has already issued the" first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building Code, for the Project; (c) upon issuance of the first construction document for the Project (if at least two years have then passed from the effective date of this Agreement); or (d) by the release of funds under a Letter of Credit (as defined in Section 2.1.2 of this Agreement) at least forty-five days prior to the close of construction financing on the affordable housing project at Transbay Block 4. The fee collection procedure set forth in Section 402 of the Planning Code shall not apply to the Project, nor shall any other provision of the San Francisco Municipal Code that conflicts with the fee collection and timing described in this Section 2.1.1.

2.1.2 Within thirty (30) days after the effective date of the Disposition and Development Agreement between OCII and Developer or an entity affiliated with Developer for Transbay Block 4, Developer shall submit to OCII an enforceable letter of credit, which shall allow OCII to draw down the full amount of the Affordable Housing Fee, as described in this Section 2.1., on

commercially reasonable terms and in substantially the form attached to this Agreement as Exhibit E (the "**Letter of Credit**"). OCII shall have advance approval, in its reasonable discretion, of the Letter of Credit provider, which must demonstrate good standing in the form of: (a) no placement on a watchlist for negative downgrade; and either (b) long-term credit ratings from at least two nationally recognized credit rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least A2/A/A or equivalent, or (c) short-term credit ratings from at least two rating agencies, at least one of which shall be Moody's or Standard & Poor's, of at least P-1/A-1/F1 or equivalent. The Letter of Credit shall remain valid until such time as the Affordable Housing Fee is paid in full to OCII and shall provide for full disbursement of the funds upon OCII's request for release of funds, provided such request is consistent with the terms of this Development Agreement.

2.1.3 Developer shall pay the Impact Fees and Exactions set forth in Exhibit F, calculated on the basis of the schedule of fees published by the City for calendar year 2021. Planning Code Section 409(b), regarding annual escalation of Impact Fees and Exactions, shall not apply to the Project.

2.2 **Vested Rights**. The City, by entering into this Agreement, is limiting its future discretion with respect to Project approvals that are consistent with this Agreement during the Term. Consequently, the City shall not use its discretionary authority in considering any application to change the policy decisions reflected by the Agreement or otherwise to prevent or to delay development of the Project as set forth in the Agreement. Instead, implementing approvals that substantially conform to or implement the Agreement shall be issued by the City so long as they substantially comply with and conform to this Agreement. The City shall not use its discretionary authority to change the policy decisions reflected by this Agreement or otherwise to prevent or to delay development of the Project as contemplated in this Agreement. The City shall take no action under this Agreement nor impose any condition on the Project that would conflict with this Agreement.

2.3 **Changes in Federal or State Laws**. If Federal or State Laws issued, enacted, promulgated, adopted, passed, approved, made, implemented, amended, or interpreted after the Effective Date have gone into effect and (i) preclude or prevent compliance with one or more provisions of this Agreement, or (ii) materially and adversely affect Developer's or the City's rights, benefits or obligations, such provisions of this Agreement shall be modified or suspended as may be necessary to comply with such Federal or State Law. In such event, this Agreement shall be modified only to the extent necessary or required to comply with such Law. If any such changes in Federal or State Laws would materially and adversely affect the construction, development, use, operation or occupancy of the Project such that the Development becomes economically infeasible, then Developer shall notify the City and propose amendments or solutions that would maintain the benefit of the bargain (that is this Agreement) for both Parties.

2.4 **Changes to Development Agreement Statute**. This Agreement has been entered into in reliance upon the provisions of the Development Agreement Statute. No amendment of or addition to the Development Agreement Statute which would affect the interpretation or enforceability of this Agreement or increase the obligations or diminish the development rights of Developer hereunder, or increase the obligations or diminish the benefits to the City hereunder shall be applicable to this Agreement unless such amendment or addition is specifically required by Law or is mandated by a court of competent jurisdiction. If such amendment or change is permissive rather than mandatory, this Agreement shall not be affected.

2.5 **Taxes**. Nothing in this Agreement limits the City's ability to impose new or increased taxes or special assessments, or any equivalent or substitute tax or assessment.

3. DEVELOPER REPRESENTATIONS, WARRANTIES AND COVENANTS

3.1 **Interest of Developer; Due Organization and Standing**. Developer represents that it is the legal owner of the Project Site, and that all other persons with an ownership or security interest in the Project Site have consented to this Agreement. Developer is a Delaware limited liability company. Developer has all requisite power to own its property and authority to conduct its business as presently conducted. Developer has made all required state filings required to conduct business in the State of California and is in good standing in the State of California.

3.2 **No Conflict with Other Agreements; No Further Approvals; No Suits**. Developer warrants and represents that it is not a party to any other agreement that would conflict with Developer's obligations under this Agreement. Neither Developer's articles of organization, bylaws, or operating agreement, as applicable, nor any other agreement or law in any way prohibits, limits or otherwise affects the right or power of Developer to enter into and perform all of the terms and covenants of this Agreement. No consent, authorization or approval of, or other action by, and no notice to or filing with, any governmental authority, regulatory body or any other person is required for the due execution, delivery and performance by Developer of this Agreement or any of the terms and covenants contained in this Agreement. To Developer's knowledge, there are no pending or threatened suits or proceedings or undischarged judgments affecting Developer or any of its members before any court, governmental agency, or arbitrator which might materially adversely affect Developer's business, operations, or assets or Developer's ability to perform under this Agreement.

3.3 **No Inability to Perform; Valid Execution**. Developer warrants and represents that it has no knowledge of any inability to perform its obligations under this Agreement. The execution and delivery of this Agreement and the agreements contemplated hereby by Developer have been duly and validly authorized by all necessary action. This Agreement will be a legal, valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.4 **Conflict of Interest**. Through its execution of this Agreement, Developer acknowledges that it is familiar with the provisions of Section 15.103 of the City's 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 California Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions and agrees that it will immediately notify the City if it becomes aware of any such fact during the Term.

3.5 **Notification of Limitations on Contributions**. Through execution of this Agreement, Developer acknowledges that it is familiar with Section 1.126 of City's Campaign and Governmental Conduct Code, which prohibits any person who contracts with the City, whenever such transaction would require approval by a City elective officer or the board on which that City elective officer serves, from making any campaign contribution to the officer at any time from the commencement of negotiations for a contract as defined under Section 1.126 of the Campaign and Governmental Conduct Code until six (6) months after the date the contract is approved by the City elective officer or the board on which that City elective officer serves. San Francisco Ethics Commission Regulation 1.126 1 provides that negotiations are commenced when a prospective contractor first communicates with a City officer or employee 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 officer or employee. Negotiations are completed when a contract is finalized and signed by the City and the contractor. Negotiations are terminated when the City and/or the prospective contractor end the negotiation process before a final decision is made to award the contract.

3.6 **Other Documents**. No document furnished or to be furnished by Developer to the City in connection with this Agreement contains or will contain to Developer's knowledge any untrue statement of material fact or omits or will omit a material fact necessary to make the statements contained therein not misleading under the circumstances under which any such statement shall have been made.

3.7 **No Suspension or Debarment**. Neither Developer, nor any of its officers, have been suspended, disciplined or debarred by, or prohibited from contracting with, the U.S. General Services Administration or any federal, state or local governmental agency.

3.8 **No Bankruptcy**. Developer represents and warrants to City that Developer has neither filed nor is the subject of any filing of a petition under the federal bankruptcy law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors, and, to the best of Developer's knowledge, no such filing is threatened.

3.9 **Taxes**. Without waiving any of its rights to seek administrative or judicial relief from such charges and levies, Developer shall pay and discharge all taxes, assessments and governmental charges or levies imposed on it or on its income or profits or on any of its property before the date on which penalties attach thereto, and all lawful claims which, if unpaid, would become a lien upon the Project Site.

3.10 **Notification**. Developer shall promptly notify City in writing of the occurrence of any event which might materially and adversely affect Developer or Developer's business, or that would make any of the representations and warranties herein untrue, or that would, with the giving of notice or passage of time over the Term, constitute a default under this Agreement.

3.11 **Nexus/Reasonable Relationship Waiver**. Developer consents to, and waives any rights it may have now or in the future, to challenge with respect to the Project, the legal validity of, the conditions, requirements, policies, or programs required by this Agreement, including, without limitation, any claim that they constitute an abuse of police power, violate substantive due process, deny equal protection of the laws, effect a taking of property without payment of just compensation, or impose an unlawful tax.

3.12 **Indemnification of City**. Developer shall Indemnify the City and OCII (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 ("**Losses**") arising or resulting directly or indirectly from this Agreement and Developer's performance (or nonperformance) of this Agreement, regardless of the negligence of and regardless of whether liability without fault is imposed or sought to be imposed an Indemnified Party, except to the extent that such Indemnity is void or otherwise unenforceable under applicable law, and except to the extent such Loss is the result of the active negligence or willful misconduct of an Indemnified Party. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs, and the Indemnified Party's cost of investigating any claims against the Indemnified Party. All Indemnifications set forth in this Agreement shall survive the expiration or termination of this Agreement.

3.13 **Payment of Fees and Costs.**

3.13.1 Developer shall pay to the City all City Costs (defined below) during the Term within thirty (30) days following receipt of a written invoice from the City. Each City Agency shall submit to the Planning Department or another City agency as designated by the Planning Department monthly or quarterly invoices for all City Costs incurred by the City Agency for reimbursement under this Agreement, and the Planning Department or its designee shall gather all such invoices so as to submit one

City bill to Developer each month or quarter. To the extent that a City Agency fails to submit such invoices, then the Planning Department or its designee shall request and gather such billing information, and any City Cost that is not invoiced to Developer within eighteen (18) months from the date the City Cost was incurred shall not be recoverable. For purposes of this Agreement, "**City Costs**" means the actual and reasonable costs incurred by a City Agency or OCII in preparing, adopting or amending this Agreement, in performing its obligations or defending its actions under this Agreement or otherwise contemplated by this Agreement, as determined on a time and materials basis, including reasonable attorneys' fees and costs but excluding work, hearings, costs or other activities contemplated or covered by the standard fee(s) (i.e., processing fees) imposed by the City upon the submission of an application for a permit or approval, other than impact fees or exactions, in accordance with City practice on a City-wide basis.

3.13.2 The City shall not be required to process any requests for approval or take other actions under this Agreement during any period in which payments from Developer are past due. If such failure to make payment continues for a period of more than sixty (60) days following notice, it shall be a Default for which the City shall have all rights and remedies as set forth in Section 7.4.

3.14 **Mello-Roos Community Facilities District**. The Project shall be subject to the provisions of the proposed City and County of San Francisco Transbay Center District Plan [Mello-Roos] Community Facilities District No. 2014-1 (Transbay Transit Center) ("**CFD**"), once established, to help pay the costs of constructing the new Transbay Transit Center, the Downtown Rail Extension ("DTX"), and other improvements in the Transit Center District Plan area. The special tax rate has been established, as included in the CFD Rate and Method of Apportionment ("RMA") attached hereto as Exhibit C.

3.14.1 If the Project is 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 C of O is issued to the Developer, then the Developer will be required to pay to the City for transmittal to the TJPA, and retention by the City as applicable, of the estimated CFD taxes amount that would otherwise be due to the San Francisco Office of the Assessor-Recorder ("**Assessor-Recorder**") if the CFD had been established in accordance with the rates established in the RMA.

3.14.2 The "amount that would otherwise be due" under 3.14(i) above shall be based on the RMA attached hereto as Exhibit C, calculated as if the Project were subject to the RMA from the date of issuance of the Final C of O until the Project is subject to the CFD.

3.14.3 If the City proposes a CFD covering the Site, Developer agrees to cast its vote in favor of the CFD, provided that the tax rates are not greater than the Base Special Tax rates in the RMA attached as Exhibit C to this Agreement.

4. MUTUAL OBLIGATIONS

4.1 **Notice of Completion or Revocation**. Upon the Parties' completion of performance or revocation of this Agreement, a written statement acknowledging such completion or revocation, signed by the appropriate agents of City and Developer, shall be recorded in the Official Records.

4.2 **Estoppel Certificate**. Developer may, at any time, and from time to time, deliver written notice to the Planning Director requesting that the Planning Director certify in writing that to the best of his or her knowledge: (i) this Agreement is in full force and effect and a binding obligation of the Parties; (ii) this Agreement has not been amended or modified either orally or in writing, and if so amended or modified, identifying the amendments or modifications and stating their date and nature; (iii) Developer is not in default in the performance of its obligations under this Agreement, or if in default, describing

therein the nature and amount of any such defaults; and (iv) the findings of the City with respect to the most recent annual review performed pursuant to Section 9.2 below. The Planning Director shall execute and return such certificate within forty-five (45) days following receipt of the request. Each Party acknowledges that any mortgagee with a mortgage on all or part of the Project Site, acting in good faith, may rely upon such a certificate. A certificate provided by the City establishing the status of this Agreement with respect to any lot or parcel shall be in recordable form and may be recorded with respect to the affected lot or parcel at the expense of the recording party.

4.3 **Cooperation in the Event of Third-Party Challenge.**

4.3.1 In the event any legal action or proceeding is instituted challenging the validity of any provision of this Agreement, the Parties shall cooperate in defending against such challenge. The City shall promptly notify Developer of any Third-Party Challenge instituted against the City.

4.3.2 Developer shall assist and cooperate with the City at its own expense in connection with any Third-Party Challenge. The City Attorney's Office may use its own legal staff or outside counsel in connection with defense of the Third-Party Challenge, at the City Attorney's sole discretion. Developer shall reimburse the City for its actual costs in defense of the action or proceeding, including but not limited to the time and expenses of the City Attorney's Office and any consultants; *provided, however,* Developer shall have the right to receive monthly invoices for all such costs. Developer shall Indemnify the City from any other liability incurred by the City, its officers, and its employees as the result of any Third-Party Challenge, including any award to opposing counsel of attorneys' fees or costs, except where such award is the result of the willful misconduct of the City or its officers or employees. This section shall survive any judgment invalidating all or any part of this Agreement.

4.3.3 Affordable Housing Fee Challenge. The Parties agree that if a Third-Party Challenge is initiated regarding the validity or enforceability of this Agreement or, specifically of the Affordable Housing Fee, Developer shall not sell or lease the residential units designated for and required to complete the On-Site Requirements until the validity and enforceability of this Agreement, including payment of the Affordable Housing Fee, has been finally determined and upheld. If this Agreement or the Affordable Housing Fee is not upheld (on any final appeal), then Developer will satisfy the On-Site Requirements with the designated residential units.

4.4 **Good Faith and Fair Dealing**. The Parties shall cooperate with each other and act in good faith in complying with the provisions of this Agreement. In their course of performance under this Agreement, the Parties shall cooperate and shall undertake such actions as may be reasonably necessary to implement the Project as contemplated by this Agreement.

4.5 **Agreement to Cooperate; Other Necessary Acts**. The Parties agree to cooperate with one another to expeditiously implement the Project in accordance with this Agreement, and to undertake and complete all actions or proceedings reasonably necessary or appropriate to ensure that the objectives of the Agreement are fulfilled during the Term. Each Party shall use good faith efforts to take such further actions as may be reasonably necessary to carry out this Agreement, in accordance with the terms of this Agreement (and subject to all applicable laws) in order to provide and secure to each Party the full and complete enjoyment of its rights and privileges hereunder.

5. PERIODIC REVIEW OF DEVELOPER'S COMPLIANCE

5.1 **Annual Review**. Pursuant to Section 65865.1 of the Development Agreement Statute, at the beginning of the second week of each January following final adoption of this Agreement and for so

long as the Agreement is in effect (the "**Annual Review Date**"), the Planning Director shall commence a review to ascertain whether Developer has, in good faith, complied with the Agreement. The failure to commence such review in January shall not waive the Planning Director's right to do so later in the calendar year. The Planning Director may elect to forego an annual review if no significant construction work occurred on the Project Site during that year, or if such review is otherwise not deemed necessary.

5.2 **Review Procedure**. In conducting the required initial and annual reviews of Developer's compliance with this Agreement, the Planning Director shall follow the process set forth in this Section.

5.2.1 Required Information from Developer. Upon request by the Planning Director but not more than sixty (60) days and not less than forty-five (45) days before the Annual Review Date, Developer shall provide a letter to the Planning Director confirming, with appropriate backup documentation, Developer's compliance with this Agreement for the preceding calendar year. The Planning Director shall post a copy of Developer's submittals on the Planning Department's website.

5.2.2 City Compliance Review. The Planning Director shall notify Developer in writing whether Developer has complied with the terms of this Agreement (the "City Report"), and post the City Report on the Planning Department's website. If the Planning Director finds Developer not in compliance with this Agreement, then the City may pursue available rights and remedies in accordance with this Agreement and Chapter 56. The City's failure to initiate or to timely complete the annual review shall not be a Default and shall not be deemed to be a waiver of the right to do so at a later date. All costs incurred by the City under this section shall be included in the City Costs.

6. AMENDMENT; TERMINATION; EXTENSION OF TERM

6.1 **Amendment or Termination**. Except as provided in Section 2.3 (Changes in State and Federal Rules and Regulations) and Section XXX (Remedies), this Agreement may only be amended or terminated with the mutual written consent of the Parties. Except as provided in this Agreement to the contrary, the amendment or termination, and any required notice thereof, shall be accomplished in the manner provided in the Development Agreement Statute and Chapter 5.

6.2 **Extension Due to Legal Action, Referendum, or Excusable Delay.**

6.2.1 If any litigation is filed challenging this Agreement or the validity of this Agreement or any of its provisions and it directly or indirectly delays this Agreement, then the Term shall be extended for the number of days equal to the period starting from the commencement of the litigation or the suspension to the end of such litigation or suspension (a "Litigation Extension"). The Parties shall document the start and end of a Litigation Extension in writing within thirty (30) days from the applicable dates.

6.2.2 In the event of changes in State or Federal Laws or regulations, inclement weather, delays due to strikes, inability to obtain materials, civil commotion, war, acts of terrorism, fire, acts of God, litigation, lack of availability of commercially-reasonable project financing (as a general matter and not specifically tied to Developer), or other circumstances beyond the control of Developer and not proximately caused by the acts or omissions of Developer that substantially interfere with carrying out the obligations under this Agreement ("Excusable Delay"), the Parties agree to extend the time periods for performance, as such time periods have been agreed to by Developer, of Developer's obligations impacted by the Excusable Delay. In the event that an Excusable Delay occurs, Developer shall notify the City in writing of such occurrence and the manner in which such occurrence substantially interferes with the ability of Developer to perform under this Agreement. In the event of the occurrence of any such Excusable Delay, the time or times for performance of the obligations of Developer, will be

extended for the period of the Excusable Delay if Developer cannot, through commercially reasonable and diligent efforts, make up for the Excusable Delay within the time period remaining before the applicable completion date; *provided, however*, within thirty (30) days after the beginning of any such Excusable Delay, Developer shall have first notified City of the cause or causes of such Excusable Delay and claimed an extension for the reasonably estimated period of the Excusable Delay. In the event that Developer stops any work as a result of an Excusable Delay, Developer must take commercially reasonable measures to ensure that the affected real property is returned to a safe condition and remains in a safe condition for the duration of the Excusable Delay.

6.2.3 The foregoing Section 6.2.2 notwithstanding, Developer may not seek to delay the payment of the Affordable Housing Fee as a result of an Excusable Delay related to the lack of availability of commercially reasonable project financing.

7. ENFORCEMENT OF AGREEMENT; REMEDIES FOR DEFAULT; DISPUTE RESOLUTION

7.1 **Enforcement**. The only Parties to this Agreement are the City and Developer. This Agreement is not intended, and shall not be construed, to benefit or be enforceable by any other person or entity whatsoever.

7.2 **Default**. For purposes of this Agreement, the following shall constitute an event of default (an "**Event of Default**") under this Agreement: (i) except as otherwise specified in this Agreement, the failure to make any payment within ninety (90) calendar days of when due; and (ii) the failure to perform or fulfill any other material term, provision, obligation, or covenant hereunder, including complying with all terms of the Conditions of Approval, attached hereto as Exhibit D, and the continuation of such failure for a period of thirty (30) calendar days following a written notice of default and demand for compliance (a "**Notice of Default**"); *provided, however*, if a cure cannot reasonably be completed within thirty (30) days, then it shall not be considered a default if a cure is commenced within said 30-day period and diligently prosecuted to completion thereafter.

7.3 **Notice of Default**. Prior to the initiation of any action for relief specified in Section XX below, the Party claiming default shall deliver to the other Party a Notice of Default. The Notice of Default shall specify the reasons for the allegation of default with reasonable specificity. If the alleged defaulting Party disputes the allegations in the Notice of Default, then that Party, within twenty-one (21) calendar days of receipt of the Notice of Default, shall deliver to the other Party a notice of non-default which sets forth with specificity the reasons that a default has not occurred. The Parties shall meet to discuss resolution of the alleged default within thirty (30) calendar days of the delivery of the notice of non-default. If, after good faith negotiation, the Parties fail to resolve the alleged default within thirty (30) calendar days, then the Party alleging a default may (i) institute legal proceedings pursuant to Section XX to enforce the terms of this Agreement or (ii) send a written notice to terminate this Agreement pursuant to Section XX. The Parties may mutually agree in writing to extend the time periods set forth in this Section.

7.4 **Remedies.**

7.4.1 Specific Performance; Termination. In the event of an Event of Default under this Agreement, the remedies available to a Party shall include specific performance of the Agreement in addition to any other remedy available at law or in equity (subject to the limitation on damages set forth in Section XX below). In the event of an Event of Default under this Agreement, and following a public hearing at the Board of Supervisors regarding such Event of Default and proposed termination, the non-defaulting Party may terminate this Agreement by sending a notice of termination to the other Party

setting forth the basis for the termination. The Party alleging a material breach shall provide a notice of termination to the breaching Party, which notice of termination shall state the material breach. The Agreement will be considered terminated effective upon the date set forth in the notice of termination, which shall in no event be earlier than ninety (90) days following delivery of the notice. The Party receiving the notice of termination may take legal action available at law or in equity if it believes the other Party's decision to terminate was not legally supportable.

7.4.2 Actual Damages. Developer agrees that the City shall not be liable to Developer for damages under this Agreement, and the City agrees that Developer shall not be liable to the City for damages under this Agreement, and each covenants not to sue the other for or claim any damages under this Agreement and expressly waives its right to recover damages under this Agreement, except as follows: (1) the City shall have the right to recover actual damages only (and not consequential, punitive or special damages, each of which is hereby expressly waived) for (a) Developer's failure to pay sums to the City as and when due under this Agreement, but subject to any express conditions for such payment set forth in this Agreement, and (b) Developer's failure to make payment due under any Indemnity in this Agreement, and (2) either Party shall have the right to recover attorneys' fees and costs as set forth in Section XX, when awarded by an arbitrator or a court with jurisdiction. For purposes of the foregoing, "actual damages" shall mean the actual amount of the sum due and owing under this Agreement, with interest as provided by law, together with such judgment collection activities as may be ordered by the judgment, and no additional sums.

7.5 **Dispute Resolution**. The Parties recognize that disputes may arise from time to time regarding application to the Project. Accordingly, in addition and not by way of limitation to all other remedies available to the Parties under the terms of this Agreement, including legal action, the Parties agree to follow the dispute resolution procedure in Section XX that is designed to expedite the resolution of such disputes. If, from time to time, a dispute arises between the Parties relating to application to the Project the dispute shall initially be presented by Planning Department staff to the Planning Director, for resolution. If the Planning Director decides the dispute to Developer's satisfaction, such decision shall be deemed to have resolved the matter. Nothing in this section shall limit the rights of the Parties to seek judicial relief in the event that they cannot resolve disputes through the above process.

7.6 **Dispute Resolution Related to Changes in State and Federal Rules and Regulations**. The Parties agree to the follow the dispute resolution procedure in this Section 7.6 for disputes regarding the effect of changes to State and federal rules and regulations to the Project pursuant to Section XX.

7.6.1 Good Faith Meet and Confer Requirement. The Parties shall make a good faith effort to resolve the dispute before non-binding arbitration. Within five (5) business days after a request to confer regarding an identified matter, representatives of the Parties who are vested with decision-making authority shall meet to resolve the dispute. If the Parties are unable to resolve the dispute at the meeting, the matter shall immediately be submitted to the arbitration process set forth in Section XX.

7.6.2 Non-Binding Arbitration. The Parties shall mutually agree on the selection of an arbiter at JAMS in San Francisco or other mutually agreed to Arbiter to serve for the purposes of this dispute. The arbiter appointed must meet the Arbiters' Qualifications. The "Arbiters' Qualifications" shall be defined as at least ten (10) years of experience in a real property professional capacity, such as a real estate appraiser, broker, real estate economist, or attorney, in the Bay Area. The disputing Party(ies) shall, within ten (10) business days after submittal of the dispute to non-binding arbitration, submit a brief with all supporting evidence to the arbiter with copies to all Parties. Evidence may include, but is not limited to, expert or consultant opinions, any form of graphic evidence, including photos, maps or graphs and any other evidence the Parties may choose to submit in their discretion to assist the arbiter in resolving the dispute. In either case, any interested Party may submit an additional brief within ten (10)

business days after distribution of the initial brief. The arbiter thereafter shall hold a telephonic hearing and issue a decision in the matter promptly, but in any event within five (5) business days after the submittal of the last brief, unless the arbiter determines that further briefing is necessary, in which case the additional brief(s) addressing only those items or issues identified by the arbiter shall be submitted to the arbiter (with copies to all Parties) within five (5) business days after the arbiter's request, and thereafter the arbiter shall hold a telephonic hearing and issue a decision promptly but in any event not sooner than two (2) business days after submission of such additional briefs, and no later than thirty-two (32) business days after initiation of the non-binding arbitration. Each Party will give due consideration to the arbiter's decision before pursuing further legal action, which decision to pursue further legal action shall be made in each Party's sole and absolute discretion.

7.7 **Attorneys' Fees**. Should legal action be brought by either Party against the other for an Event of Default under this Agreement or to enforce any provision herein, the prevailing party in such action shall be entitled to recover its reasonable attorneys' fees and costs. For purposes of this Agreement, "reasonable attorneys' fees and costs" shall mean the fees and expenses of counsel to the Party, which may include printing, duplicating and other expenses, air freight charges, hiring of experts, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The term "reasonable attorneys' fees and costs" shall also include, without limitation, all such fees and expenses incurred with respect to appeals, mediation, arbitrations, and bankruptcy proceedings, and whether or not any action is brought with respect to the matter for which such fees and costs were incurred. For the purposes of this Agreement, the reasonable fees of attorneys of City Attorney's Office 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 City Attorney's Office's services were rendered who practice in the City of San Francisco in law firms with approximately the same number of attorneys as employed by the City Attorney's Office.

7.8 **No Waiver**. Failure or delay in giving a Notice of Default shall not constitute a waiver of such Event of Default, nor shall it change the time of such Event of Default. Except as otherwise expressly provided in this Agreement, any failure or delay by a Party in asserting any of its rights or remedies as to any Event of Default shall not operate as a waiver of any Event of Default or of any such rights or remedies, nor shall it deprive any such Party of its right to institute and maintain any actions or proceedings that it may deem necessary to protect, assert, or enforce any such rights or remedies.

7.9 **Future Changes to Existing Standards**. Pursuant to Section 65865.4 of the Development Agreement Statute, unless this Agreement is terminated by mutual agreement of the Parties or terminated for default as set forth in Section XX, either Party may enforce this Agreement notwithstanding any change in any applicable general or specific plan, zoning, subdivision, or building regulation adopted by the City or the voters by initiative or referendum (excluding any initiative or referendum that successfully defeats the enforceability or effectiveness of this Agreement itself).

7.10 **Joint and Several Liability**. If Developer consists of more than one person or entity with respect to any real property within the Project Site or any obligation under this Agreement, then the obligations of each such person and/or entity shall be joint and several.

8. MISCELLANEOUS PROVISIONS

8.1 **Entire Agreement**. This Agreement, including the preamble paragraph, Recitals and Exhibits, constitute the entire understanding and agreement between the Parties with respect to the subject matter contained herein.

8.2 **Binding Covenants; Run With the Land**. Pursuant to Section 65868 of the Development Agreement Statute, from and after recordation of this Agreement, all of the provisions, agreements, rights, powers, standards, terms, covenants and obligations contained in this Agreement shall be binding upon the Parties and, subject to Article XX above, their respective heirs, successors (by merger, consolidation, or otherwise) and assigns, and all persons or entities acquiring the Project Site, or any portion thereof, or any interest therein, whether by sale, operation of law, or in any manner whatsoever, and shall inure to the benefit of the Parties and their respective heirs, successors (by merger, consolidation or otherwise) and assigns. All provisions of this Agreement shall be enforceable during the Term as equitable servitudes and constitute covenants and benefits running with the land pursuant to applicable law, including but not limited to California Civil Code section 1468.

8.3 **Applicable Law and Venue**. This Agreement has been executed and delivered in and shall be interpreted, construed, and enforced in accordance with the laws of the State of California. All rights and obligations of the Parties under this Agreement are to be performed in the City and County of San Francisco, and such City and County shall be the venue for any legal action or proceeding that may be brought, or arise out of, in connection with or by reason of this Agreement.

8.4 **Construction of Agreement**. The Parties have mutually negotiated the terms and conditions of this Agreement and its terms and provisions have been reviewed and revised by legal counsel for both the City and Developer. Accordingly, no presumption or rule that ambiguities shall be construed against the drafting Party shall apply to the interpretation or enforcement of this Agreement. Language in this Agreement shall be construed as a whole and in accordance with its true meaning. The captions of the paragraphs and subparagraphs of this Agreement are for convenience only and shall not be considered or referred to in resolving questions of construction. Each reference in this Agreement or to this Agreement shall be deemed to refer to the Agreement as amended from time to time pursuant to the provisions of the Agreement, whether or not the particular reference refers to such possible amendment.

8.5 **Project Is a Private Undertaking; No Joint Venture or Partnership.**

8.5.1 The Project is a private development and no portion shall be deemed a public work. The City has no interest in, responsibility for, or duty to third persons concerning the Project. Developer shall exercise full dominion and control over the Project Site, subject only to the limitations and obligations of Developer contained in this Agreement.

8.5.2 Nothing contained in this Agreement, or in any document executed in connection with this Agreement, shall be construed as creating a joint venture or partnership between the City and Developer. Neither Party is acting as the agent of the other Party in any respect hereunder. Developer is not a state or governmental actor with respect to any activity conducted by Developer hereunder.

8.6 **Recordation**. Pursuant to Section 65868.5 of the Development Agreement Statute, the clerk of the Board shall cause a copy of this Agreement or any amendment thereto to be recorded in the Official Records within ten (10) business days after the Effective Date of this Agreement or any amendment thereto, as applicable, with costs to be borne by Developer.

8.7 **Obligations Not Dischargeable in Bankruptcy**. Developer's obligations under this Agreement are not dischargeable in bankruptcy.

8.8 **Signature in Counterparts**. This Agreement may be executed in duplicate counterpart originals, each of which is deemed to be an original, and all of which when taken together shall constitute one and the same instrument.

8.9 **Time of the Essence**. Time is of the essence in the performance of each and every covenant and obligation to be performed by the Parties under this Agreement.

8.10 **Notices**. Any notice or communication required or authorized by this Agreement shall be in writing and may be delivered personally or by registered mail, return receipt requested. Notice, whether given by personal delivery or registered mail, shall be deemed to have been given and received upon the actual receipt by any of the addressees designated below as the person to whom notices are to be sent. Either Party to this Agreement may at any time, upon written notice to the other Party, designate any other person or address in substitution of the person and address to which such notice or communication shall be given. Such notices or communications shall be given to the Parties at their addresses set forth below:

To City:

Rich Hillis
Director of Planning
San Francisco Planning Department
1650 Mission Street, Suite 400
San Francisco, California 94102

with a copy to:

Dennis J. Herrera, Esq.
City Attorney
City Hall, Room 234
1 Dr. Carlton B. Goodlett Place
San Francisco, California 94102

To Developer:

Parcel F Owner, LLC
c/o Hines
101 California Street, Suite 1000
San Francisco, CA 94111
Attn: Cameron Falconer
Telephone: (415) 982-6200

with a copy to:

Charles J. Higley, Esq.
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, California, 94104

8.11 **Limitations on Actions**. Pursuant to Section 56.19 of the Administrative Code, any decision of the Board of Supervisors made pursuant to Chapter 56 shall be final. Any court action or proceeding to attack, review, set aside, void, or annul any final decision or determination by the Board shall be commenced within ninety (90) days after such decision or determination is final and effective. Any court action or proceeding to attack, review, set aside, void or annul any final decision by (i) the Planning Director made pursuant to Administrative Code Section 56.15(d)(3) or (ii) the Planning

Commission pursuant to Administrative Code Section 56.17(e) shall be commenced within ninety (90) days after said decision is final.

8.12 **Severability**. If any term, provision, covenant, or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, or if any such term, provision, covenant, or condition does not become effective until the approval of any Non-City Responsible Agency, the remaining provisions of this Agreement shall continue in full force and effect unless enforcement of the remaining portions of the Agreement would be unreasonable or grossly inequitable under all the circumstances or would frustrate the purposes of this Agreement. Notwithstanding the foregoing, the Developer and the City agree that the Agreement will terminate and be on no force or effect if Section 2.1 herein is found invalid, void or unenforceable.

8.13 **Sunshine**. Developer understands and agrees that under the City's Sunshine Ordinance (Administrative Code, Chapter 67) and the California Public Records Act (California Government Code section 6250 *et seq.*), this Agreement and any and all records, information, and materials submitted to the City hereunder are public records subject to public disclosure. To the extent that Developer in good faith believes that any financial materials reasonably requested by the City constitutes a trade secret or confidential proprietary information protected from disclosure under the Sunshine Ordinance and other applicable laws, Developer shall mark any such materials as such, . When a City official or employee receives a request for information that has been so marked or designated, the City may request further evidence or explanation from Developer. If the City determines that the information does not constitute a trade secret or proprietary information protected from disclosure, the City shall notify Developer of that conclusion and that the information will be released by a specified date in order to provide Developer an opportunity to obtain a court order prohibiting disclosure.

8.14 **OCII an Intended Third Party Beneficiary**. OCII is an express third party beneficiary of this Agreement and shall be entitled to enforce the provisions of this Agreement as if it were a party hereto.

[Remainder of Page Intentionally Blank;

Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Director of Planning

Approved on March 23, 2021
Board of Supervisors Ordinance No. 42-21

Approved as to form:
Dennis J. Herrera, City Attorney

By: _____
Heidi J. Gewertz
Deputy City Attorney

DEVELOPER

Parcel F Owner, LLC, a Delaware limited liability company

By: _____

Name: Cameron Falconer

Title: Senior Managing Director / COO
Designated Signatory

See Attached CA Notarial Language for Public Notary:
Srira Zadmehran
Commission # 2330328

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 SAN FRANCISCO)

On 09/20/2021 before me, Srira Zadmehran, Notary Public, personally appeared Cameron Falconer, 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: Srira Zadmehran (seal)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

CITY

CITY AND COUNTY OF SAN FRANCISCO, a municipal corporation

By: _____
Director of Planning

Approved as to form:
Dennis J. Herrera, City Attorney

By: Heidi J. Gewertz
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Heidi J. Gewertz
Deputy City Attorney

Approved on March 23, 2021
Board of Supervisors Ordinance No. 42-21

DEVELOPER

Parcel F Owner, LLC, a Delaware limited liability company

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 SAN FRANCISCO)

On September 30, 2021 before me, Nora Priego-Ramos, Notary Public, personally appeared Rich Hillis, 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.

NORA PRIEGO-RAMOS
Notary Public - California
San Mateo County
Commission # 2359676
My Comm. Expires May 31, 2025

Signature: _____ (seal)

EXHIBITS LIST

A	Variation Request
B	CCII Resolution
C	CFD Rate and Method of Apportionment
D	Conditions of Approval
E	Form of Letter of Credit
F	Schedule of Impact Fees

EXHIBIT A
VARIATION REQUEST

December 17, 2020

By Email

Office of Community Investment and Infrastructure ("***OCII***")
Attn: Sally Oerth, Interim Executive Director
1 South Van Ness Avenue, 5th Floor
San Francisco, CA 94103

Re: Request for Variation, 542-550 Howard Street, Transbay Redevelopment Area Parcel F, San Francisco, CA Block 3721/Lots 16, 135, 136, 138

Dear Director Oerth:

This request for a variation from the Transbay Redevelopment Plan (the "***Plan***") amends and restates our previous request, dated June 28, 2018. Parcel F Owner LLC (the "***Sponsor***") owns the property at 542-550 Howard Street ("***Parcel F***"), located within Zone 2 of the Transbay Redevelopment Project Area (together with Zone 1, the "***Plan Area***"), which is subject to requirements of the Plan and Planning Code that all housing developments within the Plan Area provide on-site affordable housing. Redevelopment Plan, § 4.9.3. (the "On-Site Requirement"). The Sponsor has submitted development applications to the San Francisco Planning Department for a 62-story mixed use tower on Parcel F, with a 9 floor hotel, 15 office floors, 7 floors of shared amenities and retail spaces, and 165 residential "for-sale" condominiums (collectively, the "***Project***").

Pursuant to section 3.5.5 of the Plan, the Sponsor hereby requests a variation from the On-Site Requirement whereby the Sponsor would instead pay to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement. As you know, the Sponsor has been negotiating diligently with OCII regarding development of Transbay Block 4, in Zone 1 of the Plan Area. Per our recent discussions, there is a preference for the Parcel F payment described above to be used to support the development of 192 units of high-quality affordable housing in the mid-rise (100% affordable) component of the proposed Block 4 project.

As discussed in greater detail, below, the Sponsor seeks the variation described in this letter because providing on-site, for-sale BMR units on Parcel F would create practical difficulties for maintaining the long-term affordability of the units, leading to undue hardship for the Project Sponsor, the Project's homeowners' association ("***HOA***"), and the BMR unit owners themselves. HOA fees for luxury view condominiums in similar developments are prohibitively high for low- and moderate-income households. In addition, these high HOA dues will inevitably increase over time, making it difficult or impossible for low- and moderate-income households in the Project to afford to remain in their units. The Project Sponsor's payment would fund new rental

units that will remain permanently affordable to low- and middle-income households, and will therefore better fulfill the Plan's objectives and state law requirements to create affordable housing in the Plan Area.

Redevelopment Plan Provides for Variation

Pursuant to section 3.5.5 of the Plan, OCII may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code if strict enforcement would result in practical difficulties for the development creating undue hardship for the property owner. OCII may grant variations only if there are unique physical constraints or other extraordinary circumstances applicable to the property. Any variation granted must be in harmony with the Plan and not materially detrimental to the public welfare or neighboring property or improvements.

Challenges for Long-Term Affordability of On-Site BMR Units

The Project will be the first building in San Francisco to include a mix of hotel, offices, and residential units in the same high-rise building, with the residential units occupying Floors 34 to 61. When it is completed, the 800-foot tower will be one of the tallest buildings in San Francisco, taking up a prominent position in the City's skyline. In addition, the Project will include unique and desirable public amenities, including a public pedestrian way connecting Howard Street to the new Transbay Transit Center, a pedestrian bridge providing public access to the Transit Center's new rooftop park, and a public elevator connecting Natoma Street to the pedestrian bridge.

Due to the extraordinary nature of the Project, maintaining the long-term affordability of the on-site BMR units as envisioned by the Plan would create practical difficulties that would prevent the administration of a successful affordable housing program. The residential condominium units within the Project will be assessed extremely high HOA fees, in excess of $2,500 per month.[1] The high HOA fees are the product of a variety of factors, including expensive building maintenance for residential units at the top of a downtown high-rise building, property taxes (including Transbay Community Facilities District special taxes) for common areas, and significant costs for providing services and amenities for the building residents.

Although the initial price of the BMR units could potentially be adjusted to reflect the cost of the HOA fees, after completion of the Project, the HOA may raise fees at any time without regard to the effect on the BMR units and unit-owners. In addition to the already very high regular, monthly assessments for ongoing maintenance, taxes, and services, the HOA can also be

[1] For context, the HOA fees for residences at 181 Fremont, a Transbay project with a comparable residential program, range from approximately $2600/month for smaller units (studio, one bedroom), up to $4500 for larger units. For rough comparison, MOHCD currently sets permitted housing costs for 100% AMI residents at $2382 for a one bedroom. For 60% AMI residents, MOHCD sets permitted housing costs for a one bedroom at $1,357.

expected, from time to time, to levy "special assessments" to pay for one-time costs, like major renovations, replacements and repairs. State law requires, generally, that HOA fees must be allocated equally among all of the units subject to the assessments. *See* 10 CCR 2792.16(a). Note, increases in HOA fees will be beyond the control of the Sponsor, since the HOA will be made up of the owners of all the units in the Project, a majority of whom will be owners of the Project's market-rate luxury view units. Thus, it is simply not feasible for a BMR unit owner to be protected, over time, from increases in regular and special HOA assessments.

Because of the infeasibility of keeping up with payment of HOA fees, BMR unit owners can be expected either to sell (or attempt to sell) the units to other qualifying buyers, or worse, default on their obligations to the HOA and potentially be *forced* to sell their units to pay for past due HOA fees. In both scenarios, the cost of the restricted affordable unit with high HOA fees will be assumed by either the subsequent income-eligible buyer or by the Mayor's Office of Housing and Community Development ("***MOHCD***"), the City agency that administers the BMR program. The potential increase in turnover of the units would destabilize ownership and occupancy of the BMR units within the Project and create an undue hardship for the Sponsor, the HOA, MOHCD, and future owners of the BMR units.

Variation to Allow Payment to OCII to Fund Affordable Housing

The Sponsor proposes that the obligation to provide on-site BMR units for the Project be fulfilled instead by making payment to OCII in an amount to be approved by OCII and the San Francisco Board of Supervisors. The Sponsor's payment would be used by OCII to fund affordable housing in Zone 1 of the Plan Area. Per the Sponsor's discussions with OCII staff, there would be preference for the payment to be used to support the development of 192 units of high-quality affordable housing in the mid-rise component of the proposed Transbay Block 4 project.

Consistent with Goals and Objectives of the Plan

The variation is consistent with the Plan's goal of creating a new downtown neighborhood, and supports the Plan's objective of creating a mixture of housing types to attract a diverse residential population, including families and people of all income levels. As a result of the practical difficulties described above, if the Project were to provide on-site BMR units, the great likelihood is that those units would remain unoccupied for substantial amounts of time, due to the inability of low-and middle-income homeowners to purchase or fund the ongoing costs of ownership, and the resulting high turn-over. The variation, however, would allow OCII to fund permanently affordable rental projects within the Plan Area that do not present the same challenges with the HOA. The stability created by this approach will achieve the objective of attracting (and retaining) low- and moderate-income residents to the new neighborhood in the nearby surrounding Plan Area. In addition, the variation will have no detrimental impact to the public welfare or neighboring property or improvements. To the contrary, the variation will enhance the public welfare by facilitating the development of a stable, vibrant neighborhood with a range of housing options and opportunities.

Conclusion

A variation will allow the Sponsor to deliver the Project in a way that satisfies the many goals and objectives of the Plan, including the goals of fostering a new Transbay neighborhood and providing affordable housing for the longest feasible time. *See* Health & Safety Code Section 33334.3(1). Accordingly, the Sponsor is committed to working with OCII to provide affordable housing that will actually serve the needs of low- and moderate-income residents, rather than set them (and the Project) up for greater hardship. The need for affordable housing in San Francisco is too great to waste resources on an on-site approach that is bound to fail. Thank you for your consideration, and we look forward to working with OCII on this important matter.

Sincerely,

PARCEL F OWNER LLC,
a Delaware limited liability company

DocuSigned by:
By: _____

Name: Cameron Falconer

Its: Authorized Signatory

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EXHIBIT B
CCII RESOLUTION

COMMISSION ON COMMUNITY INVESTMENT AND INFRASTRUCTURE

RESOLUTION NO. 02-2021

Adopted January 19, 2021

CONDITIONALLY APPROVING A VARIATION TO THE TRANSBAY REDEVELOPMENT PLAN'S ON-SITE AFFORDABLE HOUSING REQUIREMENT AS IT APPLIES TO THE MIXED-USE PROJECT AT 542-550 HOWARD STREET, SUBJECT TO APPROVAL BY THE BOARD OF SUPERVISORS OF THE CITY AND COUNTY OF SAN FRANCISCO IN ITS CAPACITY AS LEGISLATIVE BODY FOR THE SUCCESSOR AGENCY TO THE SAN FRANCISCO REDEVELOPMENT AGENCY, AND AUTHORIZING THE PAYMENT OF AN AFFORDABLE HOUSING FEE TO FULFILL THE PROJECT'S AFFORDABLE HOUSING OBLIGATION; PROVIDING NOTICE THAT THIS APPROVAL IS WITHIN THE SCOPE OF THE TRANSIT CENTER DISTRICT PLAN PROJECT APPROVED UNDER THE TRANSIT CENTER DISTRICT PLAN FINAL ENVIRONMENTAL IMPACT REPORT ("FEIR"), A PROGRAM EIR, AND IS ADEQUATELY DESCRIBED IN THE FEIR FOR THE PURPOSES OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT; AND ADOPTING ENVIRONMENTAL REVIEW FINDINGS; TRANSBAY REDEVELOPMENT PROJECT AREA

WHEREAS, The California Legislature in 2003 enacted Assembly Bill 812 ("AB 812") authorizing the demolition of the historic Transbay Terminal building and the construction of the new Transbay Transit Center (the "TTC") (Stat. 2003, Chapter 99, codified at § 5027.1 of the Cal. Public Resources Code). AB 812 also mandated that 25 percent of the residential units developed in the area around the TTC "shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 60 percent of the area median income, and that at least an additional 10 percent of all dwelling units developed within the project area shall be available at affordable housing cost to, and occupied by, persons and families whose incomes do not exceed 120 percent of the area median income" if the City and County of San Francisco ("City") adopted a redevelopment plan providing for the financing of the TTC (the "Transbay Affordable Housing Obligation"); and,

WHEREAS, The Board of Supervisors of the City and County of San Francisco ("Board of Supervisors") approved a Redevelopment Plan for the approximately 40 acre Transbay Redevelopment Project Area ("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 established a program for the Redevelopment Agency of the City and County of San Francisco ("Former Agency") to redevelop and revitalize the blighted Project Area; it also provided for the financing of the TTC and thus triggered the Transbay Affordable Housing Obligation; and,

WHEREAS, The 2005 Report to the Board of Supervisors on the Redevelopment Plan ("Report") estimated that the Transbay Affordable Housing Obligation would require the development of 1200 affordable units. Report at p. VI-14 (Jan. 2005). The Report also stated: "The affordable housing in the Project Area will include approximately

388 inclusionary units, or units built within market-rate housing projects... The affordable housing will also include approximately 795 units in stand-alone, 100 percent affordable projects." Report at page VIII-7; and,

WHEREAS, The Redevelopment Plan established, under Cal. Health and Safety Code § 33333, the land use controls for the Project Area, required development to conform to those land use controls, and divided the Project Area into two land use zones: Zone One and Zone Two. The Redevelopment Plan required the Former Agency to exercise land use authority in Zone One and authorized it to delegate to the San Francisco Planning Department ("Planning Department") the land use controls of the San Francisco Planning Code ("Planning Code"), as amended from time to time, in Zone Two; and,

WHEREAS, On May 3, 2005, the Former Agency and the Planning Department entered into a Delegation Agreement whereby the Planning Department assumed land use authority in Zone Two of the Project Area subject to certain conditions and procedures, including the requirement that the Planning Department's approval of projects shall be consistent with the Redevelopment Plan ("Delegation Agreement"); and,

WHEREAS, In 2012, the City adopted the Transit Center District Plan, which covers the entirety of the Project Area north of Folsom Street, including Zone 2 of the Redevelopment Plan wherein the Planning Department has land use authority; and,

WHEREAS, To fulfill the Transbay Affordable Housing Obligation, both the Redevelopment Plan and the Planning Code require that all housing developments within the Project Area contain on-site affordable housing. Redevelopment Plan, § 4.9.3 (a minimum of 15 percent); Planning Code, § 249.28 (b) (6) (incorporating the higher inclusionary requirements of Planning Code § 415.6, namely a minimum of 20 percent) (together the "On-Site Requirement"). Neither the Redevelopment Plan nor the Planning Code authorizes off-site affordable housing construction or an "in-lieu" fee payment as an alternative to the On-Site Requirement in the Project Area; and,

WHEREAS, The Redevelopment Plan provides a procedure and standards by which certain of its requirements and the provisions of the Planning Code may be waived or modified. Section 3.5.5 of the Redevelopment Plan states: "The Agency Commission, in its sole discretion, may grant a variation from the Plan, the Development Controls and Design Guidelines, or the Planning Code where enforcement would otherwise result in practical difficulties for development creating undue hardship for the property owner and constitute an unreasonable limitation beyond the intent of the Plan, the Design for Development or the Development Controls and Design Guidelines... Variations to the Plan or the Development Controls and Design Guidelines shall only be granted because of unique physical constraints or other extraordinary circumstances applicable to the property. The granting [of] a variation must be in harmony with the Plan, the Design for Development and the Development Controls and Design Guidelines and shall not be materially detrimental to the public welfare or materially injurious to neighboring property or improvements in the vicinity... In granting any variation,

the Agency Commission shall specify the character and extent thereof, and shall also prescribe any such conditions as are necessary to secure the goals of the Plan, the Design for Development and the Development Controls and Design Guidelines;" and,

WHEREAS, On February 1, 2012, state law dissolved the Former Agency. Cal. Health & Safety Code §§ 34170 et seq. (the "Redevelopment Dissolution Law."); and,

WHEREAS, Under the Redevelopment Dissolution Law, all of the Former Agency's assets (other than certain housing assets) and obligations were transferred to the Successor Agency to the Former Agency, also known as the Office of Community Investment and Infrastructure ("Successor Agency" or "OCII"). Some of the Former Agency's housing assets were transferred to the Mayor's Office of Housing and Community Development ("MOHCD"), acting as the housing successor; and,

WHEREAS, To implement the Redevelopment Dissolution Law, the Board of Supervisors adopted Resolution No. 11-12 (Jan. 26, 2012) and Ordinance No. 215-12 (Oct. 4, 2012), which granted land use authority over the Former Agency's Major Approved Development Projects, including the Transbay Redevelopment Project, to the Successor Agency and its Commission. The Delegation Agreement, however, remains in effect and the Planning Department continues to exercise land use authority under the Planning Code over development in Zone Two; and,

WHEREAS, On April 15, 2013, the California Department of Finance ("DOF") determined finally and conclusively that the Successor Agency has enforceable obligations under Redevelopment Dissolution Law to complete certain development in the Project Area, including the Transbay Affordable Housing Obligation; Letter, S. Szalay, DOF Local Government Consultant, to T. Bohee, Successor Agency Executive Director (April 15, 2012 [sic]); and,

WHEREAS, In furtherance of its land use authority under the Delegation Agreement, Redevelopment Plan, and Transit Center District Plan, the Planning Commission approved, by Resolutions 20613 and 20614, and Motions 20615, 20616, 20617, 20618 (Jan. 9, 2020) a project at 542-550 Howard Street (Assessor's Parcel Block No. 3721, Lots 016, 135, 136, and 138, also known as Transbay Parcel F, located in Zone 2 of the Redevelopment Plan on the north side of Howard Street, between 1st and 2nd Streets in the Project Area. (the "Project Site"). Subsequently, on June 5, 2020, the Zoning Administrator issued a variance decision. (Together the Planning Commission approvals and the Zoning Administrator decision are referred to as the "Approvals"). The Approvals approved a project that would include a new 61-story mixed use building reaching a height of approximately 750 feet (approximately 800 feet including rooftop screen/mechanical equipment), and including 165 dwelling units, 189 hotel rooms, 275,674 gross square feet of office use floor area, approximately 9,000 square feet of retail space, approximately 20,000 square feet of open space, 178 Class 1 and 34 Class 2 bicycle parking spaces, and four below-grade levels to accommodate up to 183 vehicle parking spaces for the residential, hotel, and office uses (the "Project"). The Project also includes a bridge to the future elevated park situated on top of the TTC; and,

WHEREAS, To comply with the On-Site Requirement, the Approvals require the Project to include approximately 33 inclusionary below-market-rate units that are affordable to income-eligible households. All of the Project's approximately 165 residential units are located on the highest 17 floors of the building. The residential units will be for-sale units with homeowners' association ("HOA") assessments that the Project's developer estimates will exceed $2500 per month; and,

WHEREAS, On June 28, 2018, OCII received a request from Developer for a variation from the On-Site Requirement whereby the Developer would construct off-site affordable units instead of providing on-site inclusionary units. Letter, Parcel F Owner LLC, to N. Sesay (June 28, 2018) (the "Original Variation Request"). OCII did not act on the Original Variation Request pending additional negotiations with the Developer. On December 17, 2020, OCII received an amended and restated request in which the Developer proposed that the obligation to provide on-site BMR units for the Project be fulfilled instead by paying to OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee (the "Affordable Housing Fee") that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement. Letter, Parcel F Owner LLC to S. Oerth, OCII (Dec. 17, 2020) ("Revised Variation Request"), attached as Exhibit B to the Commission Memorandum related to this Resolution; and,

WHEREAS, In the Revised Variation Request, the Developer explained that the Project was unique in that it will include a mix of hotel, offices, and residential units in the same high-rise building, its residential units are located on the upper 17 floors of an approximately 61-story tower, it provides desirable public amenities such as a public pedestrian way connecting Howard Street to the Transbay Transit Center, a pedestrian bridge providing public access to the Transit Center's new rooftop park, and its HOA dues will be in excess of $2500 per month. The Revised Variation Request concludes that the application of the On-Site Requirement to the Project creates practical difficulties that would prevent the administration of a successful affordable housing program because the HOA may raise fees at any time without regard to the effect on the BMR units resulting in it simply not being feasible for a BMR unit owner to be protected, over time, and thus creates an undue hardship for the Developer, the HOA, the MOHCD, and future owners of the BMR units; and,

WHEREAS, The Revised Variation Request proposes that the Successor Agency grant a variation on the condition that the Developer pay the Affordable Housing Fee, which is significantly higher than the fee that Section 415.5 of the Planning Code would require if the Project was located outside of the Project Area and not subject to the On-Site Requirement. Payment of the Affordable Housing Fee for OCII's development of affordable housing within the Project Area ensures that the variation's removal of on-site affordable units does not adversely affect the Successor Agency's compliance with the Transbay Affordable Housing Obligation; and,

WHEREAS, The following facts support a finding that the On-Site Requirement imposes practical difficulties for the Project creating undue hardships for the owners of the inclusionary below-market-rate units ("BMR Owners") and MOHCD, as the housing successor responsible for enforcing the long-term affordability restrictions on the units:

1) HOA fees pay for the costs of operating and maintaining the common areas and facilities of a luxury condominium project, including in this case the shared use of luxury hotel amenities in the lower hotel floors of the Project, such as a spa and fitness center, and generally must be allocated equally among all of the units subject to the assessment, Cal. Code Reg., title 10, § 2792.16(a). HOA fees may not be adjusted based on the below-market-rate ("BMR") status of the unit or the income level of the homeowner. If HOA fees increase, BMR Owners will generally be required to pay the same amount of increases in regular assessments and of special assessments as other owners.

2) The Successor Agency's Limited Equity Homeownership Program ("LEHP") ensures that income-eligible households are able to afford, at initial occupancy, all of the housing costs, but does not cover increases in HOA dues that occur over time. Initially, the LEHP will decrease the cost of the BMR unit itself to ensure that income-eligible applicants are able to meet all of the monthly costs, including HOA fees. Moreover, the Successor Agency nor MOHCD (which ultimately assumes authority over the BMR unit as a transferred housing asset) does not have a program for assisting owners in BMR units when increases in regular monthly HOA fees occur.

3) Members of homeowner associations may approve increases in HOA fees without the support of the BMR Owners because BMR Owners, particularly in a development with inclusionary units, typically constitute a small minority of the total HOA membership. Increases less than 20 percent of the regular assessment may occur without a vote of the HOA; increases exceeding 20 percent require a majority vote of members in favor. Cal. Civil Code § 5605 (b). In addition, a homeowner association may impose special assessments to cover the costs of capital expenditures for repairs and other purposes. *Id.*

4) When HOA fees increase or special assessments are imposed, BMR Owners whose incomes have not increased comparably may have difficulty making the higher monthly payments for HOA fees. *See e.g.* Carol Lloyd, *Owners' Dues Keep Going Up*, S.F. Chronicle, Aug. 5, 2007, *available at:* http://www.sfgate.com/default/article/Owners-dues-keep-going-up-2526988.php. The result is that housing costs may become unaffordable and some BMR Owners will face the hardship of having to sell their unit at the reduced prices required under the limited equity programs of the Successor Agency and MOHCD.

5) If the BMR Owner is forced to sell the inclusionary unit because of the high HOA fees, the cost of the restricted affordable unit, which will now include the high HOA fees, will be assumed by either the subsequent income-eligible buyer or by MOHCD, as the housing successor required to comply with the affordability restrictions. In either case, the high HOA dues will have caused an additional hardship, and it is not feasible for a BMR Owner to be protected, over time, from increases in regular and special HOA assessments; and,

WHEREAS, The hardship imposed by the On-Site Requirement constitutes an unreasonable limitation beyond the intent of the Redevelopment Plan to create affordable housing for the longest feasible time, as required under the Transbay Affordable Housing Obligation; and,

WHEREAS, The following facts support a finding that extraordinary circumstances apply to the Project:

1) The Project is unique in that it is a mixed-use building with its residential units located on the upper 17 floors of a 61-story tower. Of the high-rise developments recently approved or proposed in the Project Area, the Project will be the first building in San Francisco to include a mix of hotel, offices, and residential units in the same high-rise building. As noted above, the construction of affordable housing units at the top of a high-rise creates practical difficulties for maintaining the affordability of the units.

2) The Developer will pay OCII approximately $45 - 47 million, which is an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project was located outside of the Project Area and not subject to the On-Site Requirement.. *See* San Francisco Planning Code, §§ 415.1 et seq; and,

WHEREAS, OCII's use of the Affordable Housing Fee for affordable housing in the Project Area ensures that the variation will not be materially detrimental to the public welfare and is necessary to comply with Transbay Affordable Housing Obligation; and,

WHEREAS, Approval of the Revised Variation Request would be subject to approval by the Board of Supervisors, in its capacity as legislative body for the Successor Agency, because it constitutes a material change to a Successor Agency affordable housing program, Ordinance No. 215-12, §6(a) (providing that "the Successor Agency Commission shall not modify the Major Approved Development Projects or the Retained Housing Obligations in any manner that would . . . materially change the obligations to provide affordable housing without obtaining the approval of the Board of Supervisors...."); and,

WHEREAS, The San Francisco Planning Commission and Board of Supervisors will consider approving a development agreement that would be consistent with this Resolution by providing relief from the on-site affordable housing requirement in Section 249.28 of the Planning Code, and would require the Developer to pay the Affordable Housing Fee (based on the 2021 San Francisco Citywide Development Impact Fee Register) to OCII for affordable housing in the Project Area to further the Successor Agency's obligation to fulfill the Transbay Affordable Housing Obligation (the "Development Agreement"). The proposed Development Agreement would also provide that the Developer may pay the Affordable Housing Fee on the earlier to occur of: (a) issuance of the temporary certificate of occupancy associated with the residential portions of the Project; or (b) on the date that is two years after the effective date of the Project's Development Agreement between the City and the Parcel F Owner LLC (but only if the "first construction document," as defined in Section 401 of the Planning Code and Section 107A.13.1 of the Building

Code, has been issued for the Project). In addition, the proposed Development Agreement would require the Developer to provide OCII, prior to payment of the Affordable Housing Fee, with an irrevocable letter of credit for the full amount of the fee if the Developer and OCII reach agreement on a project at Transbay Block 4; and,

WHEREAS, On May 24, 2012, the San Francisco Planning Commission, as lead agency under the California Environmental Quality Act ("CEQA"), certified the FEIR, which analyzed the development of land under the Transit Center District Plan, including the development of the Project on the Project site. The Transit Center District is located approximately between Folsom and Market Streets, and between New Montgomery Street and the Embarcadero and includes Zone 2 of the Redevelopment Plan wherein the Planning Commission has land use authority under the Delegation Agreement. The FEIR is available for review at the Planning Department's website at: http://sfmea.sfplanning.org/2007.0558E_FEIR1.pdf, http://sfmea.sfplanning.org/2007.0558E_FEIR2.pdf,and, http://sfmea.sfplanning.org/2007.0558E_FEIR3.pdf; and,

WHEREAS, Prior to the Approvals for the Project, the Planning Department determined that the Project was eligible for review under CEQA Guideline § 15183 and issued a Certificate of Determination for a Community Plan Evaluation on August 27, 2019 (the "CPE"), determining the following: the Project would not result in effects on the environment that are peculiar to the Project or the Project site or that were not identified as significant effects in the FEIR; the Project would not result in potentially significant off-site or cumulative impacts that were not identified in the FEIR; the Project would not result in significant effects, which, as a result of substantial new information that was not known at the time the FEIR was certified, would be more severe than were already analyzed and disclosed in the FEIR; and the Project sponsor will undertake feasible mitigation measures specified in the FEIR to mitigate project-related significant impacts; and,

WHEREAS, A copy of the CPE is on file with the Commission Secretary and are incorporated herein by reference; now, therefore, be it

RESOLVED, That the Commission determines that its approval of the Revised Variation Request is not subject to further environmental review pursuant to CEQA Guidelines Section 15183 for the following reasons: the Project, irrespective of whether it provides affordable housing units off-site or the Affordable Housing Fee, would have the same density and would not result in effects on the environment that are peculiar to the Project or the Project site that were not identified as significant effects in the FEIR; the Project and the Variation Request would not result in potentially significant off-site or cumulative impacts that were not identified in the FEIR; the Project and the Variation Request would not result in significant effects, which, as a result of substantial new information that was not known at the time the FEIR was certified, would be more severe than were already analyzed and disclosed in the FEIR; and the Project sponsor will undertake feasible mitigation measures specified in the FEIR to mitigate project-related significant impacts; and, be it further

RESOLVED, That the Commission hereby approves a variation to the Redevelopment Plan's On-Site Requirement for the Project at 543-550 Howard Street that relieves the Developer from complying with the On-Site Requirements ,but that requires the Developer to pay OCII an amount equal to one hundred fifty percent (150%) of the inclusionary housing fee that Section 415.5 of the Planning Code would otherwise require if the Project were not subject to the On-Site Requirement, subject to approval by the Board of Supervisors, acting in its capacity as the legislative body for the Successor Agency; and, be it further

RESOLVED, The Commission on Community Investment and Infrastructure authorizes the Executive Director to take appropriate and necessary actions to effectuate the purpose of this resolution.

I hereby certify that the foregoing resolution was adopted by the Commission at its meeting of January 19, 2021.

Commission Secretary

EXHIBIT C
CFD RATE AND METHOD OF APPORTIONMENT

CITY AND COUNTY OF SAN FRANCISCO
COMMUNITY FACILITIES DISTRICT NO. 2014-1
(TRANSBAY TRANSIT CENTER)

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 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, pursuant to Section 424 of the Planning Code, is required to participate in funding Authorized Facilities through the CFD and, therefore, is subject to the levy of the Special Tax when Buildings within the Development Project become Taxable Buildings.

"**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 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 four percent (4%) 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 that is not Public Property, (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 is not Public Property and 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, for Taxable Parcels that are not Taxable Public Property, 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 that are not Taxable Public Property. For Taxable Public Property, "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 Parcels of Taxable Public Property.

"Public Property" means any property within the boundaries of CFD No. 2014-1 that is owned by the federal government, the State of California, the City, or other public agency.

"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 gross square footage (as defined in Section 102.9 of the Planning Code) 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.

"**Taxable Public Property**" means any Parcel of Public Property that had been a Taxable Parcel in a prior Fiscal Year, and for which the Special Tax obligation was not prepaid when the public agency took ownership of the Parcel.

"**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, (v) whether there is Taxable Public Property in the CFD, and (vi) 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

Building Height	*Base Special Tax Fiscal Year 2013-14**
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

Building Height	*Base Special Tax Fiscal Year 2013-14**
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

Building Height	*Base Special Tax Fiscal Year 2013-14**
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

Building Height	*Base Special Tax Fiscal Year 2013-14**
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.

3. *Determining the Maximum Special Tax for Taxable Public Property*

The Maximum Special Tax for a Parcel of Taxable Public Property shall be equal to the Maximum Special Tax that applied to the Taxable Parcel prior to the Parcel becoming Public Property.

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 according to the steps outlined below:

Step 1: The Special Tax shall be levied Proportionately on each Taxable Parcel that is not Taxable Public Property up to 100% of the Maximum Special Tax for each Parcel for such Fiscal Year until the amount levied on Taxable Parcels that are not Taxable Public Property is equal to the Special Tax Requirement;

Step 2: If additional revenue is needed after Step 1 in order to meet the Special Tax Requirement, the Special Tax shall be levied Proportionately on each Assessor's Parcel of Taxable Public Property, up to 100% of the Maximum Special Tax assigned to each Parcel.

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 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 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 seventy-five 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) Public Property, except Taxable Public Property, (ii) Square Footage for which a prepayment has been received and a Certificate of Exemption issued, (iii) Below Market Rate Units except as otherwise provided in Sections D.3 and D.4, (iv) 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, (v) Exempt Child Care Square Footage, , and (vi) Parcels in the CFD that are not yet Taxable Parcels..

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 30 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.

Appendix A – California Existing Building Code, Select Standards Related to Seismic Upgrades for Alterations

SECTION 503A ALTERATIONS

503A.1 General. Except as provided by this section, alterations to any building or structure shall comply with the requirements of the California Building Code for new construction. Alterations shall be such that the existing building or structure is not less complying with the provisions of this code than the existing building or structure was prior to the alteration.

Exceptions:

1. An existing stairway shall not be required to comply with the requirements of California Building Code Section 1101 where the existing space and construction does not allow a reduction in pitch or slope.

1. Handrails otherwise required to comply with Section 1011.11 of the California Building Code shall not be required to comply with the requirements of California Building Code Section 1014.6 regarding full extension of the handrails where such extensions would be hazardous due to plan configuration.

[BS] 503A.3 Existing structural elements carrying gravity load. Any existing gravity load-carrying structural element for which an alteration causes an increase in design gravity load of more than 5 percent shall be strengthened, supplemented, replaced or otherwise altered as needed to carry the increased gravity load required by this code for new structures. Any existing gravity load-carrying structural element whose gravity load-carrying capacity is decreased as part of the alteration shall be shown to have the capacity to resist the applicable design gravity loads required by this code for new structures.

503A.3.1 Design live load. Where the alteration does not result in increased design live load, existing gravity load-carrying structural elements shall be permitted to be evaluated and designed for live loads approved prior to the alteration. If the approved live load is less than that required by Section 1607A, the area designed for the nonconforming live load shall be posted with placards of approved design indicating the approved live load. Where the alteration does result in increased design live load, the live load required by Section 1607A shall be used.

[BS] 503A.4 Existing structural elements carrying lateral load. Except as permitted by Section 503A.13, where the alteration increases design lateral loads in accordance with California Building Code Section 1609A or 1613A, or where the alteration results in a prohibited structural irregularity as defined in the California Building Code, or where the alteration decreases the capacity of any existing later load structural irregularity as defined in ASCE 7, or decreases the capacity of an existing lateral load-carrying structural element, the structure of the altered building or structure shall be shown to meet the requirements of California Building Code Sections 1609A and 1613A.

Exceptions: For incidental and minor alterations:

1. Any existing lateral load-carrying structural element whose demand-capacity ratio with the alteration considered is no more than 10 percent greater than its demand-capacity ratio with the alteration ignored shall be permitted to remain unaltered. For purposes of calculating

demand-capacity ratios, the demand shall consider applicable load combinations with design lateral loads or forces per California Building Code Sections 1609A and 1613A. For purposes of this exception, comparisons of demand-capacity ratios and calculation of design lateral loads, forces and capacities shall account for the cumulative effects of additions and alterations since original construction.

2. Drift limits based on original design code shall be permitted to be used in lieu of the drift limits required by ASCE 7.

[BS] 503A.13. Voluntary Seismic Improvements. Alterations to existing structural elements or additions of new structural elements that are not otherwise required by this chapter and are initiated for the purpose of improving the performance of the seismic force-resisting system of an existing structure or the performance of seismic bracing or anchorage of existing nonstructural elements shall be permitted, provided that engineering analysis is submitted demonstrating the following:

(1) the altered structure, and the altered structural and nonstructural elements are no less in compliance with the provisions of this code with respect to earthquake design than they were prior to the alteration;
(2) new structural elements are designed, detailed and connected to the existing structural elements as required by Chapter 16A. Alterations of existing structural elements shall be based on design demand required by Chapter 16A. Demands for new or altered existing structural elements need not exceed the maximum load effect that can be transferred to the elements by the system;
(3) new, relocated or altered nonstructural elements are designed, detailed and connected to existing or new structural elements as required by Chapter 16A; and
(4) the alterations do not create a structural irregularity as defined in ASCE 7 or make an existing structural irregularity more severe.

Appendix B – SF Amendments, Select Standards Related to Seismic Upgrade for Alterations

303.4 Minimum Lateral Force For Existing Buildings.

303.4.1 General. This section is applicable to existing buildings when invoked by SFEBC Section 503. This section may be used as a standard for voluntary upgrades.

An existing building or structure which has been brought into compliance with the lateral force resistance requirements of the San Francisco Building Code in effect on or after the dates shown in Table 303.4 shall be deemed to comply with this section except when a vertical extension or other alterations are to be made which would increase the mass or reduce the seismic resistance capacity of the building or structure. Where multiple building types apply, the later applicable date shall be used. Where none of the building types apply, compliance shall be at the discretion of the Director. Building type definitions are given in ASCE 41, Table 3-1.

TABLE 303.4.1 – DATES REQUIRED TO DEMONSTRATE BUILDING COMPLIANCE

Building Type	*Date of Compliance*	*Model Code (for reference)*
Wood Frame, wood shear panels (Types W1 & W2)	1/1/1984	UBC 1976
Wood Frame, wood shear panels (Type W1A)	7/1/1999	UBC 1997
Floor areas greater than 3,000 ft2 per level		
Steel moment-resisting frame (Types S1 & S1a)	12/28/1995	UBC 1994
Steel concentrically braced frame (Types S2 & S2a)	7/1/1999	UBC 1997
Steel eccentrically braced frame (Types S2 & S2a)	1/1/1990	UBC 1988
Buckling-restrained braced frame (Types S2 & S2a)	1/1/2008	IBC 2006
Light metal frame (Type S3)	1/1/2008	IBC 2006
Steel frame w/ concrete shear walls (Type S4)	12/28/1995	UBC 1994
Steel plate shear wall (Type S6)	1/1/2008	IBC 2006
Reinforced concrete moment-resisting frame (Type C1)	12/28/1995	UBC 1994
Reinforced concrete shear walls (Types C2 & C2a)	12/28/1995	UBC 1994
Tilt-up concrete (Types PC1 & PC1a)	7/1/1999	UBC 1997
Precast concrete frame (Types PC2 & PC2a)	1/1/2008	IBC 2006

Reinforced masonry (Type RM1)	7/1/1999	UBC 1997
Flexible diaphragms		
Reinforced masonry (Type RM2)	12/28/1995	UBC 1994
Stiff diaphragms		
Seismic isolation or passive dissipation	7/1/1992	UBC 1991

303.4.2 Wind forces. Buildings and structures shall be capable of resisting wind forces as prescribed in Section 1609.

303.4.3 Seismic forces. Buildings and structures shall comply with the reduced seismic forces, as defined in Section 303.3.2. The building separation limitations of Section ASCE 7-16 Section 12.12.3 need not be considered.

When upper floors are exempted from compliance by Section 503.11.1, the lateral forces generated by their masses shall be included in the analysis and design of the lateral force resisting systems for the strengthened floor. Such forces may be applied to the floor level immediately above the topmost strengthened floor and distributed in that floor in a manner consistent with the construction and layout of the exempted floor.

EXHIBIT D
CONDITIONS OF APPROVAL

Exhibit D

Conditions of Approval

The Conditions of Approval for the Project are set forth in the following approved San Francisco Planning Commission Motions:

- Motion No. 20843 (Downtown Project Authorization), approved on January 28, 2021. This Motion incorporated by reference, modified, and superseded in part the Conditions of Approval in Motion No. 20616, approved on January 9, 2020.

- Motion No. 20844 (Conditional Use Authorization), approved on January 28, 2021. This Motion incorporated by reference, modified, and superseded in part the Conditions of Approval in Motion No. 20618, approved on January 9, 2020.

- Motion No. 20845 (Office Allocation), approved on January 28, 2021. This Motion incorporated by reference, modified, and superseded in part the Conditions of Approval in Motion No. 20617, approved on January 9, 2020.

EXHIBIT E

FORM OF LETTER OF CREDIT

DATE: ____, 202__

IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [Number]

ISSUING BANK
[Name of Bank]
[Address of Bank]

BENEFICIARY
Successor Agency to the Redevelopment Agency
of the City and County of San Francisco
One South Van Ness Avenue, Fifth Floor
San Francisco, California 94103
Attention: Executive Director
Telephone: (415) 701-2311

APPLICANT
Parcel F Owner LLC
101 California St., Suite 1000
San Francisco, CA 94lll
Attn: Mr. Daniel Esdorn
Senior Managing Director
daniel.esdorn@hines.com,
Telephone: (415) 982-6200

AMOUNT: USD $_____ UNITED STATES DOLLARS

EXPIRATION DATE: AT OUR COUNTERS.

[Name of Bank] ("BANK") HEREBY ESTABLISHES IN FAVOR OF THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO ("BENEFICIARY") OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO _____ (THE "LETTER OF CREDIT") IN THE AMOUNT OF _____ DOLLARS (USD $_____) FOR THE ACCOUNT AND ON BEHALF OF PARCEL F OWNER LLC ("APPLICANT''). PURSUANT TO THE TERMS AND PROVISIONS OF THE DEVELOPMENT AGREEMENT (THE "DEVELOPMENT AGREEMENT") BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO AND PARCEL F OWNER LLC (THE "APPLICANT"), FUNDS, UP TO THE MAXIMUM AGGREGATE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT, ARE PAYABLE TO BENEFICIARY BY BANK WITHIN THREE (3) BUSINESS DAYS

AFTER BANK'S RECEIPT, PRIOR TO BANK'S CLOSE OF BUSINESS ON THE EXPIRATION DATE, OF:

A DRAW STATEMENT SIGNED BY BENEFICIARY'S AUTHORIZED OFFICER OR REPRESENTATIVE OR, IF THIS LETTER OF CREDIT IS TRANSFERRED, BY AN AUTHORIZED OFFICER OR REPRESENTATIVE OF ANY TRANSFEREE BENEFICIARY (IN EITHER INSTANCE, SIGNING AS SUCH) ATTESTING TO THE SATISFACTION OF CONDITIONS FOR RELEASE OF FUNDS UNDER THE DEVELOPMENT AGREEMENT AND READING AS FOLLOWS:

"WE HEREBY DEMAND USD UNDER [Name of Bank] LETTER OF CREDIT NO. _____. THE AMOUNT OF THIS DRAW IS CURRENTLY DUE TO THE SUCCESSOR AGENCY TO THE REDEVELOPMENT AGENCY OF THE CITY AND COUNTY OF SAN FRANCISCO (THE "BENEFICIARY") BY APPLICANT UNDER THE TERMS OF THE DEVELOPMENT AGREEMENT REQUIRING RELEASE OF FUNDS NO LATER THAN FORTY-FIVE DAYS PRIOR TO THE CLOSE OF CONSTRUCTION OF AN AFFORDABLE HOUSING PROJECT AT TRANSBAY BLOCK 4. PROCEEDS OF THIS DRAW ARE TO BE WIRE TRANSFERRED TO OUR ACCOUNT---------- [INSERT WIRING INSTRUCTIONS]";

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DRAWINGS PRESENTED BY FACSIMILE ("FAX") TO FAX NUMBER [NUMBER], OR ALTERNATELY TO FAX NUMBER [NUMBER] ARE ACCEPTABLE, UNDER TELEPHONE PRE-ADVICE TO [NUMBER], OR ALTERNATELY TO [NUMBER], PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRY DATE ON THIS INSTRUMENT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING. IN THE EVENT OF PRESENTATION BY FAX, THE ORIGINAL DOCUMENTS SHOULD NOT ALSO BE PRESENTED.

AS USED HEREIN, THE TERM "BUSINESS DAY" MEANS ANY DAY OTHER THAN A SATURDAY, SUNDAY, OR A DAY ON WHICH BANKS IN THE STATE OF FLORIDA ARE AUTHORIZED OR REQUIRED TO BE CLOSED, AND A DAY ON WHICH PAYMENTS CAN BE EFFECTED ON THE FEDWIRE SYSTEM.

THE DRAW STATEMENT SHOULD BE ADDRESSED TO BANK, REFERENCE THIS LETTER OF CREDIT BY NUMBER, SPECIFY THE AMOUNT OF THE DRAW REQUEST, AND SET FORTH WIRE TRANSFER INSTRUCTIONS, WITH THE AMOUNT OF THE DRAW REQUEST AND WIRE TRANSFER INSTRUCTIONS COMPLETED.

THIS LETTER OF CREDIT IS NOT SUBJECT TO ANY CONDITION OR QUALIFICATION AND IS OUR INDIVIDUAL OBLIGATION WHICH IS IN NO WAY CONTINGENT UPON REIMBURSEMENT FROM APPLICANT OR ANY OTHER PERSON.

THIS LETTER OF CREDIT SHALL EXPIRE ON _____, BUT, SUBJECT TO THE PROVISION BELOW, SUCH EXPIRATION DATE SHALL BE AUTOMATICALLY

EXTENDED WITHOUT NOTICE OR AMENDMENT FOR PERIODS OF ONE (1) YEAR ON EACH SUCCESSIVE EXPIRATION DATE, UNLESS AT LEAST SIXTY (60) DAYS BEFORE ANY EXPIRATION DATE, WE SEND NOTICE TO BENEFICIARY BY CERTIFIED MAIL OR COURIER SERVICE AT THE ABOVE ADDRESS, THAT THIS LETTER OF CREDIT IS NOT EXTENDED BEYOND THE THEN-CURRENT EXPIRATION DATE.

PRESENTATION OF THE ORIGINAL LETTER OF CREDIT AND DRAW REQUESTS MAY BE IN PERSON, BY COURIER, OR BY UNITED STATES MAIL TO BANK'S ADDRESS STATED ABOVE NOT LATER THAN THE THEN CURRENT EXPIRATION DATE.

THIS LETTER OF CREDIT IS TRANSFERABLE, BUT ONLY IN ITS ENTIRETY AND MAY BE SUCCESSIVELY TRANSFERRED. TRANSFER OF THIS LETTER OF CREDIT SHALL BE EFFECTED BY US UPON YOUR SUBMISSION OF THIS ORIGINAL LETTER OF CREDIT, INCLUDING ALL ORIGINALS OF AMENDMENTS, IF ANY, ACCOMPANIED BY OUR TRANSFER REQUEST FORM DULY COMPLETED AND EXECUTED. IF BENEFICIARY WISHES TO TRANSFER THE LETTER OF CREDIT, BENEFICIARY SHOULD CONTACT US FOR THE TRANSFER FORM WHICH WE SHALL PROVIDE UPON YOUR REQUEST. IN ANY EVENT, THIS LETTER OF CREDIT MAY NOT BE TRANSFERRED TO ANY PERSON OR ENTITY LISTED IN OR OTHERWISE SUBJECT TO, ANY SANCTION OR EMBARGO UNDER ANY APPLICABLE RESTRICTIONS.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ICC PUBLICATION NO. 590).

VERY TRULY YOURS,

[Name of Bank]

EXHIBIT F

SCHEDULE OF IMPACT FEES

Applicable Impact Fee	**Planning Code Section**
Transportation Sustainability Fee	Sec. 411A
Downtown Park Fee – C-3 District	Section 412
Jobs Housing Linkage Fee	Section 413
Child Care Fee (Office and Hotel)	Section 414
Child Care Fee (Residential)	Section 414A
Transit Center District Open Space Fee	Section 424.6
Transit Center District Transportation and Street Improvement Fee	Section 424.7
Transit Center District Mello Roos Community Facility District Program	Section 424.8
Public Art Fee	Section 429

Not Applicable Impact Fee	**Planning Code Section**
Residential Affordable Housing Fee	Sec. 415.1-415.11

Exhibit G

Legal Description

EXHIBIT G

LEGAL DESCRIPTION

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF SAN FRANCISCO, IN THE COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, AND IS DESCRIBED AS FOLLOWS:

PARCEL 1

ALL THAT PARCEL OF LAND (STATE PARCEL NO. 502) DESCRIBED IN THE INSTRUMENT RECORDED SEPTEMBER 3, 1937, IN VOLUME 3195, PAGE 96, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO AND DESCRIBED THEREIN AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF NATOMA STREET, DISTANT THEREON 335 NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET; RUNNING THENCE NORTHEASTERLY AND ALONG SAID LINE OF NATOMA STREET 88 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 70 FEET 2 INCHES; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 10 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 11 FEET 6 INCHES; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 85 FEET TO A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 386 FEET 6 INCHES NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET; THENCE SOUTHWESTERLY ALONG SAID LINE OF HOWARD STREET 61 FEET 6 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 85 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 28 FEET; THENCE AT A RIGHT ANGLE NORTHWESTERLY 2 INCHES; THENCE IN A DIRECT LINE NORTHWESTERLY 88 FEET 6-3/4 INCHES TO THE POINT OF COMMENCEMENT.

BEING PART OF 100 VARA LOT NO. 29 IN BLOCK NO. 347.

APN: PORTION LOT 136, BLOCK 3721 (PORTION OF FORMER LOT 15A)

PARCEL 2

ALL THAT PARCEL OF LAND (STATE PARCEL NO. 372) CONVEYED TO THE STATE OF CALIFORNIA BY INSTRUMENT RECORDED SEPTEMBER 4, 1937, IN VOLUME 3192, PAGE 151, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO AND DESCRIBED THEREIN AS FOLLOWS:

COMMENCING AT A POINT ON THE SOUTHEASTERLY LINE OF NATOMA STREET, DISTANT THEREON 423 FEET NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET; RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF NATOMA STREET 90 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 50 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 90 FEET; AND THENCE AT A RIGHT ANGLE NORTHWESTERLY 50 FEET TO THE POINT OF COMMENCEMENT.

BEING PORTION OF 100 VARA BLOCK NO. 347.

APN: REMAINDER LOT 136, BLOCK 3721 (PORTION OF FORMER LOT 15A)

PARCEL 3

BEGINNING AT A POINT ON THE NORTHWESTERLY LINE OF HOWARD STREET, DISTANT THEREON 386 FEET AND 6 INCHES NORTHEASTERLY FROM THE NORTHEASTERLY LINE OF SECOND STREET, RUNNING THENCE NORTHEASTERLY ALONG SAID LINE OF HOWARD STREET 36 FEET AND 6 INCHES; THENCE AT A RIGHT ANGLE NORTHWESTERLY 95 FEET, MORE OR LESS, TO A POINT PERPENDICULARLY DISTANT 70 FEET AND 2 INCHES SOUTHEASTERLY FROM THE SOUTHEASTERLY LINE OF NATOMA STREET, THENCE SOUTHWESTERLY PARALLEL WITH SAID SOUTHEASTERLY LINE OF NATOMA STREET 25 FEET; THENCE AT A RIGHT ANGLE SOUTHEASTERLY 10 FEET; THENCE AT A RIGHT ANGLE SOUTHWESTERLY 11 FEET AND 6 INCHES, THENCE AT A RIGHT ANGLE SOUTHEASTERLY 85 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

EXHIBIT G
(Continued)

BEING A PORTION OF 100 VARA BLOCK NO. 347.

APN: LOT 016, BLOCK 3721

PARCEL 4

PARCEL B, AS SET FORTH IN THAT CERTAIN "CERTIFICATE OF COMPLIANCE", RECORDED JUNE 22, 2016, INSTRUMENT NO. 2016-K277777-00, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DESCRIBED AS FOLLOWS:

ALL THAT REAL PROPERTY SITUATED IN THE CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, BEING A PORTION OF THAT PARCEL OF LAND DESIGNATED AS "PARCEL 1" AND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY DIRECTOR'S DEED (QUITCLAIM) RECORDED AUGUST 9, 2010 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2010-J017202-00, TOGETHER WITH A PORTION OF THAT PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY FINAL ORDER OF CONDEMNATION RECORDED AUGUST 11, 2014 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2014-J925707-00, AND A PORTION OF THAT PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY FINAL ORDER OF CONDEMNATION RECORDED JUNE 2, 2015 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2015-K069897-00, ALL BEING SITUATED IN 100 VARA BLOCK NO. 347 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING ON THE NORTHWESTERLY LINE OF HOWARD STREET (82.50 FEET WIDE), SAID POINT LYING DISTANT THEREON NORTH 46°18'10" EAST 325.00 FEET FROM THE NORTHEASTERLY LINE OF SECOND STREET (82.50 FEET WIDE) BEING THE MOST EASTERLY CORNER OF SAID "PARCEL 1"; THENCE ALONG SAID NORTHWESTERLY LINE OF HOWARD STREET, SOUTH 46°18'10" WEST 30.68 FEET, THENCE LEAVING SAID NORTHWESTERLY LINE OF HOWARD STREET ALONG A CURVE CONCAVE NORTHEASTERLY AND FROM WHICH THE RADIUS POINT BEARS NORTH 19° 36'04" EAST 2273.80 FEET DISTANT; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 1°14'57" AN ARC LENGTH OF 49.58 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY FROM WHICH THE RADIUS POINT BEARS SOUTH 33°14'18" WEST 92.53 FEET DISTANT; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°56'08", AN ARC LENGTH OF 25.73 FEET; THENCE NORTH 72°41'50" WEST 16.91 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND FROM WHICH THE RADIUS POINT BEARS NORTH 21°54'54" EAST 2273.80 FEET DISTANT; THENCE WESTERLY ALONG SAID CURVE THOUGH A CENTRAL ANGLE OF 0°27'44" AN ARC DISTANCE OF 18.34 FEET TO THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY AS DESCRIBED IN DOCUMENT NO. 2015-K069897-00, OFFICIAL RECORDS; THENCE ALONG SAID NORTHWESTERLY LINE AND THE NORTHWESTERLY LINE OF SAID PARCEL OF LAND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY AS DESCRIBED IN DOCUMENT NO. 2014-J925707-00, OFFICIAL RECORDS, NORTH 46°18'10" EAST 27.38 FEET, TO THE MOST NORTHERLY CORNER OF LAST SAID PARCEL; THENCE ALONG THE NORTHEASTERLY LINE OF LAST SAID PARCEL, SOUTH 43°41'50" EAST 15.00 FEET, TO THE MOST WESTERLY CORNER OF SAID "PARCEL 1" DESCRIBED IN DOCUMENT NO. 2010-J017202-00, OFFICIAL RECORDS; THENCE ALONG THE NORTHWESTERLY LINE OF SAID "PARCEL 1", NORTH 46°18'10" EAST 50.00 FEET, TO THE MOST NORTHERLY CORNER OF SAID "PARCEL 1"; THENCE ALONG THE NORTHEASTERLY LINE OF SAID "PARCEL 1" SOUTH 43°41'50" EAST 85.00 FEET, TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK 3721.

ALL BEARINGS, STREETS AND STREET LINES HEREINABOVE MENTIONED ARE IN ACCORDANCE WITH

THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY NO. 6428", FILED MAY 31, 2012 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, UNDER DOCUMENT NO. 2012J423945, IN BOOK EE OF SURVEY MAPS, AT PAGES 19 THROUGH 27, INCLUSIVE.

APN: LOT 135, BLOCK 3721 (PORTIONS OF FORMER APN 3721-019, 3721-020 AND APN 3721-015A)

PARCEL 5

PARCEL B, AS SET FORTH IN THAT CERTAIN "CERTIFICATE OF COMPLIANCE", RECORDED JUNE 22, 2016, INSTRUMENT NO. 2016-K277778-00, OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, DESCRIBED AS FOLLOWS:

ALL OF THAT PARCEL OF LAND DESIGNATED AS "NATOMA ST. LAND" AND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY GRANT DEED RECORDED APRIL 10, 2009 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2009-I745633-00, TOGETHER WITH A PORTION OF THAT PARCEL OF LAND DESIGNATED AS "PARCEL THREE" AND CONVEYED TO THE TRANSBAY JOINT POWERS AUTHORITY BY GRANT DEED RECORDED DECEMBER 16, 2008 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO UNDER DOCUMENT NO. 2008-I694632-00, ALL BEING SITUATED IN 100 VARA BLOCK NO. 347 AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT LYING ON THE SOUTHEASTERLY LINE OF NATOMA STREET (35.00 FEET WIDE), SAID POINT LYING DISTANT THEREON NORTH 46°18'10" EAST 335.00 FEET FROM THE NORTHEASTERLY LINE OF SECOND STREET (82.50 FEET WIDE) BEING THE MOST NORTHERLY CORNER OF SAID "NATOMA ST. LAND"; THENCE ALONG THE EASTERLY LINE OF SAID "NATOMA ST. LAND" SOUTH 18°17'23" EAST 88.57 FEET TO AN ANGLE POINT; THENCE SOUTH 43°41'50" EAST 0.17 FEET TO THE MOST EASTERLY CORNER OF SAID "NATOMA ST. LAND"; THENCE ALONG THE SOUTHEASTERLY LINE OF SAID "NATOMA ST. LAND" SOUTH 46°18'10" WEST 22.00 FEET TO AN ANGLE POINT; THENCE NORTH 43°41'50" WEST 15.00 FEET TO AN ANGLE POINT; THENCE SOUTH 46°18'10" WEST 27.38 FEET; THENCE ALONG A CURVE CONCAVE NORTHEASTERLY AND FROM WHICH THE RADIUS POINT BEARS NORTH 22°22'37" EAST 2273.80 FEET DISTANT; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 0°43'23" AN ARC LENGTH OF 28.69 FEET TO A POINT OF COMPOUND CURVATURE; THENCE NORTHWESTERLY ALONG A TANGENT CURVE, CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 139.80 FEET, THROUGH A CENTRAL ANGLE OF 16°32'44" AN ARC LENGTH OF 40.37 FEET, TO SAID SOUTHEASTERLY LINE OF NATOMA STREET; THENCE ALONG SAID SOUTHEASTERLY LINE OF NATOMA STREET, NORTH 46°18'10" EAST 109.21 FEET, MORE OR LESS, TO THE POINT OF BEGINNING.

BEING A PORTION OF ASSESSOR'S BLOCK 3721.

ALL BEARINGS, STREETS AND STREET LINES HEREINABOVE MENTIONED ARE IN ACCORDANCE WITH THAT CERTAIN MAP ENTITLED "RECORD OF SURVEY NO. 6428", FILED MAY 31, 2012 IN OFFICIAL RECORDS OF THE CITY AND COUNTY OF SAN FRANCISCO, UNDER DOCUMENT NO. 2012J423945, IN BOOK EE OF SURVEY MAPS, AT PAGES 19 THROUGH 27, INCLUSIVE.

APN: LOT 138, BLOCK 3721 (FORMER APN 3721-031 AND PORTION OF FORMER APN 3721-029)